

Overcoming Cultures of Compliance
in Government
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Many would agree that corruption—the abuse of public office for private gain²—is widespread in government today. Certainly, there is no shortage of examples of corruption, and as a nation, we are drawn to and focus on each example. The alleged sale of a US Senate seat by a now impeached governor,³ the conviction of former Alaska Senator Stevens for lying on required financial disclosure reports,⁴ the scandal involving US Department of Interior employees having sex with representatives of the industry they regulated, and the story of a senior Air Force official negotiating for a job with Boeing while procuring military aircraft,⁵ and the guilty plea by two Pennsylvania judges who took kickbacks from a privately run “boot camp” detention centers⁶ captures our attention. And few of us in the day-to-day ethics world can speak the name of the former mayor of Detroit Kwame Kilpatrick, or the former Governor of New York Eliot Spitzer, without a silent giggle and a “thank you” for giving us salacious examples to spice up our otherwise dry presentations. But if these examples fail to resonate with our audience, others are readily available from the annual prosecution summary produced by the Office of Government Ethics,⁷ or from the Department of Defense’s *Encyclopedia of Ethical Failure*.⁸ The media reports these lapses to a public eager to learn how their elected and government officials have failed the public’s trust, and ethics officers like me trot out these and other examples of officials gone bad in an attempt to scare others into correct conduct.

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² The abuse of public office for private gain is a commonly accepted definition of corruption. See, e.g., N. Ouzounov, *Facing the Challenge: Corruption, State Capture and the Role of Multinational Business*, 37 *J. Marshall L. Rev.* 1181, 1185 (2004); The World Bank Group, *Helping Countries Combat Corruption* 8 (1997).

³ *In re* Rod R. Blagojevich, Judgment of Conviction and Disqualification, The Senate of the Ninety-Sixth Gen. Assembly of the State of Illinois (Jan. 29, 2009), available at <http://www.ilga.gov/senate/impeachment/documents/Judgment%20of%20Conviction%20and%20Disqualification.pdf>

⁴ Del Quentin Wilbur, *Stevens Found Guilty on 7 Counts*, *The Washington Post*, Oct. 28, 2008, at A01. All US Senators are required to file a Senate Public Financial Disclosure Report annually. Section 101(f)(9) of the Ethics in Government Act, 5 U.S.C. app. § 101(f)(9) (2006).

⁵ For a good summary of the facts surrounding the conviction of the former Principal Deputy Assistant Secretary of the Air Force for Acquisition and Management, see Michael S. Devine, *Procurement Fraud: The Continuing (Sad) Saga of Darlene Druyen*, 2006 *Army Law* 132, 137-40 (2006).

⁶ Ian Urbina & Sean D. Hamill, *Judges Plead Guilty in Payoffs for Jailing Youths*, *The New York Times*, Feb. 13, 2009, at A1.

⁷ 2007 Conflict of Interest Prosecution Summary, US Office of Government Ethics (November 6, 2008), available at http://www.usoge.gov/ethics_guidance/daeograms/dgr_files/2008/do08038.html.

⁸ Office of the General Counsel, Standards of Conduct Office, Department of Defense, *Encyclopedia of Ethical Failure* (June 2006), available at www.dod.mil/dodgc/defense_ethics/dod_oge/Encyclopedia_of_Ethical_Failures_2006_Full_Version.doc. The explicit purpose of the *Encyclopedia* is: “to sensitize Federal employees to the reach and impact of Federal ethics statutes and regulations.” *Id.* at 3.

The amount of publicized corruption may be surprising given the many controls imposed on government officials regulating—but obviously not controlling—their conduct. In the federal government, there are numerous criminal and civil statutes addressing corruption and ethics,⁹ and an extensive and detailed code of conduct for the executive branch that proscribes and prescribes employee conduct in minute and often mind-numbing detail.¹⁰ Virtually every federal employee is required to receive interactive ethics training when entering federal service and annually thereafter,¹¹ and federal law requires the government’s senior executives to file a public financial disclosure report.¹² Every executive branch agency has at least one Designated Agency Ethics Official¹³ and usually several other experts on government ethics available for consultation. There are e-mail reminders, websites, and public pronouncements by government leaders about the importance of ethics and compliance with the laws and regulations. Overlapping these rules and exhortations to behave are professional standards of conduct for those in the professions and for those conducting government audits.¹⁴ The sheer number of rules, the myriad reminders, and the stories of bad actors getting punished have many federal employees devoting too much energy to problems like trying to decide whether they can accept a free donut (acceptable) or a free sandwich (unacceptable),¹⁵ what kind of gift, if any, they can accept for giving a speech,¹⁶ and whether they can buy a particular mutual fund,¹⁷ instead of task completion. Generally, in

⁹ Criminal statutes include 18 U.S.C. §§ 201-211 (imposing criminal penalties for various types of corruption and conflicts of interest); 18 U.S.C. § 641 (making it a crime to steal from the United States); 18 U.S.C. § 1001 (making it a crime to lie to the federal government); and 18 U.S.C. § 1719 (making it a crime to use the government’s franking privilege for personal use).

Civil statutes are equally numerous, and include 5 U.S.C. § 3110 (anti-nepotism rules); The Hatch Act Reform Amendments of 1993, 5 U.S.C. §§ 7321-7326 (regulating government employee involvement in partisan political activity); 5 U.S.C. § 7351 (prohibiting federal supervisors from accepting gifts from subordinate employees); 5 U.S.C. § 7353 (prohibiting the acceptance of gifts from contractors and other “prohibited sources”); The Procurement Integrity Act, 41 U.S.C. § 423(e)(2) (civil penalties for disclosure of source selection information and barring former government employees from accepting compensation from certain government contractors).

The Office of Government Ethics (OGE) lists 38 related statutes of general applicability that federal employees need to obey. 5 C.F.R. § 2635.902. OGE cautions that the list is not comprehensive and excludes statutes that only apply to employees of a specific agency, like the Department of Defense. *Id.* § 2635.901.

¹⁰ Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. pt. 2635 (2008). This article focuses on federal executive branch agencies and its employees. Employees in the federal judicial and legislative branches are subject to some, but not all, of the ethics-related statutory provisions but notably, are not subject to the Standards of Ethical Conduct. 5 C.F.R. § 2635.102(a).

¹¹ 5 C.F.R. § 2638.701 - .705 (2008).

¹² Section 101 of the Ethics in Government Act, 5 U.S.C. app. § 101 (2006).

¹³ 5 C.F.R. § 2638.201.

¹⁴ Government Auditing Standards (2007 ed.), available at <http://www.gao.gov/govaud/ybk01.htm>. See Donna T. Chen & Ann E. Mills, *Addressing Ethical Commitments When Professionals Partner with Organizations*, 39 MCGEORGE L. REV. 719, 719 (2007), for a brief discussion of the standards of professional conduct applicable to members of various professions. Chen and Mills observe that “a legal focus is of limited help in resolving issues associated with competing ethical commitments.” *Id.* at 726 (citation omitted).

¹⁵ This regulatory distinction drawn at 5 C.F.R. § 2635.203(b)(1) between items like a donut, which is acceptable as a “modest item of food . . . offered other than as part of a meal” and sandwiches, which are unacceptable because it is offered as part of a meal, was described by several commentators when the Standards of Conduct were first issued. *E.g.*, Kathleen Clark, *Do We Have Enough Ethics in Government Yet?: An Answer from Fiduciary Theory*, 1996 Univ. Ill. L. Rev. 58, 66 (1996).

¹⁶ See 5 C.F.R. § 2635.204(a) (with some exceptions, federal employees may accept gifts worth \$20 or less).

¹⁷ See 5 C.F.R. § 2640.201.

my experience, federal employees strive to comply with the rules, both large and small, regardless of whether *malum in se* or merely *malum prohibitum*. Thus, despite the many notorious breaches of the public's trust, the federal government does not suffer from a culture of corruption, but instead, suffers from a culture of compliance.¹⁸

Though a compliant culture is certainly preferable to a corrupt one, the federal government's culture of compliance should nevertheless concern us greatly. Too often, compliant behavior is confused with ethical behavior, leading to legalism¹⁹ and unacceptable results. For example, a federal employee will be in compliance with the Standards of Ethical Conduct even when having significant responsibility for a matter that will directly affect their adult child's business. It is true that the governing regulations tell employees that they "should" consider how this activity might look and consider recusal,²⁰ but this counsel is merely aspirational. Similarly, although a former federal employee who was significantly involved in official matter involving specific parties is barred from representing a private party on that matter before the United States, it is lawful for the former employee to provide detailed behind the scenes advice to a colleague so *they* can appear before the government.²¹ This "whispering in someone's ear" scheme is entirely lawful and compliant, but hardly ethical.

The elevation of the compliant over the ethical has serious consequences. Not only does the focus on compliance fail to prevent unethical conduct, it also fails to prepare employees to make hard choices, imposes extra costs to taxpayers without even any effort to gauge its benefit,²² and limits public officials' freedom of action in accomplishing the agency's mission.²³

¹⁸ Regardless, the level of corruption in government is no greater than the level of corruption in the private sector. See Association of Certified Fraud Examiners, *2008 Report to the Nation on Occupational Fraud & Abuse* 30 (2008) (reporting data on "occupational fraud: the use of one's occupation for personal enrichment through the deliberate misuse or misapplication of the employing organization's resources or assets.").

¹⁹ Legalism is an attitude that equates moral conduct with rule compliance. See Beth Nolan, *Regulating Government Ethics: When It's Not Enough to Just Say No*, 58 Geo. Wash. L. Rev. 405, 407 (1990) (quoting Judith Shklar, *Legalism* 1 (1964)).

²⁰ "[A]n employee *should* not participate in a particular matter involving specific parties which he knows is likely to affect . . . a person with whom he has a covered relationship . . . if he determines that a reasonable person with knowledge of the relevant facts would question his impartiality in the matter. An employee who is concerned . . . *should* use the [regulatory process] to determine whether he should or should not participate in a particular matter. 5 C.F.R. § 2635.501(a) (emphasis added). Note that the regulations refer to this process as a disqualification, not recusal. *Id.* § 2635.502(e).

²¹ See 18 U.S.C. § 207(a). The elements of the offense are actually far more complex, see, e.g., *Twenty-Third Survey of White Collar Crime*, 45 Am. Crim. L. Rev. 825, 857-863 (2008), and requires that the defendant had knowledge that his or her communication was unlawful. *United States v. Nofziger*, 878 F.2d 442, 444-45 (D.C. Cir. 1989).

²² See generally Frank Aneciarico & James Jacobs, *The Pursuit of Absolute Integrity: How Corruption Control Makes Government Ineffective* (1996).

²³ "Effort[s] to *control* what went on inside government—to keep the politicians and bureaucrats from doing anything that might endanger the public interest or purse [may have] cleaned up many of our governments, but in solving one set of problems it created another. In making it difficult to steal the public's money, we made it virtually impossible to *manage* the public's money. . . . In attempting to control virtually everything, we became so obsessed with dictating *how* things should be done . . . that we ignored the outcomes, the *results*." David Osborne & Ted Gaebler, *Reinventing Government: How the Entrepreneurial Spirit is Transforming the Public Sector* (1992), reprinted in Jay M. Shafritz & J. Steven Ott, *Classics of Organization Theory* 523, 550 (4th ed. 1996) (emphasis in original). See also Phillip K. Howard, *The Death of Common Sense* 99 (1994) ("by pretending that procedure will

Paradoxically, it helps guide those intending to commit a fraud to use compliance to their advantage.

Consider, for example, the collapse of Enron. Though there was ample criminal conduct by those involved, a key action leading to its demise was its use of “special purpose vehicle” partnerships to hold its debt and poor performing assets off its books, thereby allowing Enron to continue to report huge quarterly profits and maintain its stock price.²⁴ According to advice from Enron’s accountants (Arthur Andersen) and lawyers (Vinson & Elkins), all Enron needed to do to shield its debt was to comply with a Financial Accounting Standards Board (FASB) rule²⁵ stating that partnerships would not be considered a subsidiary if at least three percent of their equity came from outside investors.²⁶ Enron listened to its expert professional advice, structured SPVs to comply with FASB’s rule, and investors and the public lost billions.

The focus on compliance has also spawned an entire industry devoted to finding interstices in the tax code to enable clients to pay less tax. Many accountants and lawyers exploit these gaps in the tax code—called “tax loopholes” or “tax expenditures” depending on the speaker’s perspective²⁷—as they advise their clients to take advantage of these provisions while they can. Organized labor too wields the power of compliance when it initiates a “work to the rule” action seeking employer concessions. The false sense of righteousness some feel because their conduct is not prohibited helps explain the appalling treatment of prisoners by US forces at Abu Ghraib, as soldiers were guided not by standards of human decency, but by a legalistic interpretation of a rule book on interrogation.²⁸

More ethics laws and monitoring systems have certainly made government service more complex, but not necessarily more ethical.²⁹ Though enacting yet another rule has the potential

get rid of corruption, we have succeeded only in humiliating honest people and providing the cover of darkness and complexity for the bad people.”)

²⁴ See, e.g., *Lessons Learned from Enron’s Collapse: Auditing the Accounting Industry, Hearings Before the House of Representatives Committee on Energy and Commerce*, 107th Cong., 2d Sess. 90-96 (2002) (Statement of Bala G. Dharan); Ronald Simms, *Ethics and Corporate Social Responsibility: Why Giants Fall* 147-180 (2003); Jerry Markham, *A Financial History of Modern US Corporate Scandals: From Enron to Reform* 99-100 (2006). See generally Bethany McLean & Peter Elkind, *The Smartest Guys in the Room: The Amazing Rise and Scandalous Fall of Enron* (2004).

²⁵ Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities, Statement of Financial Accounting Standards No. 140 (Financial Accounting Standards Bd. 2000), available at <http://www.fasb.org/pdf/fas140.pdf>.

²⁶ See generally Simms, *supra* note 24.

²⁷ US Department of the Treasury, FAQs: Taxes, available at <http://www.treas.gov/education/faq/taxes/taxes-economy.shtml> (last accessed February 1, 2009).

²⁸ Attributing prisoner torture to legalism is a gross oversimplification, of course. Other factors, such as “groupthink,” Craig E. Johnson, *Ethics in the Workplace: Tools and Tactics for Organizational Transformation* 166 (2006), and the prison guards’ obedience to authority, were also involved. See, e.g., Susan T. Fiske, Lasana T. Harris & Amy J.C. Cuddy, *Why Ordinary People Torture Enemy Prisoners*, 306 *Science* 1482-83 (2004) (noting similarities between the Abu Ghraib guards’ abuse of prisoners with Milgram’s famous experiments and the Stanford University prison experiments). Still, Professor Vaughn warned that converting ethical problems into legal ones risked the law becoming the sole judge of propriety. Robert G. Vaughn, *Ethics in Government and the Vision of Public Service*, 58 *Geo. Wash. L. Rev.* 417, 432 (1990).

²⁹ New laws and regulations are often enacted after cries of outrage following the ethical scandal du jour, see Ann McBride, *Ethics in Congress: Agenda and Action*, 58 *Geo. Wash. L. Rev.* 451, 455 (1990), and as a culture, we seem to have an insatiable “appetite for these tasty morsels—little nuggets of ethical commands served to

to prevent a particular type of misconduct from recurring, there is little way to gauge a new rule's efficacy.³⁰ As aptly demonstrated by Enron's abuse of FASB's three percent rule, however, new rules seeking to prevent one type of conduct today too often leads to different mischief tomorrow.³¹

Similarly ineffective is hoping to achieve compliance by threatening punishment for noncompliant behavior, increased penalties, or vigorous prosecution. Though "putting the bums in jail" *may* act as a specific deterrent,³² and reflects and reinforces a society's apparent need to *respond*, B.F. Skinner demonstrated long ago that punishment is an ineffective tool for achieving behavioral change.³³

Not surprisingly, formal ethics programs, with elements like written standards of conduct, a way to get ethics advice, hotlines, and discipline for ethical misconduct, have not been shown to be effective.³⁴ A particularly ineffective element in most government ethics programs is the requirement for mandatory ethics training. Instead of preparing employees to engage in ethical decision-making, most government ethics training is designed to teach employees about the written rules, focusing on what behavior is compliant, and what small variation in the facts would convert the conduct from illegal to lawful. This kind of ethics training can be effective in transferring knowledge of those rules that are *malum prohibitum*,³⁵ but few would argue that public official's decision to eat a free sandwich instead of a donut is corrupt or scandalous. Instead, public outcry is correctly reserved for misconduct like bribery, use of an office for private gain, or some other variant of lying, cheating, or stealing for which, no training should be required. Mandatory ethics training may have its place as an effective defensive strategy for organizations, but mandatory training will neither mandate that learning nor behavioral change by anyone.

government officials." Nolan, *supra* note 19, at 409. But increasing the number of laws and regulations can actually increase criminal activity, as people and organizations try to achieve its goals regardless of restrictions, function in an increasingly complex regulatory environment, and ignore extant laws that lack legitimacy. See Diane Vaughn, *Controlling Unlawful Organizational Behavior* 107-09 (1983).

³⁰ Occupational frauds (corruption) are much more likely to be discovered by tips than by audits or internal controls, despite mandatory anti-fraud controls required by Sarbanes-Oxley, and the requirement that auditors gather fraud-related information pursuant to Statement on Auditing Standards No. 99 (SAS 99): Consideration of Fraud in a Financial Statement Audit (American Institute of Certified Public Accountants 2002); Association of Certified Fraud Examiners, *supra* note 18, at 4.

³¹"Today's problem is always the result of yesterday's solution." Peter Senge, *The Fifth Discipline: The Art and Practice of the Learning Organization* 57 (1990).

³² The evidence to support incarceration as a deterrent for white collar crime is at best equivocal, however. Sally S. Simpson, *Corporate Crime, Law, and Social Control* 42 (2002).

³³ See Morley Segal, *Points of Influence: A Guide to Using Personality Theory at Work* 235 (1997) (discussing the application of Skinner's theories to organizations).

³⁴ Ethics Resource Center, *National Business Ethics Survey, How Employees View Ethics in Their Organizations* 1 1994-2005 (Executive Summary). Programs that feature these elements without also taking affirmative steps to maintain and foster an ethical climate are better thought of as compliance programs. David Gebler, *Creating an Ethical Culture: Values-based Ethics Programs Can Help Employees Judge Right from Wrong*, *Strategic Finance* 31 (May 2006).

³⁵ See Vaughn, *supra* note 28, at 433 (ethics training in this context amounts to a guide to the interpretation and application of a large number of rules).

Creating an Ethical Culture

Though law and regulation can depress the incidence of a specific objectionable conduct,³⁶ to improve ethical performance overall, the answer lies not in law, but in organizational development.³⁷ Since organizational culture³⁸ has the greatest influence in determining ethical outcomes,³⁹ fostering an organizational culture that values honesty, integrity, and public service is essential to moving government organizations away from both the perceived culture of corruption and the culture of compliance.

Changing the culture of a government organization already encumbered by decades of patchwork legislation and regulation promulgated in response to the latest scandal may be more difficult than affecting the culture of a private concern. However, commentators have identified several common processes and leadership behaviors that if employed, should help to establish an ethical culture in government organizations.⁴⁰

Ethical behavior by the leader is essential to assuring ethical organizational behavior and ethical conduct by subordinate officials.⁴¹ “Tone at the top” is a tired cliché, yet research conducted by the Ethics Research Center shows that top managers setting a good example and keeping promises has a statistically significant impact on several ethics-related outcomes.⁴² Agency leadership must do far more than talk about the importance of ethics, but must show by their actions that ethics is important. Personal integrity cannot be an optional trait for an ethical government leader.

The commitment to ethics must also extend beyond the agency’s leader to its top executives for an ethical culture to flourish.⁴³ Certainly, the converse is true: key agency officials encouraging

³⁶ Neil Vance & Brett Trani, *Situational Prevention and the Reduction of White Collar Crime*, J. of Leadership, Accountability and Ethics (2008).

³⁷ See Peter Madsen & Jay Shafritz, *Essentials of Government Ethics* 398-99 (1992).

³⁸ Organizational culture can be defined as “a pattern of shared basic assumptions . . . that has worked well enough to be considered valid . . . and taught to new members as the correct way to perceive, think, and feel” in particular situations. See Edgar H. Schein, *Organizational Culture and Leadership* 17 (1992). The federal sentencing guidelines lists “promot[ing] an organizational culture that encourages ethical conduct and a commitment to compliance with the law” as a necessary element of an effective compliance and ethics program. U.S. SENTENCING GUIDELINES MANUAL, § 8B.2.1(a) (2007). The Sentencing Guidelines apply to governments and their political subdivisions. *Id.* § 8A1.1 Commentary.

³⁹ David Gebler, *supra* note 34, at 31 (reporting on the Ethics Resource Center’s 2005 National Business Ethics Survey).

⁴⁰ OGE has recommended 66 concrete actions federal government leaders can take move the federal executive branch’s ethics program “beyond minimal compliance.” to promote an ethical culture. Office of Government Ethics, *Leadership Initiative: Overview* (Feb. 2008), available at http://www.usoge.gov/ethics_docs/agency_model_prac/li_concrete_actions.pdf. Many of the recommendations encourage leaders to model ethical conduct and if widely adopted, should help OGE meet its strategic goal of “strengthening the ethical culture and promoting an ethical workforce within the executive branch.” US Office of Government Ethics, *Strategic Plan Fiscal Years 2007-2011* 3-9 (n.d.), available at http://www.usoge.gov/management/admin_manage_reports.aspx.

⁴¹ Dawn S. Carlson & Pamela L. Perrewe, *Institutionalization of Organizational Ethics through Transformational Leadership*, 14 J. Bus. Ethics 829 (1995)

⁴² Ethics Resource Center, *Critical Elements of an Organizational Ethical Culture* 10, n.4 (2006) available at <http://www.ethics.org/erc-publications/organizational-ethical-culture.asp>. Patricia Harned, *The Risk of Being Ethically Tone Deaf at the Top*, Compliance Week (Sep. 6, 2006).

⁴³ See S. Bavaria, *Corporate Ethics Should Start in the Board Room*, 9 Bus. Horizons 12 (1991).

or overlooking improper behavior will lead to others' improper behavior.⁴⁴ Agencies that permit compliant but unethical conduct to occur, either because of poor internal controls, conflict avoidance, or the rationalization that fundamental principles must be compromised for success, should not expect ethical conduct from its employees.⁴⁵

The agency should develop a statement of its core values, generated not just by agency leadership, but with the participation of all involved. These identified core values should include qualities such as integrity, accountability, and trust,⁴⁶ and these core values should inform virtually every decision the agency and its employees make. Naturally, agency action must be consistent with its rhetoric. Regulatory commands and lofty statements proclaiming high ethical standards will only engender cynicism if the values that actually drive organizational behavior are less honorable.⁴⁷

These core values should then form the basis of a code of behavior that reflects not just the statutory imperatives, but provides a compass for agency officials and employees at every level to make ethical judgments.⁴⁸ Government employees are more likely to follow rules they helped develop that are based on shared values.

The agency must show its commitment to ethics by sharing important information affecting the agency and its employees.⁴⁹ Ethical behavior by employees should be positively reinforced with rewards. Finally, because you get what you measure, agencies should conduct regular ethics surveys to assess how much ethical misconduct is being observed, whether employees feel comfortable reporting misconduct, or whether they have been pressured to overlook certain matters.⁵⁰ And to be credible, agencies must use the data obtained as a basis for action.

Conclusion

Efforts to criminalize and regulate the conduct of government officials have failed to alter the perceived rate of corruption. Instead, the legislative and regulatory failure to think in systems before regulating conduct has actually guided criminals and those willing to disregard ethical considerations by shielding their activity with compliance. It is not surprising, therefore, that

⁴⁴ Vance & Trani, *supra* note 36 (citation omitted).

⁴⁵ See Gebler, *supra* note 34, at 33.

⁴⁶ Cathleen Sullivan, *Creating an Ethical Culture* (n.d.), available at http://www.amanet.org/editorial/ethical_culture.htm (last accessed Feb. 12, 2009).

⁴⁷ Agencies must avoid confusing its espoused values with the actual values in operation. See Edgar H. Schein, *Organizational Culture and Leadership* 29-30 (3d. ed., 1992) (discussing Chris Argyris & Donald A. Schön, *Organizational Learning: A Theory of Action Perspective* (1978)). The tendency to confuse an organization's espoused values with the actual values in operation is perhaps best demonstrated in the acerbic definition of "values" by one observer as: "What we say we do. Not to be confused with what we actually do." Eileen C. Shapiro, *Fad Surfing in the Boardroom: Managing in the Age of Instant Answers* 226 (1996).

⁴⁸ Note, however that OGE must concur in any federal executive branch agency regulation supplementing the Standards of Conduct promulgated for the executive branch. 5 C.F.R. § 2635.105.

⁴⁹ Ethics Resource Center, *supra* note 42 at 10, n.4.

⁵⁰ Only 28% of federal executive branch agencies conduct surveys to evaluate employee perceptions of their agency's ethics program. Office of Government Ethics, *Fiscal Year 2009 and Explanatory Notes and Annual Performance Plan* 32 (Feb. 2008) available at http://www.usoge.gov/management/admin_mgmt_rpts/expnts_fy09.html.

government ethics programs, largely focused as they are on compliance with the myriad applicable restrictions and exceptions, would have little success in reducing corruption or, for that matter, promoting ethical behavior.

Instead of adding more penalties, regulation, enforcement, training, threats, and financial disclosure to government ethics programs, time and resources would be better spent working to ensure that each agency, or even each office within each agency, has a culture where a strong sense of ethics guides daily action. If a government agency has strong ethical values, and all involved are acting in concert with these values, then not only will corruption and misconduct decline, but no one will need to consider or adjudicate whether a very large donut is actually a prohibited meal.