Behavioral Ethics, Behavioral Compliance

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Role of Ethics in Compliance: The CECO’s Lament

“I’m not actually sure what that ethics thing is”

“Bury it, deny, deny, deny . . . that’s the legal perspective”

Code Obsession

- The directive approach: ABA Model Rules, New York Rules of Professional Conduct, corporate codes of conduct
- The disconnect to psychology and culture


Panopticon?

“J.P. Morgan’s Algorithm Knows You’re a Rogue Employee Before You Do” (Bloomberg Business, April 8, 2015)

But crowding out, defensive accountability, diminished motivation?


Craving Autonomy

• “I’m a good person . . . I know right from wrong”
• But what do people do when no one can see?
• “Shredder” experiments—most cheat some, but not so much that self-image of respectability is threatened

Dan Ariely, The (Honest) Truth About Dishonesty (2012)

Rationalization and Self-serving Inference

• Even without temptation (Bazerman’s auditor experiments)
• Fraud triangle (with pressure, opportunity)
• Good intentions (irrelevant)
• In the moment, automaticity, “ethical fading,” “moral wiggle-room”

Max Bazerman & Ann Tenbrunsel, Blind Spots: Why We Fail to Do What’s Right and What to Do About It (2011)
When Is Cheating More Likely?

• Depletion (stress, tiredness, resisting temptation)
• Money priming
• “Altruistic” cheating—for the team (or the family, or . . . )
• Loss aversion and hyper-competition
• “Goals Gone Wild”
• Indirect agency: cheating through agents
• Status and power

Disclosing Conflicts

• Increases “license” to cheat
• “Insinuation anxiety”—recipients signal trust, not caution

Cain et al., The Dirt on Coming Clean: Perverse Effects of Disclosing Conflicts of Interest, 34 J. Leg. Studies 1 (2005)
Slippery Slopes

- Escalation of commitment
- Cognitive dissonance
- Role of optimism at the beginning
- Evidence: financial fraud

Schrand & Zechman, *Executive Overconfidence and the Slippery Slope to Financial Misreporting*, 53 J. Acct’g & Econ. 311 (2012)

Adaptive Biases

- Focus, intensity, competitiveness
- Taste for risk
  --testosterone, oxytocin
- Deception and self-deception (Robert Trivers)
- Ethical plasticity
- Pathways to power (and the case for gender diversity)

Is this Useful?

• Little things: dashboards, nudges, timing (auto insurance mileage self-reporting)
• Bigger things: ethics can’t be “priced” (Israeli day care study), maybe awareness prompted
• Sending clear compliance messages (insurance churning)
• Noticing change (status quo biases)
• Compliance design: paths of least (ethical) resistance (e.g., financial advisers and suitability)

Feldman & Halali, Can We Regulate “Good People”? An Exploratory Study of Subtle Conflict of Interest Situations (working paper, 2014)

More?

• Donald Langevoort, Getting (Too) Comfortable: In-House Lawyers, Enterprise Risk and the Financial Crisis, 2012 Wis. L. Rev. 495
• Milton Regan, Eat What You Kill: The Fall of a Wall Street Lawyer (2004)
• Tom Tyler et al., The Ethical Commitment to Compliance, 50 Cal. Mgt. Rev. 31 (2008)