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President and Founder,  
Josephson Institute of Ethics,  
Los Angeles

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## Michael Josephson

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Los Angeles

an interview by Adam Turteltaub

# Meet Michael Josephson

This interview was conducted in January by **Adam Turteltaub** ([adam.turteltaub@corporatecompliance.org](mailto:adam.turteltaub@corporatecompliance.org)), Vice President of Membership for SCCE. **Michael Josephson** can be contacted at [mjsj@jiethics.org](mailto:mjsj@jiethics.org).

**AT:** You're not an ethicist by training, but an attorney. What led you to create the Institute?

**MJ:** I was a law professor for 20 years. I initially approached the teaching of law as I was taught: Take a morally neutral stand, zealously pursue the best interests of the client, and when it comes to potential ethical issues, do a cost-benefit analysis. I was always attracted to the competitive advocacy aspect

of the law (my wife used to say I would even try to win phone calls), so I gravitated to the "warrior courses" involving trial practice and negotiation.

I prided myself on being tough and responding in kind to the tactics of the lawyers who opposed me ("If you want to play hardball, I'll play hardball") and I felt justified and comfortable using every legal technique or strategy (I never believed in lying, fabricating, or acting dishonorably within the framework of zealous advocacy) that would advance my client's interests (i.e., help me win). I was pretty good at it, and I taught my students this approach. I bulwarked their advocacy orientation by quoting

Aaron Burr: “The law is what is boldly asserted and plausibly maintained.”

I taught that way for nearly 10 years, but my life and my outlook on lawyering changed dramatically when two events coalesced in 1976. First, I was assigned to teach a newly required course in legal ethics. This was a direct outgrowth of the Watergate scandal that involved more than 20 lawyers.

Second, I became a father for the first time with the birth of my son Justin (I now have five children, including four teenaged girls ages 14–19).

While trying to put my son to sleep in the middle of the night (he had colic), I started to think about my ethics course the next morning, and it struck me that my “what’s the downside risk” approach I had been taking was a horrible parenting strategy. I realized I did not want my son to view ethics only as a risk-management issue; I wanted him to become a good person, and it changed my frame of reference completely.

This perspective made me newly sensitive to my opportunity and obligation to define and instill ethical values and good character in my son and to be a good role model attempting to reinforce those values with my students.

I started looking at ethics in a very different way. I no longer would assume that an act is ethical simply because it is legal, and I came to realize that a person could be both a good lawyer and a good person if he went beyond asking “What is permissible?” and started asking “What is proper?”

Consequently, I induced the Dean of Loyola Law School in Los Angeles to allow me to create a new four-unit course (that was the

most they would assign to any course) called Ethics, Counseling and Negotiation, where I would combine the teaching of legal ethics (based on a narrow Code of Professional

Responsibility) with real ethics (based on universal notions of morality and ethics such as honesty, fairness, respect, and responsibility) in the context of the very practical lawyering functions of counseling

and negotiation. I also brought my new ethical sensibilities to my teaching of trial practice and other courses.

This began my new lifelong journey to better understand the nature of ethics and how to instill within ambitious and highly intelligent law students a deeper desire to live honorably.

This passion to find the formula for being both a good lawyer and a good person became the focus of my professional life and in 1985, when I had an opportunity to sell a successful, private, educational, legal education business that produced study materials and prepared students to pass the bar exam, I accepted the offer of nearly \$10 million and I used a significant portion of the proceeds to found the nonprofit Joseph & Edna Josephson Institute of Ethics (named after my parents). Until June of 2012, I worked as a full-time volunteer, receiving no compensation for my work.

**AT:** It’s worth noting that this is a labor of love. You’re a non-profit. Why did you choose the non-profit route?

**MJ:** I had done pretty well in law school and was selected to give the valedictory address for all UCLA graduate departments at

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our 1967 graduation ceremony, so I had lots of good opportunities after graduation, but I was filled with 60s idealism and I chose to work for the U.S. Department of Justice Civil Rights Division. Unfortunately, the Viet Nam War intervened and virtually all of my graduating class expected to be drafted. I was always much more interested in social significance than material wealth, and believed Eldridge Cleaver (a black militant of my time) who said, "If you are not part of the solution, you are part of the problem."

I had interned in the summer of 1966 with Senator Earnest Gruening, one of only two Senators who adamantly opposed to the War and this strongly influenced my views. To avoid the choice between the possibility of becoming a conscientious objector, fleeing to Canada, or going into the Army to participate in a War I thought was immoral, I discovered that one of the few job categories that came with a draft deferment was teaching, and I accepted an offer to become an instructor (the lowest academic position) at the University of Michigan Law School.

I came to love teaching and I chose to stay within the groves of academe, rather than enter law practice. When I had the opportunity to sell my publishing company (designed to help law students) and found the Josephson Institute (in honor of my parents) and still have enough money to live comfortably, I grabbed it. It never crossed my mind to work in any form other than a non-profit

corporation and to work for free as long as I was able to.

**AT:** You started back in the 1980s, well before Enron. How have you seen the environment for ethics education change?

**MJ:** When I started the Institute, the concept of ethics education was very primitive. Only a tiny handful of companies had ethics programs or codes, and character education in schools was the concern of only a few educators. A new ethical sensibility began to emerge in 1987 with three major events highlighting the issues of right and wrong, rather than just legal or illegal. Gary Hart, a Senator seeking

the Democratic nomination for President, was quite literally caught with his pants down in a steamy adulterous relationship with a model named Donna Rice (forever opening the character issue to journalistic inquiry). During the same year, headlines were

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made by massive financial manipulation by junk bond king Michael Milken for Drexel Burnham and arbitrager, Ivan Boesky.

Ethics has been on the agenda ever since, and the Enron scandal was simply the most visible of dozens of cases of accounting and other frauds that highlighted the inadequacy of existing laws. Enron also highlighted the need to bulwark more laws and regulations with a higher degree of sensitivity to ethics. And new laws like the Foreign Corrupt Practices Act, Sarbanes-Oxley, Dodd-Frank, and the Federal Sentencing Guidelines have substantially

increased the complexity of legal-oriented ethics and the need for companies to have codes, training, and other protocols to avoid prosecution. They also have seen the high cost of scandal when the company is perceived to be unethical, whether or not provable illegal acts were committed.

Still, the field of business ethics is dominated by a risk-management, rules-based compliance culture, but our Institute's approach of creating a values-based ethical culture that encompasses but goes beyond compliance has been gathering steam.

Compliance still is stuck in the question: Is it legal? We think it is not only more honorable and sustainable, but more effective, to ask, "Is it right?" We stress the comment of former Supreme Court Justice Potter Stewart who said, "There's a big difference between what you have a right to do and what is right to do."

**AT:** Your focus is on character. What led you to make that choice?

**MJ:** Character is ethics in action. It not only is a vital concept driving school reforms focusing on the teaching of core ethical values and principled decision-making, it is also an issue worthy of emphasis in the workplace. People without character, who have no moral compass or commitment to ethical principles, create an unreasonably high risk for companies that will pay the price of their moral deficiency. Hence, we advocate: Hire for character, train for skills. We also think character can be developed in a workplace context and measured as part of a performance review.

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**AT:** What's notable about your organization is it's not just focused on business, but also on school children, government officials, and police. Do you take a common approach to all of these audiences? I know the principles of character you promote are the same, but is the program as a whole largely the same in its focus?

**MJ:** If one wants to be effective, both content and context matter. The content for our youth-based programs and our organizational culture workplace programs are derived from the same core ethical principles we call

the Six Pillars of Character (i.e., trustworthiness, respect, responsibility, caring, fairness, and citizenship) and various delivery and decision-making strategies seeking the best possible result. Nevertheless, there is substantial difference in sophistication and the need to teach practical application in our workplace programs, but the context of our audiences requires customization to the industry involved and to the level of authority of our audience, from boards of directors to line employees. Thus, the focus on producing or supporting ethically competent and committed individuals with good character is a common element, but strategies of delivery and content vary rather dramatically.

**AT:** What do you find the audiences have in common?

**MJ:** The most common element in our workplace audiences, from corporate executives to police officers, is the risk-management concern of the organization that sent us to them. Employees tend to be skeptical at best

and are often outright hostile. These negative attitudes are fueled by training approaches and online requirements that are usually boring, often not pertinent to the job function of the attendee, and plainly inadequate in instilling a deeper understanding of and personal commitment to ethical conduct. Frankly, we benefit from low expectations. We find most people are truly engaged and grateful when we offer a sensible, inspirationally-based framework to think about their legal and ethical responsibilities. What we teach has such obvious implications, not only to every aspect of their job-related duties and relationships, but to the way they function in their private lives. Most people really do want to live worthy and ethically noble lives.

But, I have to emphasize training is only a small aspect of creating and sustaining an ethical culture. We use the Federal Sentencing Guidelines as an organizational framework to help companies create and maintain not only the kind of programs that will comply with the rigorous federal standards, but that also will increase productivity and morale.

**AT:** And the next natural question is, how do they differ? Obviously they face different challenges, but are there different ways of thinking that have to be addressed?

**MJ:** You have to remember that when we begin to interact with employees of any private or public organization—whether it is in a class setting or during personal or group interviews or even through online

surveys—we will detect the effects of that organizational culture on the way they approach issues of ethics. Culture not only varies depending on the industry (e.g., highly regulated industries like health care companies tend to be far more compliance oriented and ethics concerned than marketing organizations or professional services, such as public

relations and law), but also by region and function. For example, when we did a comprehensive survey as part of a culture-building program for a huge federal agency with more than 100,000 employees, we found both function and region had a major

impact. In other words, there was no single organizational culture.

Generally, public service organizations are much more receptive to thinking ethically, not merely legally. A major part of our public service trainings emphasize five principles of public service ethics, including the principle that a public employee must not only avoid impropriety (a broader concept than illegality), but the appearance of impropriety. This is a very different mindset than the one normally promoted by internal auditors or the general counsel in private organizations.

**AT:** What do you think business could learn from these other groups?

**MJ:** The better corporate programs are adopting the values-based ethical mindset more commonly found in public service. In the end, however, the most important thing is what the organization demands and allows.

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What you allow, you encourage—and many private organizations allow narrow legalistic approaches that are bound to get the company in trouble eventually.

**AT:** Stretch goals and unrealistically high performance expectations can, as you note on your site, lead people to step out of bounds ethically and legally. What are some of the other pitfalls that you see in business?

**MJ:** Every company has three types of employees: the saints, who have been raised to think and act ethically and can't be tempted into acting improperly (they would rather lose their job), the sinners who are willing to and often do whatever it takes to get what they want, including approval and promotion from superiors (these folks don't respond to training or appeals to a higher purpose), and everyone else (the rest of us) who are generally ethical and honorable, but are vulnerable to external pressures and incentives as well as their own internal rationalizations. The challenge for leadership in a corporation, especially ethics and compliance folks, is to be vigilant to deter, apprehend, and discipline the sinners and to assure that the culture (largely determined by all personnel issues—recruiting, hiring, training, performance review's, promotions, compensation, and discipline) promotes ethical behavior in matters large and small.

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**Very few companies I've seen are willing to devote the energy needed to create and sustain a truly ethical culture because, in the last analysis, it is bottom-line performance that makes or breaks careers.**

makes or breaks careers. Just as I had to learn how a person could be both a good lawyer and a good person, many executives have to learn how a company can be both profitable and honorable. It's not as easy as one would hope.

**AT:** You're a proponent of character-based ethics as opposed to a compliance-based approach. What led you to conclude that one is superior?

**MJ:** We would not raise our children depending on them to do the right thing because of the rules we make or enforce. We teach them values and hope they will use them, even when there is no realistic possibility of getting caught or punished. Similarly, there are companies that believe that even robust compliance programs (and there are very few of those) will provide either the deterrence or guidance to assure ethical conduct. It's been said that character is revealed by how you behave when no one is looking, and since in many business contexts no one is looking, we need character, not just rules.

**AT:** Some of the work by behavioral economists suggests that cheating is an inherent part of our character.<sup>1</sup> Can a character-based focus overcome that human tendency? To me it argues that we need to reinforce the importance of rules and that they will be enforced.

**MJ:** Yes, a very strong case can be made that there is an inherent capacity for cheating, which is part of our human nature that focuses on seeking pleasure and avoiding pain. The vast majority of people (all but the saints) are

willing and capable of cheating under certain circumstances. To say cheating is an inherent part of our character, however, is simply not correct. Even acknowledging the capacity to and even the disposition to cheat as an inherent possibility does not justify accepting cheating in any context. We are also equally capable of self-restraint and the pursuit of more noble life goals, including a need to feel worthy. This is no less intrinsic than the instincts that can lead us astray. The fact that most people are religious to one extent or another is evidence of the inherent search for meaning and purpose beyond momentary self-interest. Humans are the only life form we know of capable of and disposed to making moral decisions. It's not the rules we need to emphasize so strongly (though they must be understood), but the inherent human need for the approval of others, a sense of self-worth, and a desire to make a positive difference in the world and the lives of those who love us.

**AT:** Let me switch gears for a moment.

One of the things compliance and ethics officers hear too often is that ethics training is boring, that people already learned ethics from their parents, pastors, and so on. How do you make it compelling?

**MJ:** First of all, take the criticism seriously. The critics are not wrong. Most programs are boring, even mind deadening, both in content and delivery. Yet every great novel or movie is centered on compelling moral issues. There's nothing boring about ethics. What's boring is

repetition of obvious platitudes and PowerPoint slides of rules. We don't need to teach adult employees that honesty and fairness are good things. We have to teach them how to do their jobs well and earn praise and recognition by

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being honest and fair. We need to discuss ethics in realistic contexts, in situations where the ordinary folks who can go either way are likely to confront ethical issues. Sometimes they don't even see the ethical issue. Other times they do, but they think the cost of doing

the right thing outweighs the cost of failing to produce certain results demanded by their superiors. Above all, ethics should be personal and inspirational.

**AT:** And, what are some of the traps you've seen organizations fall in when doing ethics training?

**MJ:** We find many shortcomings, but probably the biggest trap is the undocumented and unrealistic belief that the type of training that is offered is meaningfully changing attitudes or behavior of enough employees (who might otherwise make foolish or unethical decisions) to justify the cost and effort. In the character development field, educators look for research evidence that the methods employed are effective in altering attitudes and behaviors. Companies spend millions of dollars on live and online training without any solid evidence that their ethics/compliance training accomplishes the objectives intended.

When we conduct audits of the ethics training component we look at five separate elements:

1. **Content** — **Is the course clear, compelling, and comprehensive?** Does it cover all the important issues appropriate to the audience?
2. **Design** — **Is the course designed in a manner that makes it highly likely that the educational objectives will be achieved?** Is the time allotted sufficient? Are the instructional methods engaging and suitable to the audience? Are the logistics conducive to accomplishing the educational objectives?
3. **Implementation** — **Does the actual delivery of the training meet the description and intent behind the design?** Are instructors properly trained, competent, and credible to effectively deliver the course with fidelity to the design? Is the content and process of delivery sufficiently uniform to provide confidence that all employees receive the desired information and inspiration? Is the course actually delivered as designed in terms of timing? Is there a mechanism to assure that all employees receive the training?
4. **Effectiveness** — **Does the training effectively promote reputation-building conduct and prevent illegal, unethical and inappropriate conduct?** Does the company conduct reliable pre- and post-course surveys to determine the actual impact on knowledge, attitudes, and conduct? Is there objective evidence demonstrating effectiveness regarding the conduct the company wants to promote or prevent? Is there an opportunity for participants to candidly critique the effectiveness of the course, and is that feedback systematically collected and used to improve the program?
5. **Management Support** — **Does the senior leadership buy-in and model the principles of the program?** Has top management participated in the training program? Do they demonstrate the

principles espoused by the program or is it just a program for the staff? Is the importance of this program clearly articulated by top management in the company's internal and external communications? Are the principles rigorously applied by management for personnel issues such as hiring, firing and performance reviews for all staff members?

When a training program is subjected to this sort of rigorous analysis, major deficiencies are uncovered which often demonstrate that the training is not effective. What's more, very few programs fully comply with the Federal Sentencing Guideline standards for an effective ethics program.

**AT:** Finally, how do you see ethics and character education evolving over the next few years?

**MJ:** The consequences of unethical and illegal content are so enormous. There will be an increased demand for greater rigor and accountability in program, and it is absolutely certain that the movement will be toward a values-based strategy to create an ethical culture, rather than a rules-based approach to produce a compliance culture. We are already seeing huge advances in rigor of design, accountability, and creativity. At the Institute, for example, we make much greater use of research (including insights on personal and organizational change, and identifying and modifying perceptions and mindset). We use more dynamic and engaging instructional methods, including use of video and the Internet. In 10 years, I think we'll look back on this era as we look on the early days of computers and computer software—much better than before, but with huge future potential. \*

1. See "Do we really lie that easily?" A book review of Dan Ariely's *The Honest Truth About Dishonesty* in our January/February 2012 issue.