



## 18 U.S.C. § 207: Applicability Chart

Employees	(a)(1)	(a)(2)	(b)	(c)	(d)	(f)
<b>All Executive Branch Employees</b>	X	X	X			
<b>Senior Employees</b> <ul style="list-style-type: none"> <li>Positions with pay fixed according to the Executive Schedule</li> <li>Basic pay<sup>1</sup> at or above 86.5% of the rate of basic pay for level II of the Executive Schedule = <b>\$156,997.50</b> for CY 2014</li> <li>0-7 or above uniformed services grade</li> <li>Appointed by the President under 3 U.S.C. § 105(a)(2)(B)</li> <li>Appointed by the Vice President to a position under 3 U.S.C. § 106(a)(1)(B)</li> </ul>	X	X	X	X		X
<b>Very Senior Employees</b> <ul style="list-style-type: none"> <li>Vice President</li> <li>Paid at the rate of basic pay for level I of the Executive Schedule = <b>\$201,700</b> for CY 2014</li> <li>Employed in a position in the EOP at a rate of pay for level II of the Executive Schedule = \$181,500 for CY 2012</li> <li>Appointed by the President under 3 U.S.C. § 105(a)(2)(A)</li> <li>Appointed by the Vice President to a position under 3 U.S.C. § 106(a)(1)(A)</li> </ul>	X	X	X		X	X

<sup>1</sup> Basic pay is actual pay, minus certain “additional pay” such as locality, bonuses, awards, and certain other allowances.

Exceptions / Waivers	(a)(1)	(a)(2)	(b)	(c)	(d)	(f)
<b>Official Government Duties (j)(1)</b>  A former employee is not restricted by any of the substantive provisions of § 207 from engaging in post-employment activities performed in carrying out official duties on behalf of the U.S. This exception also extends to activities undertaken in carrying out official duties as an elected official of a state or local Government.	X	X	X	X	X	X
<b>State and Local Governments and Institutions, Hospitals, and Organizations (j)(2)</b>  A former senior or very senior employee will not violate § 207(c) or (d) if his communication or appearance is made in carrying out official duties as an employee of and is made on behalf of (1) an agency or instrumentality of a State or local Government, (2) an accredited degree-granting institution of higher education as defined in § 101 of the Higher Education Act of 1965, as amended (20 U.S.C. § 1001), or (3) a hospital or medical research organization exempted and defined under § 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. § 501(c)(3)).				X	X	
<b>International Organizations (j)(3)</b>  A former employee is not restricted by any of the substantive provisions of § 207 from representing, aiding, or advising an international organization in which the U.S. participates, if the Secretary of State certifies in advance that such activity is in the interest of the U.S.	X	X	X	X	X	X
<b>Special Knowledge (j)(4)</b>  A former senior or very senior employee will not violate § 207(c) or (d) if he makes a statement that is based on his own special knowledge in the particular area that is the subject of the statement, provided that he receives no compensation for making the statement.				X	X	

Exceptions / Waivers (Cont'd)	(a)(1)	(a)(2)	(b)	(c)	(d)	(f)
<b>Scientific or Technological Information (j)(5)</b>  A former employee will not violate §§ 207(a)(1), (a)(2), (c), or (d), if he makes a communication solely for the purpose of furnishing scientific or technological information in accordance with procedures acceptable to the agency involved. Alternatively, a former employee may make a communication upon publication of a certification in the <i>Federal Register</i> by the head of the agency concerned	X	X		X	X	
<b>Testimony under Oath or Statements Made under Penalty of Perjury (j)(6)</b>  A former employee is not restricted by any of the substantive restrictions of § 207 from giving testimony under oath or from making statements required to be made under penalty of perjury, subject to a special rule with respect to expert opinion testimony. Unless expert opinion testimony is given pursuant to court order, a former employee may not provide such testimony on a matter on behalf of any other person except the U.S. (or the Congress) if he is subject to the lifetime prohibition contained in § 207(a)(1) relating to that matter.	X	X	X	X	X	X
<b>Political Parties and Campaign Committees (j)(7)</b>  A former senior or very senior employee will not violate § 207(c) or (d) if his communication or appearance is on behalf of a candidate for Federal or State office or an authorized committee, a national committee, a national Federal campaign committee, a State committee, or a political party.				X	X	
<b>Presidential Waiver (k)</b>  A former employee is not restricted by any of the substantive restrictions of § 207 if granted 1 of 25 Presidential waivers in connection with his reemployment at a Government-owned, contractor operated entity	X	X	X	X	X	X

# The FBI's Integrity and Compliance Program

---

**Patrick W Kelley**  
Assistant Director



*Office of Integrity and Compliance*



# Why a Compliance Program: NSLs!

**NATIONAL NEWS**  
**FBI Found to Misuse Security Letters**  
2003-06 Audit Cites Probes of Citizens  
By DAN EGGEN  
Washington Post Staff Writer  
The FBI has increasingly used administrative subpoenas to obtain the personal records of



## FBI Chief Confirms Misuse of Subpoenas

*Security Letters Used to Get Personal Data*

## DOJ IG Report – National Security Letter Mismanagement

FBI Director Robert S. Mueller said new administrative subpoenas to obtain personal data about Americans until internal reforms were enacted.

### PRIVACY CONCERNS RAISED

## FBI Data Transfers Via Telecoms Questioned

By ELLEN NAKASHIMA  
Washington Post Staff Writer

When FBI investigators probing New York prostitution rings, Boston organized crime or potential terrorist plots anywhere want access to a suspect's telephone contacts, technicians at a telecommunications carrier served with a government order can, with the click of a mouse, instantly transfer key data along a computer circuit to an FBI technology office in Quantico.

rights issues.  
The bureau says its budget for the collection system increased from \$30 million in 2007 to \$40 million in 2008. Information lawfully collected by the FBI from telecom firms can be shared with law enforcement and intelligence-gathering partners, including the National Security Agency and the CIA. Likewise, under guidelines approved by the attorney general or a court, some intercept data gathered by intelligence agencies can be shared with law enforcement agencies.





# Consequences of DOJ IG's NSL Report

U. S. Department of Justice  
Office of the Inspector General

---

## A Review of the Federal Bureau of Investigation's Use of National Security Letters



- **Very costly** (time & money) **to fix** NSL errors.
- **Loss of trust** – Congressional hearings, news articles / editorials.
- **Perception** – We care about our mission but everything else is “just paperwork.”



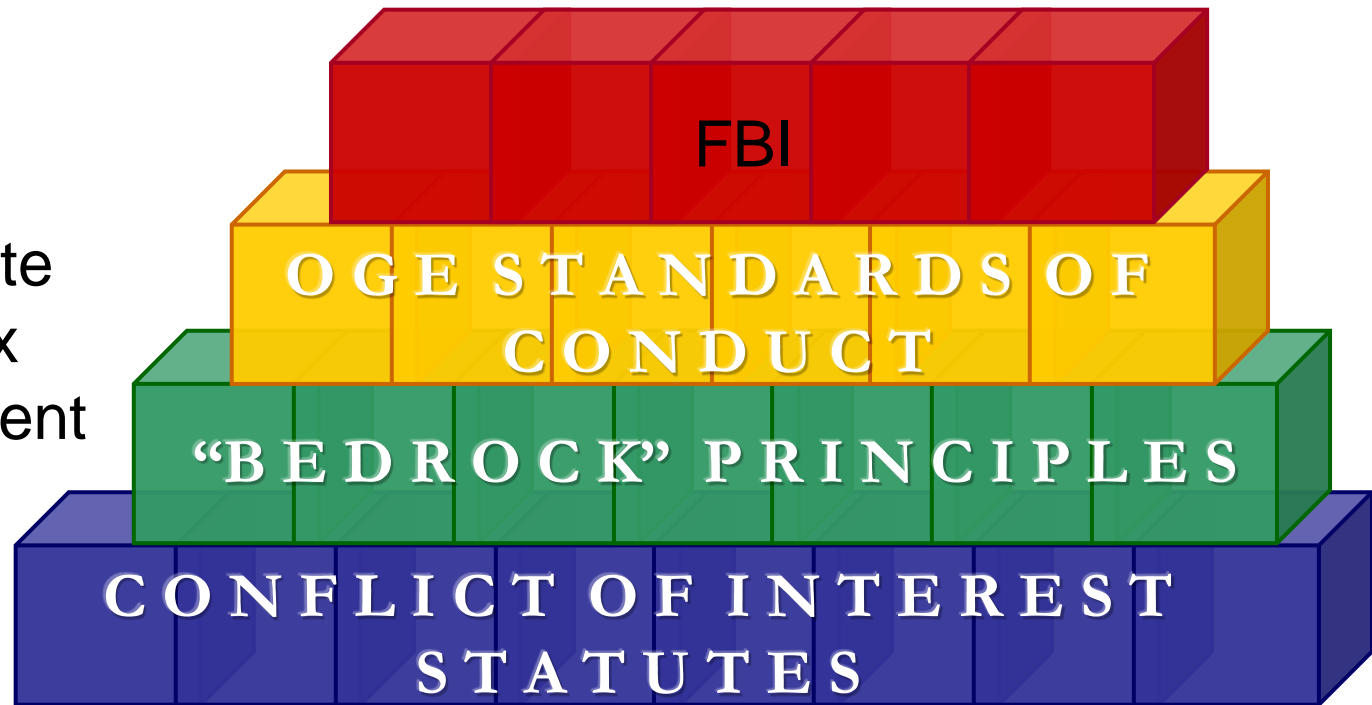
*Office of Integrity and Compliance*



# Standards of Conduct Alone Are Not Enough to Ensure Compliance

- ◆ FBI Subject to Same Rules as Rest of the Govt

BUT, We Operate in Very Complex Legal Environment







# Solution: Compliance Program

## What is a Compliance Program?

A **formal way** for an organization to **promote an organizational** legacy of **ethical conduct** and a commitment to **compliance with the spirit and the letter of the law**.

**Translation:** A way for employees who want to do the right thing to do it.



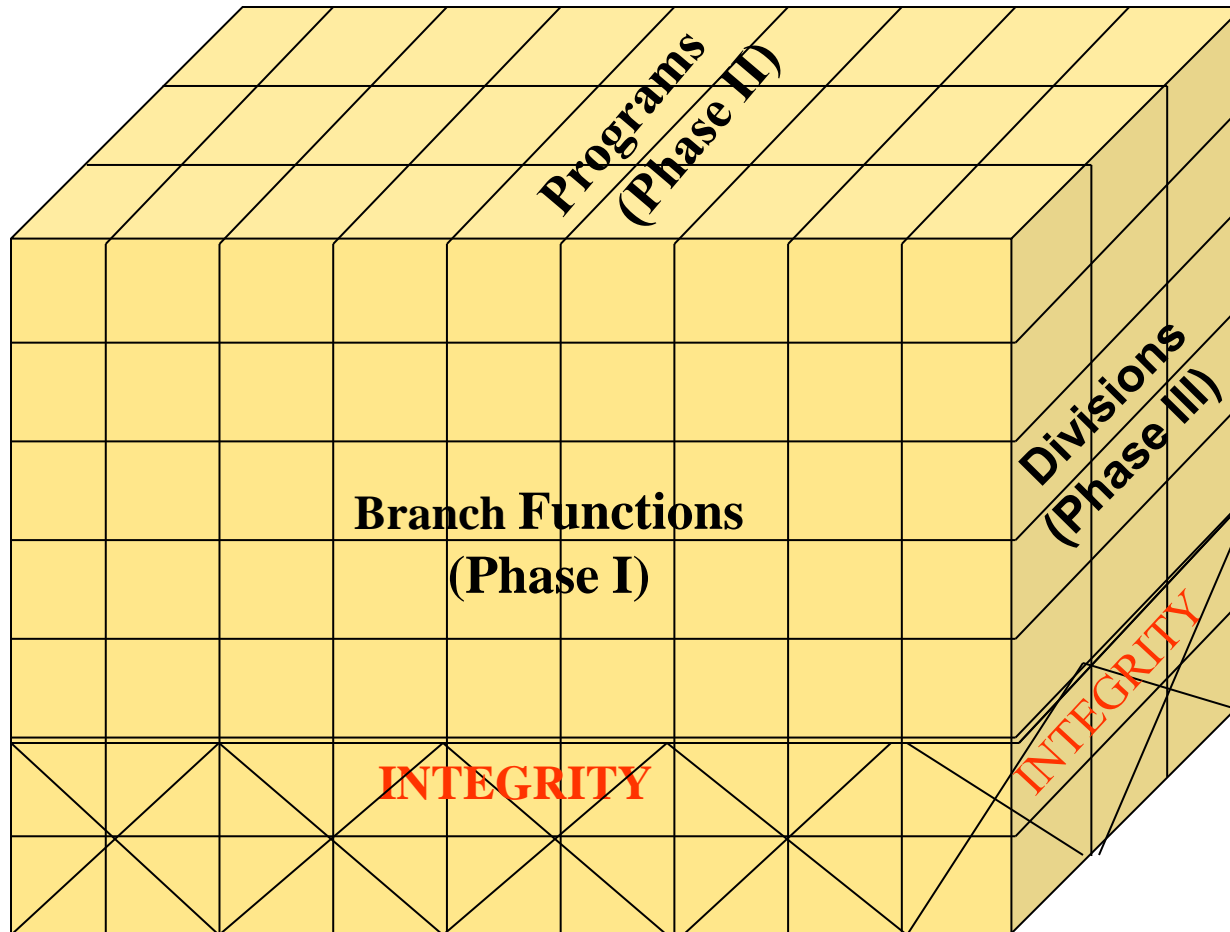
Roots: DOJ Sentencing Guidelines

*Office of Integrity and Compliance*





# Building the FBI Program





# Elements of an Effective Compliance Program

1. Ethical Culture
2. Management “Buy-In”
3. Organizational Structure that Promotes Compliance
4. Two-Way Communication
5. HR Policies That Encourage Compliance
6. Auditing
7. Documentation
8. Risk Assessment/Mitigation





# Element 1: Ethical Culture/Integrity

## Employee Base

- Large Applicant Pool
- Extensive Background Check – updated every 5 years
- Top Secret Clearances

## Strong Ethical Culture

- Core Values
- Code of Conduct (includes the OGE Standards of Conduct)

## Robust Disciplinary Process





# FBI Core Values

We are an organization driven by our Core Values, which embody the principles of compliance and ethical behavior.

- ☐ Rigorous obedience to the Constitution of the United States;
- ☐ Respect for the dignity of all;
- ☐ Compassion;
- ☐ Fairness;
- ☐ Uncompromising personal and institutional integrity;
- ☐ Accountability by accepting responsibility for our actions and decisions and their consequences; and
- ☐ Leadership, by example, both personal and professional.





## Element 2: Management 'Buy-In'

### Director's decisions:

- ▲ Create OIC within Director's Office
- ▲ Program scope – All FBI programs and activities
- ▲ Personally leads Integrity & Compliance Council
  - Meets every 4 months
- ▲ Incorporate Ethics/SOC Program into OIC
- ▲ Incorporate Compliance into Leadership Development & New Employee Training
  - One-on-one meeting with new SES personnel
  - New Employee Orientation
  - New Agent / Analyst Training (includes visit to Holocaust Museum)





## Element 3: Organizational Structure

### *OIC Mission Statement*

The mission of the FBI Office of Integrity and Compliance is to develop, implement and oversee a program that ensures that there are processes and procedures in place that promote FBI compliance with both the letter and spirit of all applicable laws, regulations, rules, and policies. The Office of Integrity and Compliance will endeavor to protect and enhance the FBI's reputation for integrity.

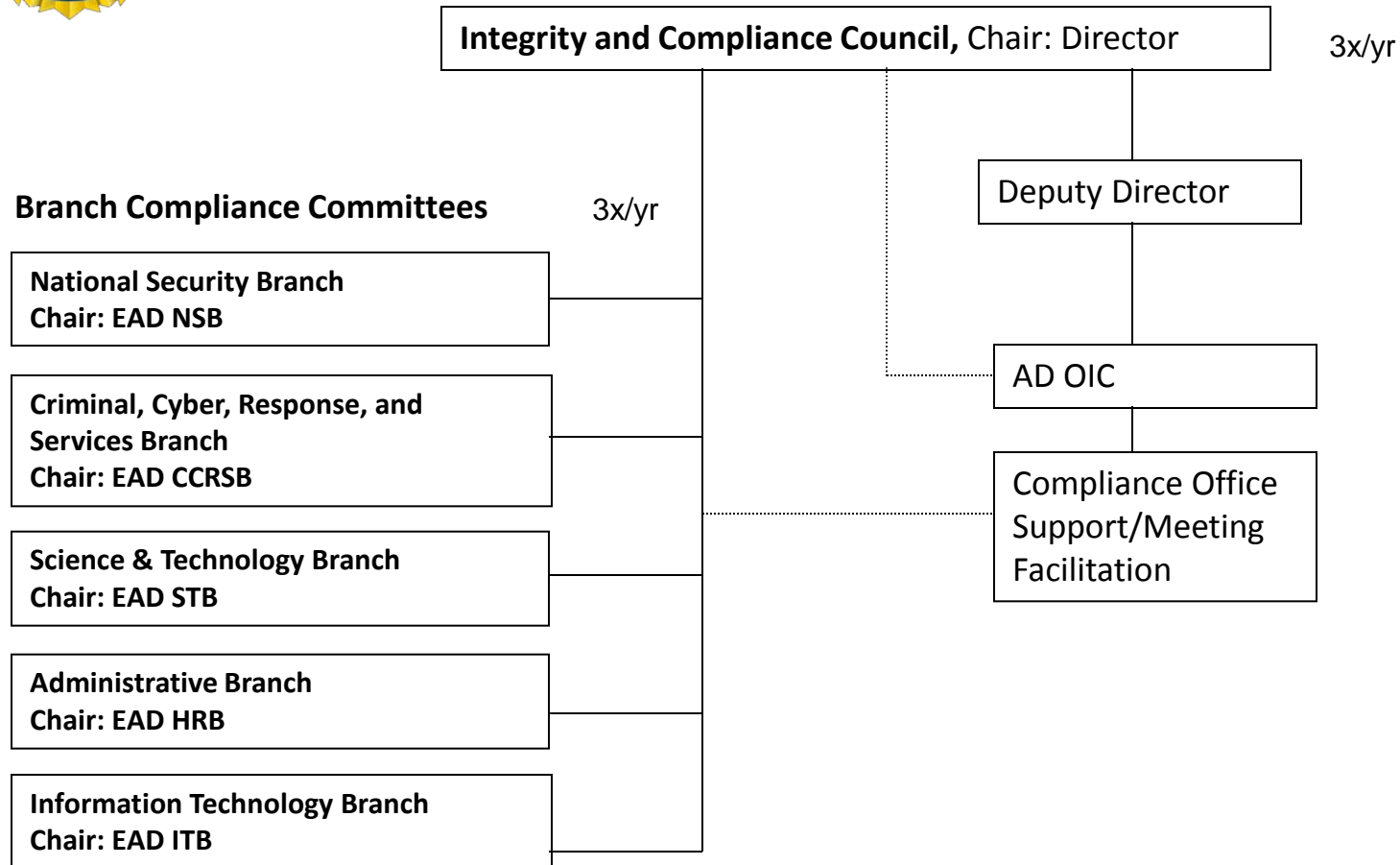
The Office of Integrity and Compliance will cultivate an environment committed to these principles, serve as a focal point for the compliance program, and assist FBI management at all levels in maintaining a culture where ethics and compliance are emphasized as paramount considerations in decisions throughout the FBI.





# Element 3: Organizational Structure

## Phase I: Branch Implementation







## Element 4: Two-Way Communication

- **Non-Retaliation** Policy
- Division Compliance Officers
- Compliance Concern helpline & Risk Referrals
- Communications
  - ◆ Core Values Campaign
  - ◆ E-Briefs
  - ◆ SharePoint/Intranet Site
  - ◆ Videos & Training Sessions





## Element 4: Two-Way Communication

### Role of Division Compliance Officers:

- Serve as division's "point of contact".
- Refer compliance concerns brought by division personnel to OIC & coordinate follow-up action.
- Forward possible compliance risks to OIC for further review.
- Coordinate training with Division Ethics Counselors.





## Element 5: HR Policies To Encourage Compliance

- Traditional, rigorous FBI hiring practices
- SES Performance Rating
- Compliance critical element added to PARs
- **Non-Retaliation Policy**
- Ethics & Compliance Awards





## Element 6: Audit

Audit capability: **Inspection Division**

- ***Inspection supports Compliance***
  - ◆ Conduct audits as needed
  - ◆ Provide audit data in support of compliance monitoring
- ***Compliance supports Inspections***
  - ◆ Identify high-risk areas
  - ◆ Align policies/risks/inspections





# Element 7: Documentation

## Risks:

- \* FOIA
- \* IG

## Benefits:

- \* IG
- \* Sustains Management Buy-In

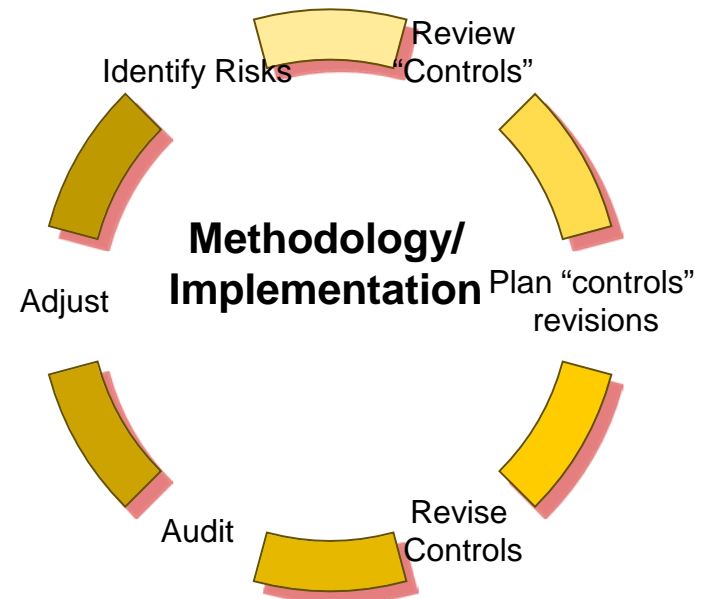




# Element 8: Risk Identification, Assessment & Mitigation

## Compliance Cycle consists of a Five Step Process:

- Step 1: Identify and prioritize activities that pose potential risks
- Step 2: Evaluate the Control Environment to determine whether actual risk exists
- Step 3: Develop and Execute Mitigation Plan
- Step 4: Audit to assess efficacy
- Step 5: Adjust as necessary





# Compliance Begins and Ends with Personnel

## Compliance & the Individual Employee

- **All employees** responsible for:
- **Knowing the rules/laws/policies** for their jobs.
- **Complying with those rules.**
- **Raising issues** of concern regarding compliance.

## Compliance & the Supervisory Employee

- Additionally, **Supervisors must:**
- **Instruct** employees on **rules/laws/policies** governing their jobs.
- Monitor employee activity to **ensure employees know/are applying rules.**
- **Encourage employees** to raise compliance **concerns.**
- **React appropriately** when issues are raised:
  - ♦ **Document** issue & action taken
  - ♦ **No retaliation.**
- **Manage compliance risks; mitigate** them **before they become problems.**







ECOA  
Professional  
Development

ONLINE • ONDEMAND • INPERSON • INHOUSE



# Compliance Convergence

Tim C. Mazur

Chief Operating Officer  
Ethics and Compliance Officer Association

and

Bill Daniels Distinguished Professor  
of Business Ethics  
University of Wyoming



# Ethics and Compliance Officer Association

The ECOA is the global professional association for ethics and compliance practitioners. Our members are responsible for internal ethics, compliance, and business conduct programs in organizations around the world and from every industry. Through the ECOA, members address the challenges they face every day, and by learning from one another and working together, help foster a global commitment to ethics and integrity.



[www.theECO.org](http://www.theECO.org)





# SEC Chairman Donaldson (2003)

“In my mind, the most important thing a board of directors should do is determine the elements that must be embedded in the company’s moral DNA ... It should be the foundation on which the board builds. It places the interest of customers, colleagues, and communities over self-interest.

In the case of corporate directors, that means placing the interests of the corporation over your own personal interests. They must develop a corporate culture based on a philosophy of high ethical standards and accountability. This culture should penetrate every level of the organization and influence all of the board’s decisions including the selection of a CEO and the senior management team who will ultimately ensure that the company’s operation reflect its philosophy.”



# SEC: Stephen Cohen (2013)

- ❑ “ethics” and “ethical” emphasized 26 times
- ❑ “robust” and “rigorous” programs rather than:
  - Management pushing back against CECO
  - Internal controls exist but are insufficient
  - CECO not at the table
- ❑ Organizations should demonstrate their ethical culture at the first meeting
- ❑ “misconduct is an outlier in a highly ethical culture”
- ❑ Morgan Stanley
- ❑ 2013 ban on portfolio manager who obstructed compliance officer
- ❑ CECOs earning whistleblower awards where management is unwilling to remedy recommendations
- ❑ New National Examination Program initiative that assesses the organization’s ethical culture: results are a factor in how often organization is audited
- ❑ Warning Signs:
  - close-to-the-line behavior
  - technical compliance
  - common sense
  - lack of empowerment



# Ethics vs. Compliance

## Compliance

- 1) Focuses only on what employees do or don't do
- 2) Easier to identify topics to assess
  - 1) topics are more "black-and-white" (i.e., you complied or you didn't)
- 3) More "hard data" available to measure
  - 1) e.g., how many OSHA violations in 2013?

## Ethics/Culture/Behavior

- 1) Additionally focuses on why employees do what they do
- 2) Rather than measure only mandatory behavior as it regards laws/regulations, also measures voluntary behavior as it regards the organization's values
- 3) Harder to measure, but still measurable and very valuable



# WHY Is Something Wrong?

## **Cheating is wrong because:**

- I might get caught.
- I'm only cheating myself.
- I won't learn the material.
- I might receive an "F."
- I don't want a bad reputation.
- I might have the wrong answers.
- I could never look the teacher in her eyes again.
- It's the "easy way" out.



# Ethics vs. Compliance

- ❑ Examples of Measuring Ethics
  - All managers in a department are given a discretionary budget to “spot” reward employees using the agency values to guide their distribution of the funds—testing a sample of these bonuses for their connection to the values
    - compliance focuses only on what you can't do or what you must do while ethics/culture/behavior additionally focuses on the extent to which you choose to do what you can and should
  - A goal of our E&C program is to create an ethical culture—using an instrument that legitimately correlates fear of retaliation with the number/type of helpline calls, asking a sample of helpline callers the extent to which they believe they suffered retaliation
    - compliance doesn't address ethical culture and, regarding retaliation, often focuses only on whether a policy exists and how often it's violated





# Ethics vs. Compliance

- Safety (value)
  - “No operating standard or urgency of service will ever justify endangering the life of anyone.” (principle)
- Honesty (value)
  - “We will report all information in documents accurately.” (principle)
  - “Tell the truth.” (principle)



# Joe Paterno

**What is the limit of a manager's or an executive's responsibility?**

**What does the Paterno case mean for achieving the goal of ethical culture?**





# Why Do We Lie?

## THE (HONEST) TRUTH ABOUT DISHONESTY

HOW WE LIE  
TO EVERYONE  
— ESPECIALLY  
OURSELVES

BESTSELLING AUTHOR OF *PREDICTABLY IRRATIONAL*

**DAN ARIELY**



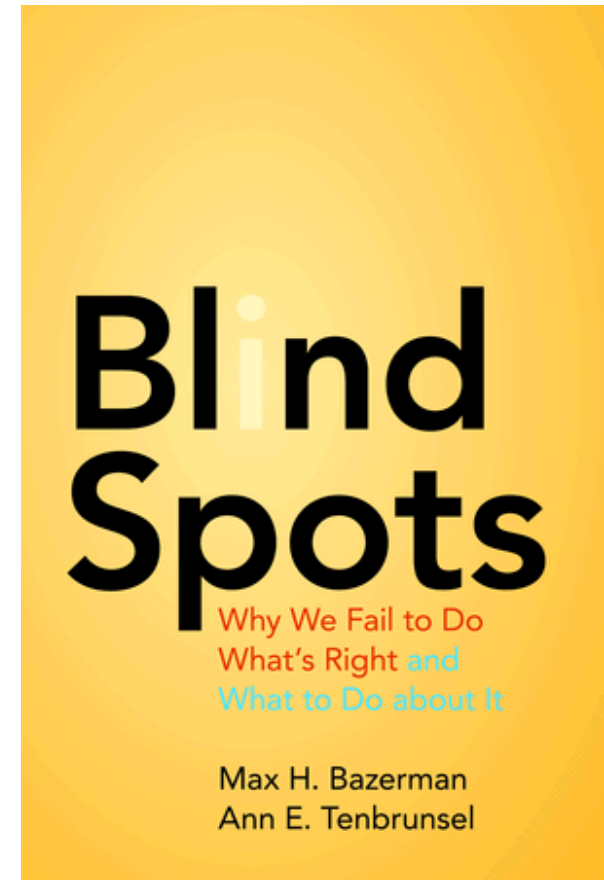
“Dishonesty is often not an outcome of a deliberate cost-benefit analysis. Instead, we are likely to be guided away from honesty by hidden influences such as conflicts of interest, depletion, creativity, witnessing the dishonest acts of others, caring about our colleagues, and revenge.”

“Dishonesty is a prototypical example of our irrational tendencies: on one hand, we want to view ourselves as honest people; on the other hand, we want to benefit from cheating. So as long as we cheat only a little, we can both benefit from our dishonest acts and still look at ourselves in the mirror.”



# Why Do We Commit Misconduct?

- Ethical illusions
  - We overestimate our ability to forecast consequences
- Ethical fading
  - We remove ethics from decision-making processes
- Bounded ethicality
  - We repeatedly act unethically without intending to do so





# Final Lessons

- Thoroughly answer the question: At your agency, what are the relationships among ethics, the organization, and what your agency does?
  - Whose job is *ethics*? The DAEO? The director's? No one's? Everyone's?
- Educate those who misunderstand the role of ethics in the workplace and fight against those who deny it
  - Turning the clock back, ignoring the reality of ethics, and returning only to compliance is not an option
  - Work to get everyone "on board" with the fact that agencies are supposed to be ethical
- Agencies should establish and communicate ethical standards in their workplaces and then work to hold all accountable to them
  - They should begin a practical and permanent dialogue about the importance of ethics where they work (e.g., when a rule/policy can or should be bent)
  - Disallow double standards



# Final Lessons

- Work to identify and communicate the ethical issues in your organization
  - Risk assessment
  - Policies / Code
- *Ethics* means something—it is not simply personal opinion
  - Different employees have different opinions about what is ethical, but the tools exist for agencies to establish standards of right and wrong
- Practice resolving “right vs. right” conflicts among ethical values
  - ... and between personal morals and organizational ethical standards
- Redefine what it means to be successful in your organization
  - reward ethical / aspirational behavior
- Always remember that, sometimes, ethics requires a great deal of courage
  - Develop and reward courage
- Employees need your help
  - They want standards—they want to do the right thing—it’s the organization’s responsibility to communicate what “the right thing” is