

the Ethical Times

Bounded Ethicality

The Cognitive Science Behind Ethical Lapses

By Rob Casimir

Arguably, a good ethics law is not a corruption-fighting law (we've got criminal anti-corruption laws for that). Rather than catching bad people doing wrong, a good ethics law should help good people do right, because, while a very small percentage of public servants are hostile to ethical principles and will knowingly engage in misconduct, the vast majority do their jobs only with the best of intentions. Those good people are going to be best served not by attempts to scare them with threats of civil fines or public sanction, but by making them aware that often the ethics issue that's right under one's nose is actually the hardest to spot.

Indeed, an extensive body of research shows that there are systematic ways in which people engage in unethical acts without the awareness that they are doing anything wrong. This field of study is known as "bounded ethicality" — that is, our ability to engage in ethical behavior is "bounded" by various pressures beyond our own conscious desire to be ethical.

The bad news: these cognitive processes occur unconsciously. So, without some form of intervention, a good public servant might well miss an ethics situation when it arises. The good news: these processes are predictable — and, with the right strategy, agency officials and ethicists can get ahead of them. Let's look at a few examples of bounded ethicality and see how we at COIB address them.

Lack of Knowledge

The first, and most obvious, contributor to ethical lapses is an inadequate knowledge base. It is very difficult to adhere to a conflicts of interest law if you don't know what the law requires. Is it okay to accept a gift? A tip? Can you use the office printer for an incidental personal task?

A public servant should always have this information (only if it's worth less than \$50; never; probably, but check your agency's Acceptable Use Policy). Fortunately, the City Charter [requires](#) that all public serv-

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ants receive ethics training upon being hired and at least once every two years thereafter. We therefore need to maximize the amount of knowledge public servants acquire in these trainings. Of course, this is easier said than done. Especially when you consider that people tend to learn better when:

- they don't actively hate the person conducting the training; and
- they aren't extremely bored.

It is for these reasons that the COIB's Education and Engagement Specialists are experts in both the conflicts of interest law and in audience engagement, using collaborative storytelling, role-playing, and performance techniques to generate discussion and make the information "stick." Enforcement is covered, of course, but primarily for the educational value of past cases.

Implicit Bias

Implicit bias is another factor which may contribute to an individual's bounded ethicality, and research once again is helpful in identifying reasons why someone with good intentions might fail to act ethically.

For example, experiments show that most people perceive their own decisions as more objective and fair





FAST FACTS

- Even a well-intentioned public servant can unthinkingly engage in unethical behavior. This is called “bounded ethicality.”
- Bounded ethicality results from a lack of knowledge, implicit bias, and ethical fading (among other causes).
- These cause are unconscious, but predictable and therefore preventable.
- COIB designs its education and outreach efforts to combat bounded ethicality.

than decisions made by others. Logically, we know that most people can't be more fair than most other people. And it seems reasonable enough to believe that, since all of our fairness judgments are inherently egocentric — hopelessly biased by our own unique perspective — the way we interpret events is probably always going to be just a little bit self-serving.

But when this “fairness bias” is combined with “overconfidence bias” (where we overestimate our own competence at a task), that's a recipe for ethical winging-it. When people feel like they already “know” the answer to an ethics question, they don't ask the experts. In an environment where violations of the conflicts of interest law come with real consequences, this is a risk folks shouldn't take. Instead, City employees should be encouraged to use one of COIB's many easily-accessible resources.

When speaking with public servants, our trainers emphasize that reaching out and asking COIB for advice is easy to do ([online](#) or on the phone), happens all the time (we get a bunch of calls every day), and carries very little personal risk (all calls are confidential, and anonymity is an option). The goal is to make public servants feel comfortable reaching out to COIB when they face a conflict of interest, so that, as easy as winging it might be, calling for advice feels equally easy.

Ethical Fading

Bounded ethicality can occur when the ethical nature of a decision fades from view entirely. This, appropriately enough, is called “ethical fading.”

Let's say you're a City employee, and one day a friend you haven't seen since college shows up to your office with a stack of tickets to the New York Knicks, which is a famous semi-professional basketball team. Your college friend mentions that he got the tickets through his new job at Big-Time City Vendor, so it's

no big deal. You take the tickets and go to the game with your family, excited at having seen your old college pal.

You learned in your COIB training that you can't take expensive tickets from City vendors. You know that it's always better to call for advice — even anonymously, even if only for a thirty-second chat — when you aren't sure how to handle a conflicts issue. But in this case, for whatever reason, it never crossed your mind. That's ethical fading, and it's difficult to combat.

However, studies indicate that temporal distance influences ethical fading. Which makes sense: when you were sitting in your COIB training 16 months ago, it seemed obvious that accepting fancy tickets from a vendor was a violation of the conflicts of interest law. But now, when you haven't thought about conflicts of interest in over a year and a half?

To this end, COIB's Education and Engagement Unit positively bombards public servants with an increasingly frequent stream of entertaining and educational ethics-related media: newsletters, [contests](#), [plain language guides](#), [FAQs](#), [posters](#), [pamphlets](#), and [absurdist training videos](#), plus daily posts on [Facebook](#), [Instagram](#), and [Twitter](#). This is the COIB equivalent of checking a clock to see if you're in a dream: by turning ethical check-ins into a daily habit, the average public servant is perpetually primed to recognize conflicts of interest when they arise. When the moment comes, they'll be ready.

A friend and fellow ethicist was once asked, “What is something that seems obvious within your profession but the general public seems to misunderstand?”

She replied: “having a conflict of interest isn't the problem, but not doing anything to address it is.” And in a world filled with so many competing interests, it is inevitable and understandable that conflicts of interest will arise. When that happens, it is important that we present the existence of that conflict not as a manifestation of some great moral failing, but as an opportunity to proactively take steps toward an ethical outcome. And whatever City position we hold, we should constantly strive to help ourselves and our fellow public servants recognize — and address — these issues.

If you've got an ethical question, fill out the webform at nyc.gov/ethics or call our Attorney of the Day hotline at (212) 442-1400, Monday through Friday, 9:00 to 5:00, for free, confidential legal advice.



Rob Casimir is a Senior Education & Engagement Specialist for the New York City Conflicts of Interest Board.

Recent Enforcement Cases

Misuse of City Time During the 2015 spring semester, a now-former Department of Education (DOE) Principal had a second job teaching a course twice a week at Borough of Manhattan Community College. On each day that he taught this course, he arrived at his DOE school 90 minutes after the start of the school day. The now-former Principal agreed to pay a \$2,500 fine to the Board.

Misuse of City Resources; Misuse of Position A DOE Payroll Secretary at a Bronx middle school was responsible for administering a school checking account used to collect student dues and pay for school activities such as dances and trips. He diverted a total of \$2,040 from this account into his own pockets by forging the Principal's signature on three checks and cashing them.

After a full trial, an Administrative Law Judge (ALJ) at the Office of Administrative Trials and Hearings issued a Report and Recommendation, finding two violations by the now-former Payroll Secretary:

1. misusing City resources by taking \$2,040 of DOE funds for his personal use; and
2. misusing his DOE position of official responsibility for the account

The ALJ recommended a \$10,000 fine, plus repayment of \$2,040. The Board adopted the ALJ's findings and recommendation.

Misuse of Position & Personnel Over the course of fourteen years, a former employee of the Department of Environmental Protection (DEP), who served most recently as a DEP Assistant Commissioner, had her subordinate DEP employee drive her from work to her home and other personal destinations fifty times. She did not fully reimburse her subordinate for the costs of gas and tolls; additionally, she knew of and approved her subordinate remaining on the clock while he drove her on these non-City trips. The former Assistant Commissioner agreed to pay a \$5,000 fine to the Board.

Misuse of City Time A now-former DOE teacher had an outside position as a representative for a multilevel marketing company called ItWorks!. She misused DOE time to promote her outside business by posting seventeen tweets about It Works! during her DOE work hours, including preparatory periods and during her classes. The teacher agreed to pay a \$1,500 fine.

In setting this penalty, the Board took into account the appearance of impropriety created by the teacher publicly posting about her private business during hours when she was supposed to be performing work for DOE.

Misuse of Confidential Information On 56 occasions, a Human Resources Administration (HRA) Caseworker misused the Welfare Management System to access the confidential public assistance case records of an individual for whom she serves as an Authorized Family Care Provider. In a joint settlement with the Board and HRA that resolves both the Caseworker's conflicts of interest law violations and unrelated HRA Code of Conduct violations, the Caseworker agreed to accept a thirty-day suspension, valued at approximately \$3,951, and to serve a one-year probation. The Board imposed no further penalty.

Misuse of City Resources A driver for the Materials for the Arts (MFTA) program at the Department of Cultural Affairs misused his assigned MFTA truck to drive himself to the gym twice. The driver agreed to pay a \$1,000 fine for misusing a City resource for personal, non-City activities.

Misuse of City Resources A Director of Field Operations at the Division of Instruction and Information Technology (DIIT) for the DOE was assigned a DIIT vehicle and E-ZPass to perform his City work. While the Director was authorized to take home his DIIT vehicle, he was instructed to personally pay for any tolls incurred for his commute. Over the course of approximately seven months, however, he used his DIIT-issued E-ZPass to pay those tolls, totaling \$516.56, which he repaid once his supervisor brought the improper charges to his attention. In his settlement with the Board, the Director agreed to pay a \$500 fine for using a City resource, in this case a DIIT E-ZPass, for a personal, non-City purpose. In determining the appropriate penalty, the Board took into account the Director's full reimbursement to the City and his representation that he carelessly, rather than intentionally, permitted tolls to be charged to the DIIT E-ZPass.

Misuse of City Resources During his tenure at Health + Hospitals, a now-former Supervisor of Plumbers maintained his own private plumbing business. Over the course of several years, he:

- stored 24 documents related to his private business on his City computer;
- listed his City office telephone number as his business's contact information on documents related to his private work; and
- listed his City office telephone number as his business's contact information on three master plumber license records filed with regulatory entities.

The former Supervisor of Plumbers agreed to pay a \$2,500 fine to the Board.

Recent Enforcement Cases

Misuse of City Resources A now-former Commissioner of the New York City Department of Correction (“DOC”) agreed to pay a \$18,500 fine to the Board for, in 2016:

- using his assigned DOC “take home” vehicle to take 30 personal trips to Maine, Massachusetts, New Jersey, and Niagara Falls;
- using a DOC-issued gas card to buy \$1,043 worth of gas for these personal trips; and
- using a DOC-issued E-ZPass to pay \$746.56 worth of tolls incurred on these personal trips.

This settlement is the thirteenth in a series of recent Board cases involving the misuse of “take-home” vehicles by current and former DOC executives.

In determining that the \$18,500 fine was an appropriate penalty, the Board weighed the following factors: the number of times the now-former Commissioner used his DOC vehicle for personal trips; the distance traveled during those trips; and the accountability required by his high-level position as Commissioner. The Board also considered that the now-former Commissioner was operating under an erroneous understanding that he was permitted to use his take-home vehicle for personal, non-City matters; that the former Commissioner represented that he retired from DOC in part because of this conduct; and that he reimbursed DOC for the gas card and E-ZPass charges incurred.

Misuse of Time & Resources, Misuse of Position, & Superior-Subordinate Financial Relationship A now-former DOE Administrative Education Officer had an outside job as a tax preparer. She misused her DOE computer to modify and store 15 documents for this outside job. She also misused City time by promoting her tax prep services to coworkers and a subordinate during DOE work hours, which led to her obtaining two coworkers and the subordinate as paying tax preparation clients. The now-former Administrative Education Officer agreed to pay a \$3,000 fine.

Moonlighting & Misuse of City Time A Social Worker for Health + Hospitals worked for a total of nine years for two firms that did business with the City in violation of the City’s conflicts of interest law. Additionally, on two occasions when she was clocked in as working for Health + Hospitals, she was actually commuting from her second job, misusing a total of 90 minutes of City time to do so. The Social Worker agreed to pay a fine of \$1,250.

A [searchable index](#) of all the COIB Enforcement Dispositions and Advisory Opinions is available courtesy of New York Law School.

New Videos

COIB has fresh video content for you to check out:



Chet Wonkman, COIB’s VP of Sales, talks up the **Attorney of the Day hotline** as only he can. COIB: we make your dreams come true.

And YouTube unboxing star Isaiah gets his hands on the latest edition of the **Plain Language Guide**. Watch his review, then [read the PLG](#) yourself.

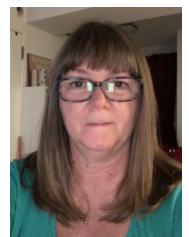


Besides our YouTube channel, many of COIB’s videos can also be [viewed on our website](#).

Congratulations!

To the winner of our recent Public Service Puzzler, **Marie Samples** of OCME.

Read her haiku, and write a cartoon caption for [the current Puzzler](#)! We’ll take entries through August 10th.



Schedule a Chapter 68 Class

Get in touch with COIB’s Education & Engagement Unit to arrange a class in Chapter 68 for you and your staff. Contact Gavin Kendall at kendall@coib.nyc.gov.

Phone: (212) 442-1400

Fax: (212) 437-0705



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