

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

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The Scary Slides

Ethical Issues in Testing

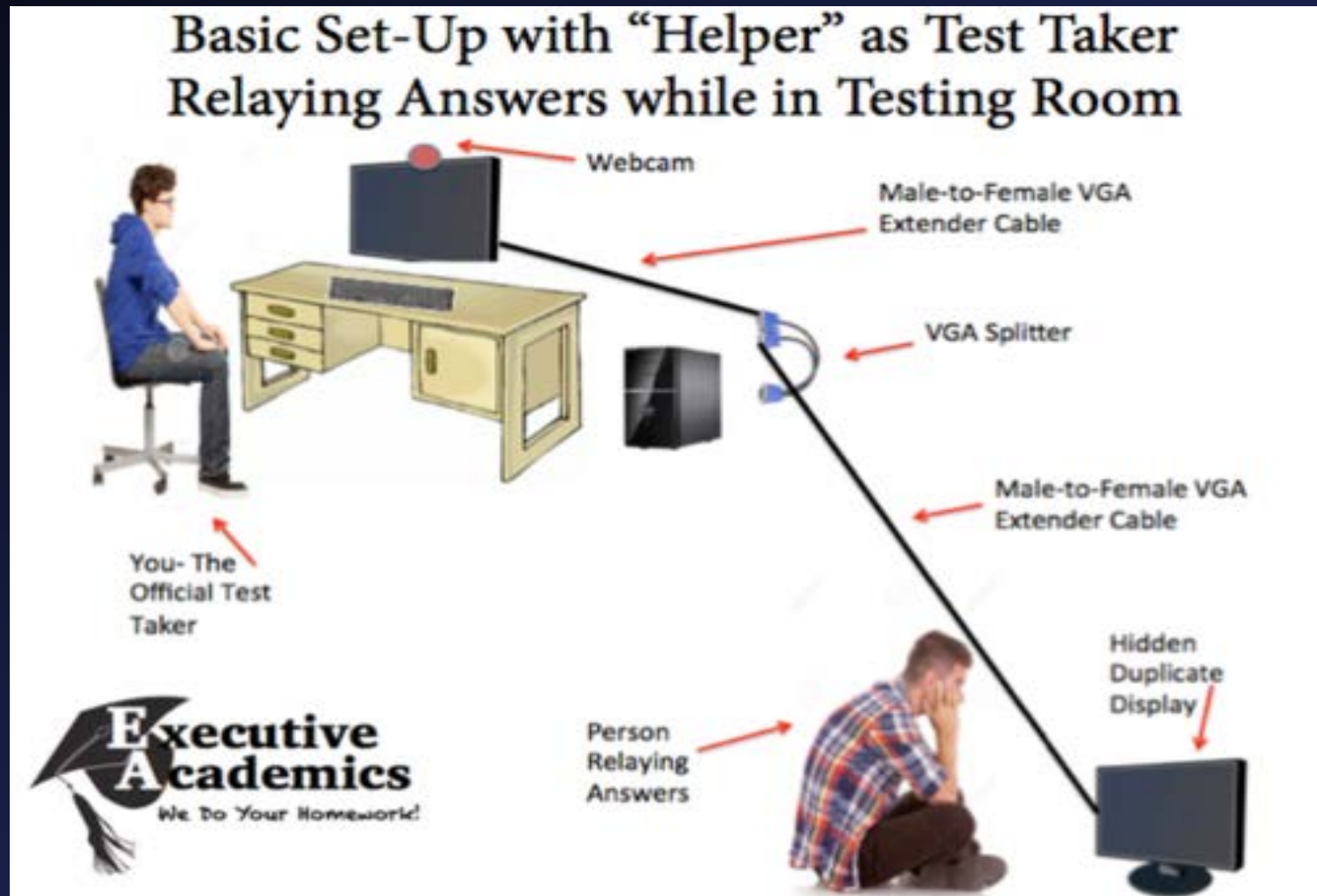
- The test administrators for ACT and SAT
 - Taking bribes to allow candidates more time for completion
 - Grad students getting hired as administrators and then accepting bribes to change answers and/or complete tests for candidates

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

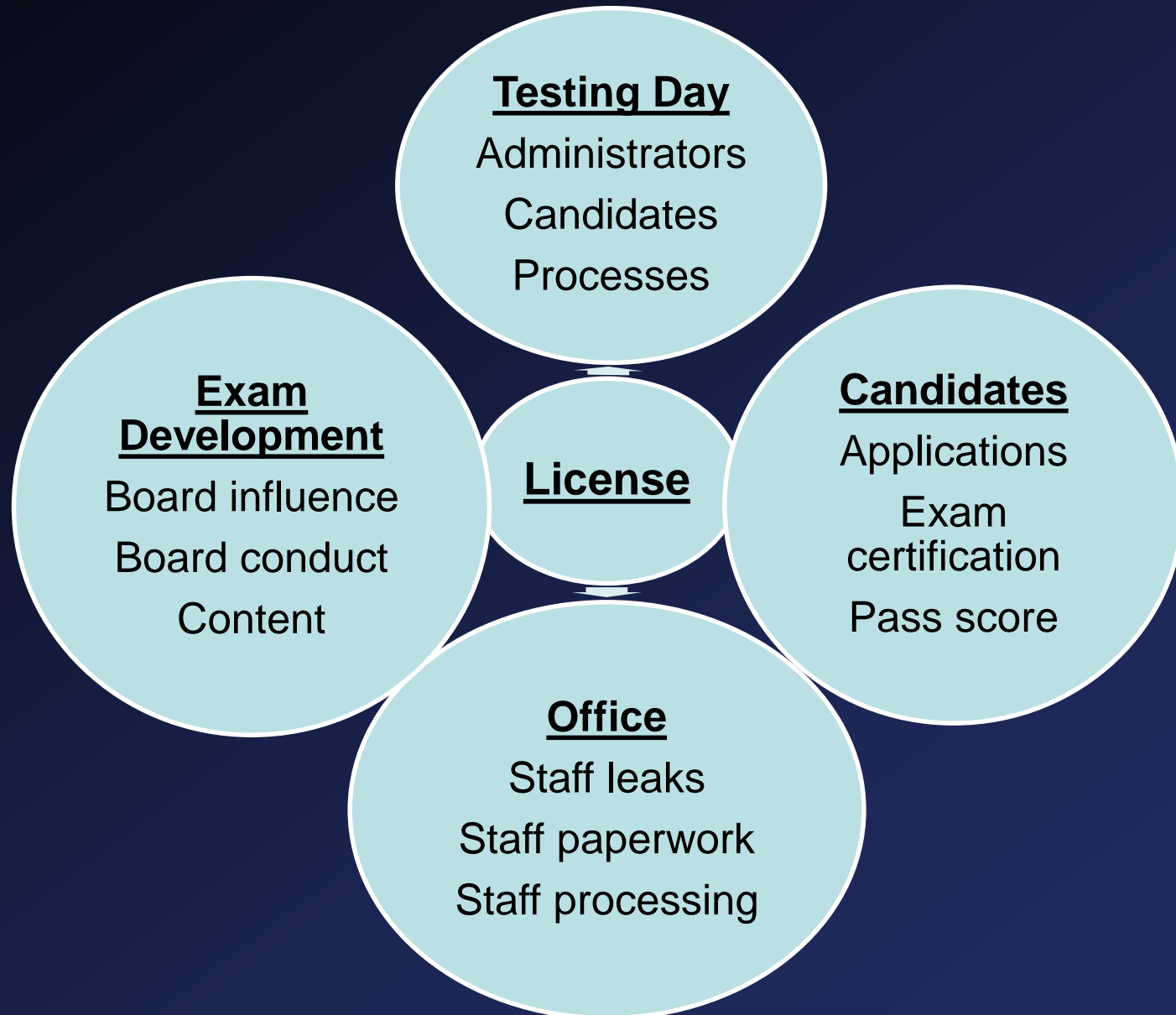
The Site Exam Cheating Set-Up



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

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.”

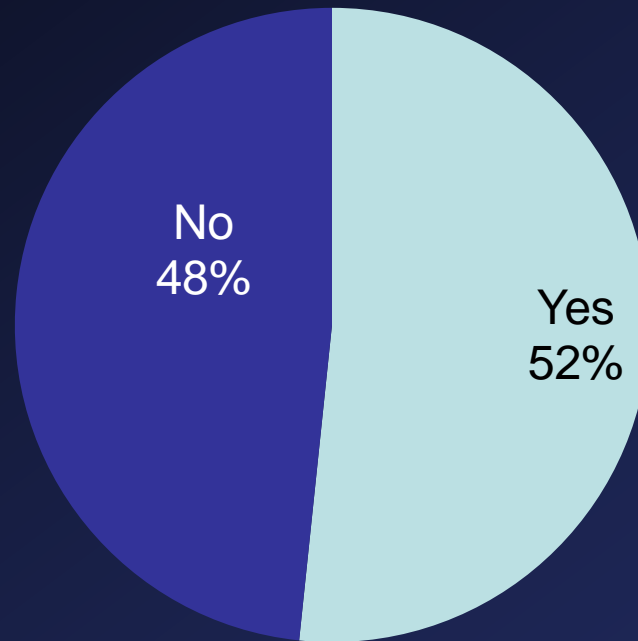
“Had to complete an essay for my child for homework.”

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

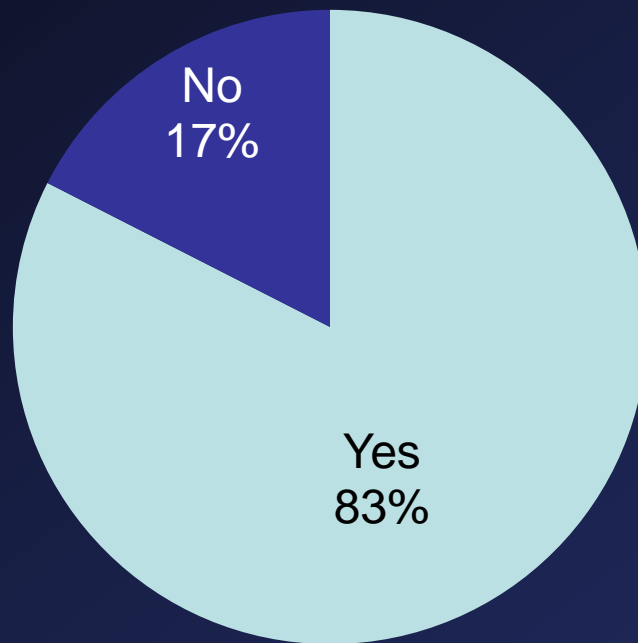
What I Did in the Past Year

“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” “I failed to live up to my duty of candor.” “I used imprecise communication.” “We have additional information that appears to be inconsistent with our previous response.”
“You lied”	“I misspoke” “I told you versions of the truth.” “We were managing the optics.”
“You lied”	“I just managed expectations” “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” “Getting results” “Smoothing earnings” “Managing earnings”
“Manipulated the appraisal”	“Got a second opinion”
“Changed the numbers”	“Pro forma adjustment”; “Deseasonalized the data”
“The employee stole from inventory.”	“The employee showed poor judgment.” “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!” “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.

End of Morning Session

Coming in the afternoon:

- Ethical decision-making: How to do it
- The types of ethical issues
- The role of enforcement in maintaining an ethical profession
- Culture and its effects on organizations and industry
- How leaders get into ethical difficulty
- The importance of speaking up and encouraging others to do so

1. Ethical Decision-Making: How to Do It



Simple Tests: A Universal One

What you do not want done to yourself, do not do to others.

Confucius, c. 500 BC

We should behave to our friends as we wish our friends to behave to us.

Aristotle, c. 350 BC

Do unto others as you would have them do unto you.

Luke 6:29-38

Thou shalt love thy neighbor as thyself.

Luke 10:27

No one of you is a believer until he loves for his brother what he loves for himself. *Islam*



A Universal Test

Do nothing to thy neighbor which thou wouldst not have him do to thee. *Hinduism*

Treat others as you would be treated yourself. *Sikhism*

May I do to others as I would that they should do unto me. *Plato*

What you hate, do not do to anyone. *Judaism*

Hurt not others with that which pains thyself. *Buddhism*



Other Analysis Models

Ken Blanchard & Norman Vincent Peale, *The Power of Ethical Management*:

- a. Is it legal?
- b. Is it balanced?
- c. How does it make me feel?

Laura Nash, *Ethics Without the Sermon*

Could I discuss my decision with my supervisor,
co-workers, friends, and family?

Front Page Test for Gens X, Y, Z



RUTLAND HERALD
February 9, 2010

TRITIUM HOT ZONE EXPANDS

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London Times

April 14, 2008

Nuclear Plants Sucking the Sea Life from British Waters

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SOUTH JERSEY NEWS

December 19, 2007

NJ nuclear plant shutdown leads to fish kill

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THE WALL STREET JOURNAL.

March 11, 2011

Plant Had a Troubled History

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New Jersey Newsroom

December 1, 2010

Groundwater tests at Oyster Creek show decreasing levels of radioactive tritium

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The New York Times

May 13, 2011

Disaster Plan Problems Found at U.S. Nuclear Plant

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2. Not all ethical issues are the same. Fixing ethical breaches requires different actions.

Behavioral Layers of Ethical Issues

INDIVIDUAL

Decisions for personal benefit without externalities

Cheating on a diet, borrowing without asking, blaming others, embezzling, shoplifting.

ORGANIZATION

Decisions influenced by company pressures

Cheating to qualify for bonuses, taking shortcuts to meet deadlines, not reporting violations

INDUSTRY

Decisions influenced by industry and competition

Using steroids, manipulating financial results, dodging regulations

SOCIETY

Decisions made based on cultural norms

Speeding, cheating on exams, bribing officials, manipulating taxes, using fake ID, discrimination

3. Culture and Its Effects on Organizations and Industries

What is culture?

- How, what, and why things are done
- Rules vs. Culture
- Compliance vs. Culture
- “Culture determines and limits strategy.”
 - Dr. Edgar Schein
 - Paraphrased by many: “Culture eats strategy for breakfast,” “Culture eats strategy for lunch,” and “Culture trumps everything.”

The Culture and Motivational Mantras

- “No exceptions. No excuses.” (Atlanta Public Schools)
- “Failure is not an option.” (NASA)
- “Sharpen your pencil!”
- “The Power of Yes.” Washington Mutual
- “Find a way.”
- “Do whatever it takes.”
- “Go the extra mile.”
- “100% results, all the time.”
- “Extra effort, extraordinary results.”
- “Staying at #1.”
- “Margins matter.”
- “Committed to deliver despite all obstacles.” (CDDAO)
- “On time, every time.” (Southwest Airlines)
- “Achieve the edge.”
- “70% Comfort. 100% Alignment”
- “Never question success.” Kidder Peabody
- “Fire, Ready, Aim!”
- “Go for Gr-eight!” (6.1 products per customer vs. 2.7 industry)(Wells)

Incentives and Culture

APS: What Was the Goal?

EDUCATING

Better educated young people
or

Higher test scores?

TESTING

Measuring knowledge and skills
or

Giving answers and altering sheets?

TEACHING

Teaching kids
according to
how they learn
or

Teaching to the test?

Pressure and Compensation Systems

- Incentive and bonus plans with no parameters or checks and balances
- Seeking behaviors but measuring by results and numbers
 - The Alcoa example
- *“Be careful what you incentivize. You will get there, but the numbers may not be real.”*

Focusing on Behaviors

- Compliance with procedures
- Managers leading ethics discussions:
You can't get an ethical culture with one hour of training per year
- Examples of ethical dilemmas and resolutions

4. Culture and Enforcement

- *“Enforcement is to organizations what integrity is to individuals.”*

M.M. Jennings

- Terminations in the worlds of power
- The rules apply to everyone
- The importance of timely and transparent investigations

The Most Effective Communication

- Whom we hire
- Whom we fire
- Whom we promote
- Whom we demote
- Whom we flatline

Waiting, Laying Back, and Lack of Resources

- 2017 Word of the Year: Complicit
- 2018 Word of the Year: Justice
- The backlog is a message
- The failure to talk with the right people is a message
- The failure to stop the conduct is a message

So, what happens?

The “We all knew” Syndrome: We See It, But Will Not Say It

Alternatives:

Spotting the Behaviors, Slips, and Violations That Are Percolating

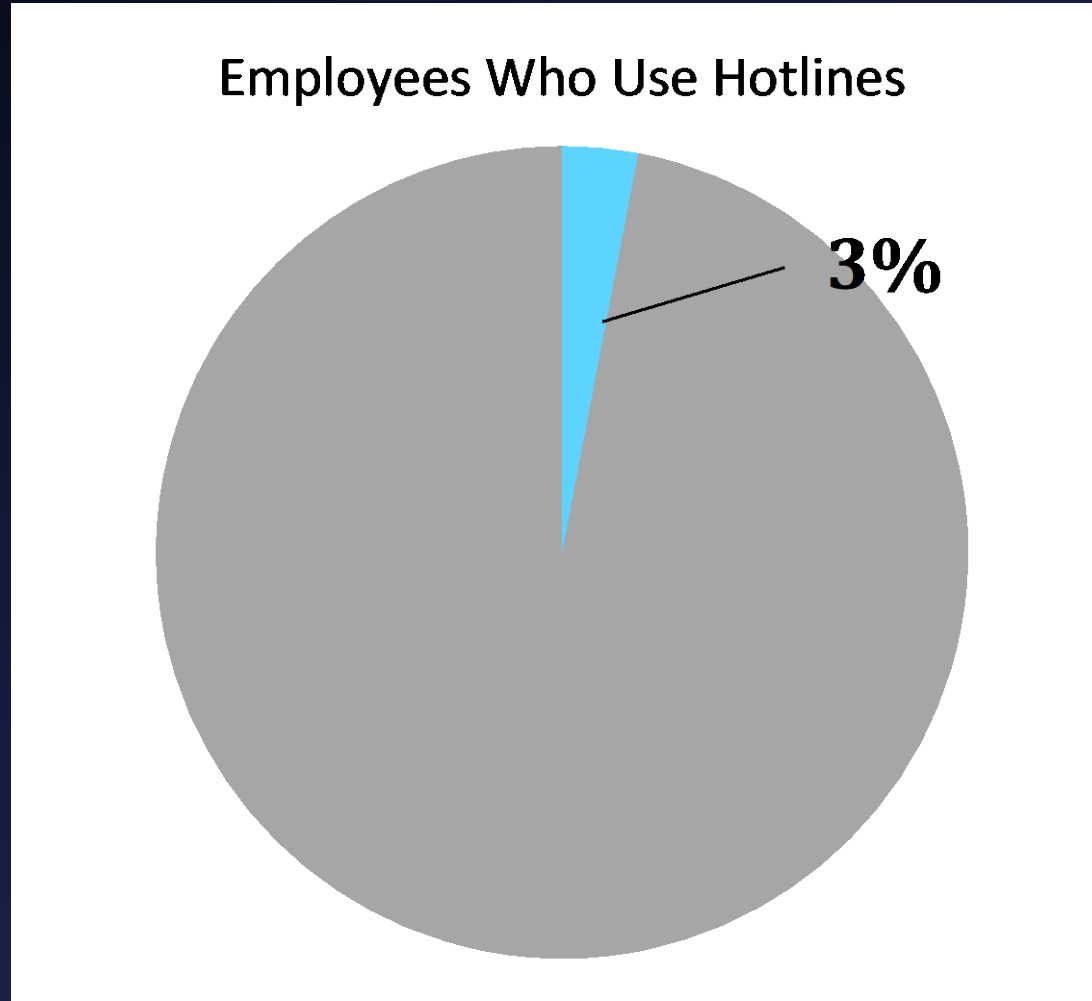
An observation

The first whale to the surface
always gets harpooned.

What does this phrase mean?

5. The Importance of Speaking Up (and Encouraging Others to Do the Same)

Hotlines Are Not the Answer



Peer discussions that do not percolate or spur action: GM

- *“We have a serious safety problem here. I am thinking big recall. I was driving 45 mph when I hit the pothole and the car shut off, and I had a car behind me that swerved around me. I don’t like to imagine a customer driving their kids in the back seat, on I75, and hitting a pothole in rush hour traffic.”*
 - E-mail sent to GM engineers by an employee in 2005
 - 2010 – finally halted production of Cobalt after NHTSA notification of too many accidents

The Flat Organization



- Everyone has the right and responsibility to speak up
- Everyone has the right and responsibility to follow up when action is not taken
- Leaders accept correction

If you see something, say something

- Complicit – 2017 Word of the Year
- The Bystander Effect: Kitty Genovese
- “We all knew.” “Everybody knew that.”
- Meryl Streep, “I didn’t know. I didn’t know.”
- Hollywood and Weinstein; Michigan State, Dr. Nassar and the gymnasts; Penn State, North Carolina
- The *New York Times* Ethicist column on the middle-school cheaters
 - Backing ourselves into the either/or conundrum
 - Consequences of doing nothing
 - Fate of perpetrators: The Sentence of Getting Away with It
 - Options
 - The Adults

A fix

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The Power of MBWA

The Example of the late Melanie Dressel,
former CEO Columbia Bank

“No, no, Hadley, every branch. Every branch!”

15 vs. 75

6. Leadership: That “tone at the top” thing

Assessing leadership: The Iconic Leader

■ Looking for the Bathsheba Syndrome

- Ludwig, Dean, Longenecker, Clinton, “The Bathsheba Syndrome: The Ethical Failure of Successful Leaders,” 12 (4) *Journal of Business Ethics* 265 (April 1993)

The Bathsheba Syndrome

- Leader with a humble past
- Dramatic and rapid rise to power
- Strong skills
- Charismatic personality
- Strategic vision
- Strong ethics
- Called upon to lead

Calvin Coolidge– Bathsheba Factor

- Did not run for a second term despite wild popularity
- *“Eventually, surrounded by all ‘yes’ people you start to believe you are grander than you are; humility is gone.”*

The Little White Lie to Leaders

- 43% of employees say it is "moderately" important to pretend to be interested in your boss's boring story in order to get a promotion

The Bathsheba Syndrome

David Petraeus	CIA	Dennis Kozlowski	Tyco
Bernie Ebbers	WorldCom	John Thain	Merrill
Mike Lynch	Autonomy	Bernie Madoff	Madoff Securities
Brian Dunn	Best Buy	John Browne	BP
Chris Albrecht	HBO	Mark Everson	Red Cross
Martin Shkreli	Turing	Lynn Tilton	Patriarch Partners
Garth Salone	Dean, Stanford Business College	Julie Hamp	Toyota
Christopher Kubasik	Lockheed Martin	Alex Molinari	Johnson Controls
Stephen MacMillan	Stryker Corp. (board gave permission)	Noel Biderman	Ashley Madison

The Bathsheba Syndrome (con't)

Jack Welch	GE	Dov Charney	American Apparel
John Dodds	Kier Group	Charles Phillips	Oracle
Barbara Byrd Bennett	Chicago Public School System	Beverly Hall	Atlanta Public School System
Marissa Mayer	Yahoo	Travis Kalanick	Uber
Michael Cagney	SoFi	Parker Conrad	Zenefits
Jeffrey Meager	KB Homes	Carmen Puliafito	USC Medical School
Harvey Weinstein	Weinstein Group	Roy Price	Amazon Studios
James Toback	Writer, director	Bill O'Reilly	Fox News
Mark Halperin	MSNBC	Roger Ailes	Fox News
Gavin Baker	Fidelity	Maj. Gen. Joseph Harrington	U.S. Army

Bathsheba Syndrome (con't)

Dave McClure	500 Startups, LLC	James Staley	Barclays
Tiger Woods	Pro golfer	Rick Pitino	Coach, Univ. Louisville
Rupert Stadler	CEO, Audi	Martin Winterkorn	CEO, VW
Jed Bernstein	President, Lincoln Center	Elizabeth Holmes	CEO Theranos
Mark Walter	Los Angeles Dodgers Guggenheim Partners LLC	Brian Krzanich	CEO, Intel
Brian Crutcher	Texas Instruments	Dennis Parneros	Barnes & Noble
John Schiller	Energy XXI	Elon Musk	Tesla

Bathsheba Syndrome (con't)

Les Moonves	CBS	John Schnatter	Papa John's
Brian France	Nascar	Carlos Ghosn	Nissan & Renault
Bobby Petrino	Coach, Univ. of Arkansas University of Louisville	John Amato	CEO, Hollywood Reporter-Billboard Group
Charlie Walk	Republic Group	Jeffrey Mezger	KB Home
Maj. David Cheek	Marines/Quantico	Carlos Ghosn	Nissan/Renault
Richard Goudis	Herbalife	Jeff Bezos	Amazon
Elizabeth Holmes	Theranos	Kevin Plank	Under Armour
Robert Kraft	New England Patriots	Kevin Tsujihara	Warner Brothers

Leaders and jumbled interests: Conflicts

- You are not an unethical person because you have conflicts
- The unethical part results from not managing those conflicts
- There are only two ways to manage a conflict of interest:
 - Don't do it
 - Disclose it (and always disclose before the media do)
- Follow up with necessary recusals, actions, withdrawals
 - Head of the CDC and the tobacco stock

Checks and Balances for Iconic Leaders

- Audits of expense accounts
- The culture beyond “tone at the top”
- The board’s role in reining in CEO and top management conduct