

# **Ethical Issues From the Regulator's Perspective: Challenges and Tools**

**Marianne M. Jennings  
Professor Emeritus  
W.P. Carey School of Business  
Arizona State University**

# The Scary Slides

# Ethical Issues in Testing

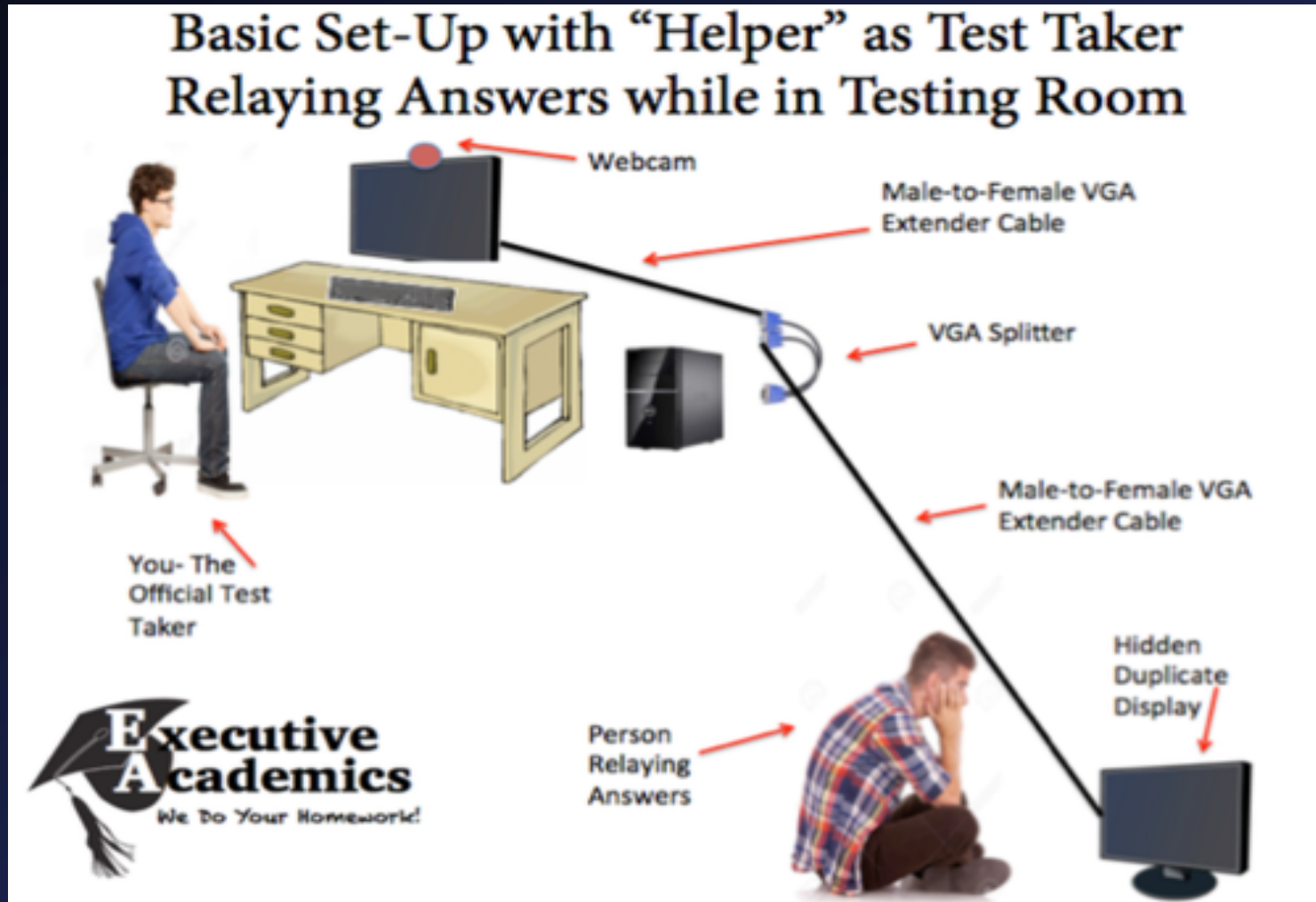
- The test administrators for ACT and SAT
  - Taking bribes to allow candidates more time for completion
  - Grad students getting hired as administrators and then accepting bribes to change answers and/or complete tests for candidates

# Ethical Issues in Testing

## ■ Office staff

- Staff in the bursar's office offering to wipe candidate's records clean (for cash and other perks)
- Staff in professional licensing offices offering to issue certifications in exchange for cash
- Advance copies of content
- Providing information on discussions in board meetings in exchange for cash
- Deadline waivers
- Scoring irregularities in exchange for cash

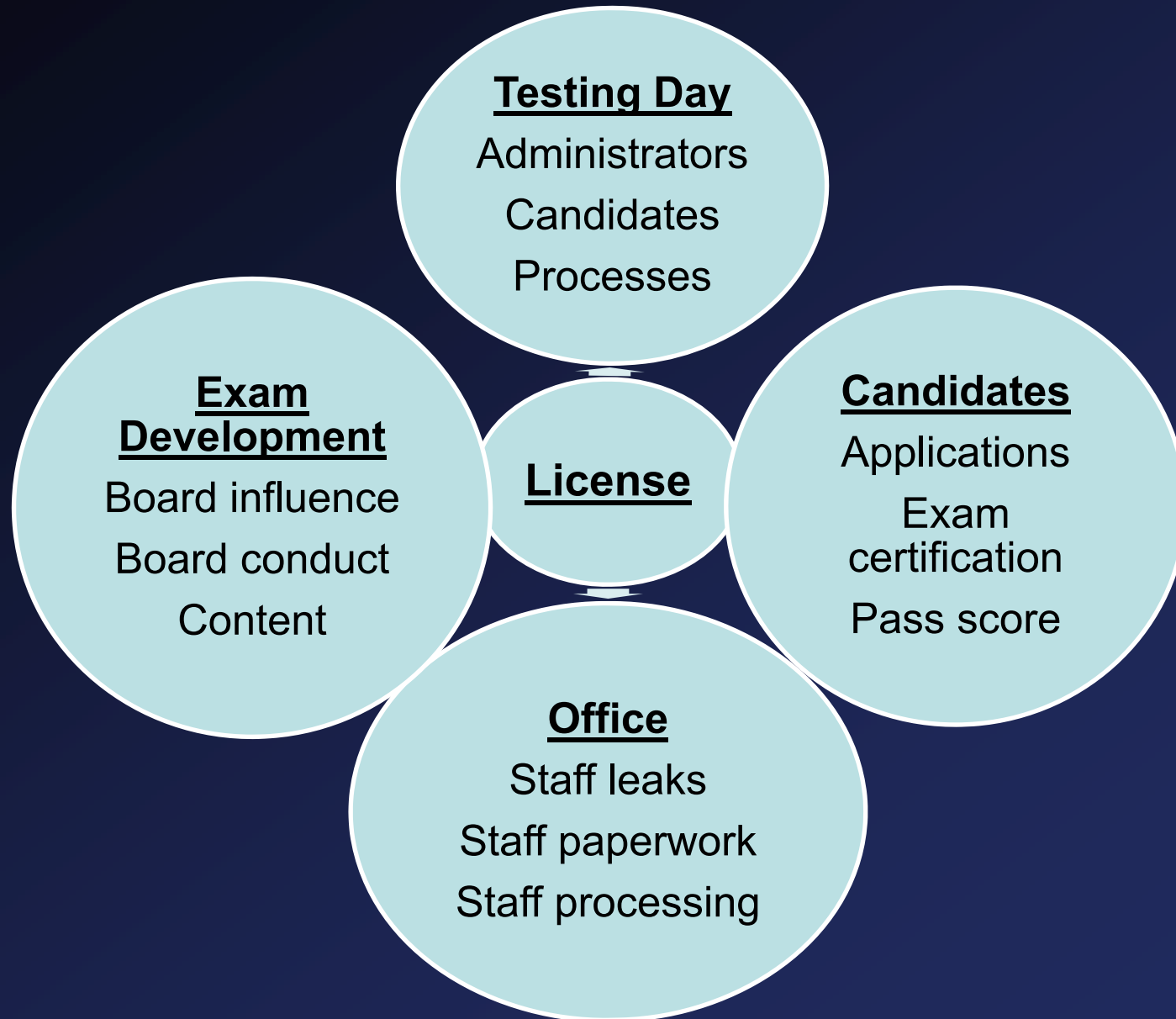
# The Site Exam Cheating Set-Up



# Feeder Ethical Issues in Exams

- Pass rate data of schools
- ADA waivers (payments to psychologists, physicians)
- Connections and board members
- Influence on exam content

# The Cycle of Academic Cheating



# Examples of Licensing Exam Cheating

- Nuclear Navy and exam cheating
- Nuclear plants and relicensing exams
- Security clearance and operational exams
- Physician specialty certification exams
- SAT and ACT – Operation Varsity Blue
- CFA exam and the “pencils down” issue
- Cyber security certification exam cheating



# Nonprofit ethical issues

- Staff embezzlement
- Misuse of board funds
- Fundraising *quid pro quos*
- Failure of boards to supervise staff
- Lax certification standards
- Recordkeeping
- Board member expenses

**What can we learn?**

# 1. There was nothing that was a close call: Clear Ethical Lapses

- Conflicts of interest
- Bribery
- Lying to the board
- Furnishing false information to the board
- Withholding information from the board
- Misuse of funds or embezzlement
- Alteration of documents
- False reports and stonewalling auditors

**2. Those involved were aware of their ethical lapses.**

# The Timeline at Michigan State

- 1997 – Gymnast Larissa Boyce tells Kathy Klages (gymnastic coach) reported abuse by Nassar; Klages tells her she was misinterpreting his treatment procedures
- 1997 – Nassar asks nurses and other girls to leave the room during treatments; all girls are treated without a nurse present
- 1998 – lawsuit against Twistars (gymnastics gym run by an Olympic coach) alleges abuse by Nassar
- 1999 – Lindsey Schuett tells her mother and school counselor of abuse by Nassar
- 1999 – Christie Achenbach (Michigan state cross-country runner) complained about Nassar's abuse to her track coach and parents
- 2000 – Tiffany Thomas-Lopez (Michigan State softball player) complained to two trainers about Nassar's abuse
- 2000-2002 Jennifer Rood Bedford (Michigan State Volleyball players) reported Nassar abuse and was encouraged to file a complaint (did not)
- 2004 – Kylie Stevens (12) told her parents that Nassar had been abusing her since she was 6. Nassar denied accusations when confronted by the parents
- 2004 – Brianne Randall (17) tells parents and the police about Nassar abuse
- 2014 – Amanda Thomashow files a complaint with a Title IX officer about Nassar's abuse just after she graduated
- 2015 – Maggie Nichols reports abuse to USA Gymnastics
- 2016 – Steve Penny, head of USA Gymnastics and a board member, frustrated with the lack of investigation of the complaint notify the FBI
- 2016– Rachel Denhollander contacts the *Indianapolis Star* to discuss abuse by Nassar

# The Timeline at Michigan State

- 2017 – Michigan State hires Patrick Fitzgerald (former US special prosecutor) to conduct an internal review
- 2017 – US Senate holds hearings
- 2017 – Fitzgerald recommends procedural changes but finds no criminal conduct
- 2017 – Head of USA Gymnastics resigns
- 2017 – Nassar guilty plea
- 2017 – Michigan Attorney general asks for copy of Fitzgerald report. Fitzgerald says there is none; he was preparing for a defense of the university
- 2018 – Nassar sentenced to 40-175 years
- 2018 – Michigan State president, Lou Anna Simon resigns
- 2018 – Entire board of USA Gymnastics resigns

◆ [https://www.washingtonpost.com/sports/twenty-years-of-failure-many-groups-missed-chances-to-stop-larry-nassar/2018/01/26/f3f51c84-029d-11e8-9d31-d72cf78dbeee\\_story.html](https://www.washingtonpost.com/sports/twenty-years-of-failure-many-groups-missed-chances-to-stop-larry-nassar/2018/01/26/f3f51c84-029d-11e8-9d31-d72cf78dbeee_story.html)

# Those Who Knew at Michigan State

- Gary Stolnik, professor and psychologist– lost his license for not reporting Nassar accusation in 1998
- Heena Shah Trivedi – athletic trainer for not reporting gymnast’s accusation in 1999
- Kelli Bert – track coach for not reporting gymnast’s accusation in 1999
- Lianna Hadden – athletic trainer – told of abuse by athletes in 1999, 2000, and 2001 and did not report
- Tony Robles– athletic trainer– told of Nassar abuse by victim in 2002
- Brooke Lemmen – MSU doctor, told in 2007 by two gymnasts of problems with Nassar (*“We get a lot of that.”*– resigned in 2017)
- Lionel Rosen – MSU sports psychiatrist-- one report but assured young woman that Nassar was doing what was best for her
- Rebecca Cass – supervisor in MSU College of Osteopathic Medicine – one victim reported the abuse to her
- David Jager – athletic trainer – told by victim in 2015 of abuse
- Destiny Teachnor-Hauk – MSU trainer– told victim that filing a report on Nassar would put a burden on her, her family, and MSU
- Jeffrey Kovan – team doctor for basketball; referred a 2014 report of abuse to the Title IX office for investigation (Teachnor-Hauk and Brooke Lemmen were medical experts used by the Title IX office in its investigation of the complaint)

**What fuels these increasing patterns?**



# 1. The Pressures We Feel

# The types of pressures

1. Deadlines: Think time constraints!
2. Goals: Think survey results!  
Think fundraising! Think pass rate!
3. Revenue: Think sales, contracts, donations!
4. Budgets: Think costs!
5. Personal goals: Think mortgage! Think retirement!
6. Sunk costs: Think, “We’ve spent . . .
7. Rankings/ratings: Where will we sit?
8. Loss of \_\_\_\_\_. Think all of the above!

# Other Pressures

- Strains on personal and family life
- Resource and staffing cuts: shortcuts
- Fatigue

# What Pressure Does: Irrational Decisions



# Pressure: Probability from the Financial Analysts Institute

$$P = f(x)$$

P = probability of an ethical outcome

x = amount of money involved

- Diagnosis bias
- Minimizing risk

*“Sometimes desperate is the same thing as stupid.”*

Matt Dillon *Gunsmoke*

# Wells Fargo

- 2000 – 63 employee reports of “gaming the system” on new accounts
- 2002 – all employees in a Colorado branch issued debit cards that customers didn’t ask for
- 2004 -- 680 employee reports of “gaming the system”
- 2007 – 288 allegations of employee sales misconduct in second quarter
- 2007 – branch manager: Teen daughter had 24 accounts; Adult daughter had 18 accounts; Husband had 21 accounts; Brother had 14 accounts; Father had 4 accounts
- 2008 --Customers with new accounts had e-mails of “noname@wellsfargo.com
- 2013 – Employees talked a homeless woman into opening six checking and savings accounts costing \$39 per month (Los Angeles City Attorney announces investigation)
- 2013 -- 1,469 allegations of employee sales misconduct in fourth quarter
- 2013 – Firing 1% of its employees annually for ethics violations related to gaming the system (CEO called it “immaterial” and cited it as good news)
- 2016 – 2 million fake accounts discovered; By 2018 – 3.5 million
- 2018 -- \$1 billion fine; one-half of the board removed by the Fed

# The Pressure Prevention Tools

- The “Why” Behind Rules, Policies, and Procedures
- Defining ourselves

# The Credo vs. the Chalk Line

*What lines are smudging ever so gradually?*





# Don't fall into the either/or conundrum

- Clint Walker's interview with Cecil B. DeMille
- The young man's first job as an auto salesman

**2. Watch that first step. It's a doozy.**

# Nobody wakes up one day and embezzles \$100,000.

- We start with the copy machine, the postage meter, the blending of campaign and public funds and payments, the combination trips
- We slip from there.
- The daily exercise of ethical choices.

# What I Did in the Past Year

*“Used a substandard contractor to make required repairs on a house for sale. Did so for price – large difference, and the repairs were substandard.”*

*“Once at work my boss asked me to take her online driver’s course which she needed to take following a ticket.”*

*“I was asked to create fake job responsibilities for myself to justify a raise in my salary.”*

# What I Did . . .

*When I took an internship I had trouble with “arriving” on time. One of my coworkers suggested that I take “HOV” lane, since there is usually no traffic especially for an exit, which normally took 10 minutes. I drove alone in the “HOV” and I knew I should not according to the rule.*

*“I told my wife this seminar started earlier than it really did.”*

*“I went to an entertainment venue without my wife knowing.”*

*“I didn’t tell my wife about a bonus payment I received.”*

# What I Did in the Past Year

*“I claimed I had to work to get out of going to a party at my sister-in-law’s.”*

*“Was charged the wrong amount at a restaurant (less than I was supposed to be charged) and I let it slide.”*

*“While opening a car door I bumped the car next to me and did not let the driver know.”*

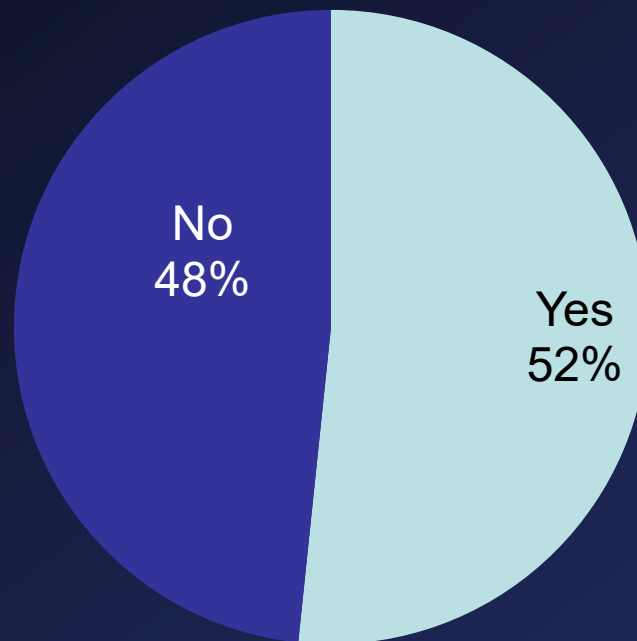
*“Had to complete an essay for my child for homework.”*

*“I made the decision on which patient to treat based on the type of insurance.”*

# What I Did in the Past Year

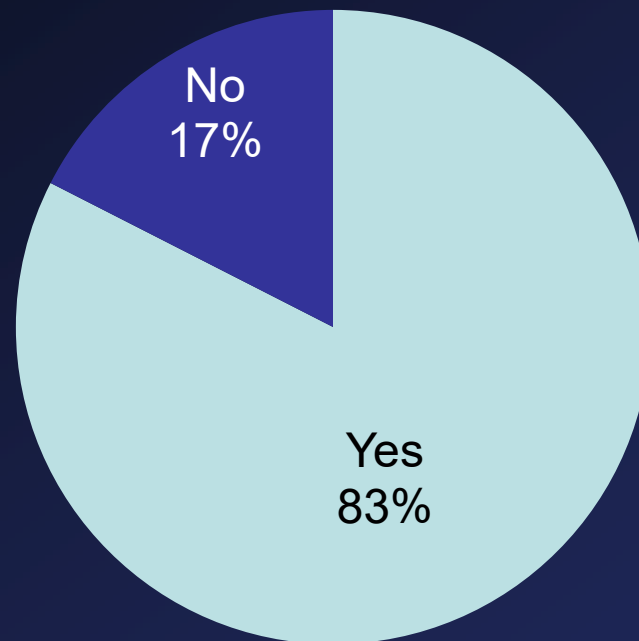
*“Mrs. Jennings, the seals on your windows are broken. You have to replace the windows because of the risk of water and moisture damage. This kind of problem is not covered, unless you can talk one of your grandkids into throwing a golf ball through them and then have your insurance pay for that.”*

# Said I Was Sick to Get Out of Work





# Told Someone That They Looked Okay When They Did Not



# When does stealing become stealing?

- The “little white lie” – Dr. Shulkin at the VA and the award from the Danes
- That first step is not all that obvious
  - *“At first, even a little lie provokes a big response in brain regions associated with emotion, such as the amygdala and insula. The tenth time you lie, even if you lie the same amount, the response is not that high. So while lying goes up over time, the response in your brain goes down.”* Dr. Tali Sharot, University College of London
- The subsequent steps become less obvious
  - The mistaken use of the wrong credit card – Continuing use
  - The acceptance of our paychecks for hours worked – More time away

# Costs of Slippage

*It's the missing hand rail in the shower that will result in the greatest number of injuries and your highest costs.*



# The Tools for Avoiding the Hook

- Advice
- Risk Analysis
- The Reality of Truth's Power

### **3. Watch for Soft Language and Rationalizations**

# Comfort: The Warm Labels

| “Way Harsh” Language    | Soft, Reassuring Language   |
|-------------------------|---|
| “You lied”              | “I misremembered”<br>“I failed to live up to my duty of candor.”<br>“I used imprecise communication.”<br>“We have additional information that appears to be inconsistent with our previous response.” |
| “You lied”              | “I misspoke”<br>“I told you versions of the truth.”<br>“We were managing the optics.”   |
| “You lied”              | “I just managed expectations”<br>“I used incremental escalations of half-truths.”   |
| “Conflict of interest”  | “It wasn’t so much a conflict of interest as it was a confluence of conflicting motives.”   |
| “We don’t really know.” | “It’s just engineering judgment.”   |
|                         |   |

# Comfort from “warm” labels

| The “way harsh” language              | The “warm” language   |
|---------------------------------------|---|
| “Cooking the books”                   | “Financial engineering”<br>“Getting results”<br>“Smoothing earnings”<br>“Managing earnings” |
| “Manipulated the appraisal”           | “Got a second opinion”  |
| “Changed the numbers”                 | “Pro forma adjustment”;<br>“Deseasonalized the data”  |
| “The employee stole from inventory.”  | “The employee showed poor judgment.”<br>“The employee was reallocating resources.”          |
| “You better get your bid price down.” | “We are going to give you a second look.”   |
| “That’s cheating!”                    | “That was creative thinking!”<br>“That was collaboration.”                                  |
| “Suspended from school”               | “Just restricted”   |

# Comfort from “warm” labels

| The “way harsh” language  | The “warm” language                   |
|---|---------------------------------------|
| “Getting a passing grade in a course that you failed without doing any additional work” | “Credit-recovery system”              |
| Insider trading   | “We just used expert networks.”       |
| “Bribes”  | “Useful expenditures”                 |
| “Teachers changed test answers.”  | “We had test clean-up parties.”       |
| “You were speeding.”  | “I was just keeping up with traffic.” |
| “Backdating options”  | “Periodic look-backs”                 |
| “Copyright infringement”  | “Peer-to-peer file sharing”           |
| “Hit man”   | “Vigilante”                           |
| “Divorce”   | “Conscious uncoupling”                |



# Comfort from Rationalizations

**“Everybody else does it.”**

*What is right is right even if no one is doing it.*

*What is wrong is wrong even if everyone is doing it.*

- Saint Augustine; William Penn (?)

*Wrong does not cease to be wrong because  
the majority share in it.*

- Leo Tolstoy

# Fare Evaders in New York City Subways

- *"My Metro card was not working."*
- *"I don't feel like going all the way there (one block to a machine) to put money on my card."*
- *"Sometimes it's easier to use the door."*
- *"I'm sad that the Metro is losing money, but I'm more sad about what's happening to black people."*
- *"They don't fix the lights. They are not doing what they are supposed to do."*

# Rationalizing, Not Analyzing

- “If we don’t do it, someone else will.”
- “It doesn’t really hurt anyone.”
- “If you think this is bad, you should have seen . . . .”
- “That’s the way it’s always been done.”
- “That’s the way they do it at \_\_\_\_\_.”
- “It’s a gray area.”

# So, we make it all gray!

- Why is it important that it be gray to you?
- Is it legally gray?
- Is it ethically gray?
- Is it a good-faith disagreement?
- What if it's not a gray area?
- Does everyone believe it's a gray area?
- Interpretation vs. loophole vs. nondisclosure of relevant information

# Barclays Bank and Gray vs. Clean

- A Barclays representative when questioned by a British regulator as to whether the Barclays was involved in some untoward behavior with regard to fixing interest rates in order to make its credit position look better than it was. *"We're clean, but we're dirty-clean, rather than clean-clean."*
- British regulator responded, *"No one's clean-clean."*

# **4. The failure to Understand History: Truth and Its Power**

# Truth and Its Percolating Quality

The laws of probability do not apply when it comes to the surfacing of unethical or illegal conduct

*Three people can keep a secret if two are dead.*

- Hell's Angels' motto (courtesy B. Franklin)

*Lying is good. It's the only way we ever get at the truth.*

- Dostoevsky

2005 Word of the Year: "Truthiness" 2016: "Post-truth"

*Circumstances beyond your control will cause bad acts to be discovered.*

- Anonymous

- Don't underestimate probability of truth coming out.
- Don't overestimate your ability to manage the truth.