

*Ethics lights the way
to good government*

The Ethical Times

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Is Enforcement Enough?

By
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What would you do, if you knew there would be no consequences to your actions? Would you have that extra slice of chocolate cake? Would you eat the whole cake? Would you steal somebody else's cake?

What if there was no mechanism to enforce societal norms? I think the first knee-jerk reaction is, "Anarchy! Chaos! Cats and dogs living together!" But is enforcement the only thing keeping us from tearing each other apart? More to the point, in a "normative regime" like the City's rules pertaining to ethics and conflicts of interest, is enforcement the only mechanism that prevents corruption?

Before we get ahead of ourselves, I think we can all agree that enforcement is important, even indispensable to the work of an ethics board, such as the COIB. As people like to say, "laws that are not enforced are not respected." You might even argue that lax enforcement could breed contempt for the law, or at least cynicism. But are there others factors, besides enforcement, which can influence corruption?

The best way to answer that question would be with an experiment or a study. And the best kind of study would be one that looks at a large sample in a complex, real-world environment. Those kinds of corruption studies, however, are pretty hard to come by. What are we going to do - make our jurisdiction an "enforcement-free zone" for six months and record the results? No. As we already noted, enforcement is crucial in fighting corruption. The risk of damage to the reality and perception of integrity in government would be too high to justify such a study. But what if we could find an environment where those conditions already existed, wouldn't that be great? Where in

the world are we going to find that?

Well, it turns out that New York City had one until about 2002. A couple of economists, Raymond Fisman and Edward Miguel, found it in the form of parking violations. Until the law changed in 2002, foreign diplomats basically could park anywhere with no fear of retribution. Sure, they could be ticketed, but their diplomatic immunity privileges protected them and their governments from having to pay fines or risk having their cars towed. For these diplomats, it was an enforcement-free zone (for parking, anyway). Now, if enforcement was the only factor in keeping people from parking illegally, then we might expect ALL diplomats from all countries parked with impunity at the same rate. If there were differing rates between countries in the same enforcement-free zone, then something else must be driving those choices to either break or not break the rules.

So, two questions: 1) did the rates differ for diplomats from different countries? And if so, 2) what might account for those differences?

First, let's just take note of the scale of the phenomenon. The study's authors note that from November 1997 to the end of 2002 diplomats in NYC received over 150,000 parking tickets worth over \$18 million collectively. Were there differences between diplomatic missions of countries? Yes. The highest level of tickets was Kuwait, with an average of almost 250 tickets per diplomat, and the lowest level was a tie between a number of countries including Great Britain, Turkey, Israel, the Netherlands, and many others, all coming in at zero. What accounted for the differences?

Here's where it gets interesting. The researchers cross-referenced these findings with the corruption ratings of the countries - these ratings are put to-

gether by surveys conducted by Transparency International, a global anti-corruption organization. There was a definite correlation between high numbers of tickets and a high rating of perceived corruption on those surveys. Translation: diplomats from more corrupt countries tended to violate more.

The researchers also found that diplomats from countries with less rosy relations with the US tended to commit more parking violations, and worse kinds of violations – double-parking on a midtown cross-street or parking at a hydrant, for example. Translation: a hostile or antagonistic relationship with the host environment may lead to more violations.

Also, lack of enforcement did seem to have an effect. The longer a diplomat stayed in New York’s “enforcement-free zone,” the greater the diplomat’s likelihood of committing a parking infraction. This was true for all diplomats from all countries, but those diplomats from less corrupt countries increased their violations less over time than their counterparts from more corrupt countries.

So it seems pretty clear that, in this “normative regime” of parking rules in New York City, enforcement is a key factor that affects compliance. (This was proven in 2003 when, thanks to the Clinton-Schumer Amendment of 2002, the City gained the power to tow diplomats’ vehicles, revoke permits, and take

money out of the offending country’s US foreign aid – violations went down significantly soon after.) But also, clearly, enforcement is not the only factor that affects compliance.

What can we take away from this and apply to our own “normative regime” of compliance with agency codes of conduct and the Conflict of Interest Law?

First, we should think about robust and thorough on-boarding when hiring new people. As we all know, standards on acceptance of gifts, misuse of position or resources, and other ethical areas tend to be higher in the public sector than in the private sector. Agencies need to think about how they can quickly and effectively communicate their values and rules to new hires. Because even if those new hires come from extremely successful private sector careers, some of their tools for success may no longer be useful in a public service context. A person who spent her entire life as an Enron executive, for example, may need a little help in understanding that one’s duty to the client served generally comes before one’s personal interests. (Also, don’t hire former Enron executives.) Of course, many agencies have great on-boarding programs already. But some agencies might be well-served to tailor their on-boarding to the backgrounds of their new employees. An agency with a lot of new hires from the tech sector, for example, where standards on

gifts and business lunches and networking tend to be a bit looser than in the Conflicts of Interest Law, might think about specially-targeted training for that group.

Second, we should think about how to keep our employees happy. Remember, the study showed that the worse relations were between the violator’s home country and the US, the more violations there tended to be. The less I like my host, be it my host country or, in the case of a City job, my agency, the less invested I may be in respecting the things that are important to the host. How much deterrence could we effect if we compensated our employees more, if we helped them continuously develop their skill sets, if we went out of our way to recognize and encourage excellence, and if we listened to their concerns? To be sure, these aren’t new ideas. But thinking about them as having a salutary effect against corruption may be a little less conventional. We spend a lot of money and energy on deterrence and enforcement, as we should. But let’s make sure that we don’t put all of our anti-corruption eggs into one basket.

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Recent Enforcement Cases

► A New York City Police Department (“NYPD”) Chief, a former Chief, and an Assistant Chief were each fined \$1,500 for accepting prohibited gifts in the form of meals from the Queens Library, an organization with which they interacted as part of their NYPD duties.

The meals were hosted by then President and CEO of the Queens Library, who was acting on behalf of the Library. The Chief and former Chief received four meals, each valued at more than \$100. The Assistant Chief received three meals for herself and one for her husband, each valued at more than \$100. They acknowledged that the meals were provided to them solely due to their City positions, the acceptance of which violated the City’s conflicts of interest law provision that prohibits public servants from using their City positions to obtain any financial gain or personal advantage for themselves or anyone “associated” with them, including a spouse.

Congratulations! to the winner of the Conflict of Interest Board’s August Public Service Puzzler contest:

William Gaston, a Associate Staff Analyst at Department of Citywide Administrative Services.



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Contact Gavin Kendall, at kendall@coib.nyc.gov

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