

Organizational Integrity *Shorts*



Edition 1.3

Reality Based Ethics & Compliance Programs

By: Jonathan Aronie, Sheppard Mullin*

As I discussed last week, it is our view that, despite growing attention on the effectiveness of Ethics and Compliance programs over the past decade, many corporate Ethics and Compliance (E&C) programs still are not as effective as they could be. In this third edition of our *OIG Shorts* series, we explore the importance of developing what we call **Reality-Based E&C Programs**.

Programs that buck up against an employee's reality—whether that reality is real or perceived—have less chance of succeeding. We see this all the time in a variety of contexts. Someone comes up with an idea that looks good on paper, but because it doesn't match the reality of the ones called upon to implement it, the idea rather quickly falls into disuse.

A case in point is the time we spend trying to convince our employees to report their colleagues for misconduct. Now we must be careful here lest our point be misconstrued. There certainly are benefits of reminding employees of their obligations (policy, legal, and moral) to disclose wrongdoing. Companies should and must do that. But we contend the ROI for such efforts actually is rather low, and we could do much better if we *supplemented* those efforts with a more reality-based approach.

In 2016, we had the honor of working with a wonderful group of community members and police officers in New Orleans to create a *peer intervention program* called EPIC. EPIC, which stands for Ethical Policing Is Courageous, teaches police officers practical tactics and strategies to intervene in another officer's conduct to prevent wrongdoing and mistakes. The program (which supplemented, but did not replace the Agency's long-standing reporting rules) was remarkably successful and, in fact, thanks to a Sheppard Mullin/Georgetown Law Center partnership, evolved into a national active bystandership program in 2020 called ABLE. In just two years, ABLE has welcomed more than 275 agencies across the U.S. and Canada into the program, including most of the country's largest law enforcement agencies. (If you want to read more about ABLE, check out this great [Boston Globe article](#)).

The principles of ABLE are founded upon decades of social science research, and significant on-the-ground experience in a number of professions, including medical, airline, military, and, now, law enforcement. The same active bystandership principles are eminently adaptable to a corporate setting. Rather than focusing solely on trying to convince your employees to report one another *after the fact*, which many employees are understandably hesitant to do, active bystandership training focuses on educating and empowering colleagues



to intervene in action *before* it becomes a problem. By providing evidence-based and ground-tested tactics and strategies (rather than merely telling employees to be morally courageous, which is how bystandership has been taught for decades), intervening becomes easier, safer, and more effective.

Incorporating meaningful active bystandership training, of course, is not the only way to ensure an E&C program is reality-based. Vetting new policies with the employees to whom the policies will apply helps foster reality-based policies that employees will be less likely to violate. Measuring the efficacy of training helps ensure that training is meaningful, memorable, and effective. Enhancing internal communications to be more transparent about the nature of the company's E&C program also helps the program stay reality based.

The bottom line is that the greatest ideas in the world will not be worth a lick if they can't command the attention of those called upon to implement them. One way we can get employees to listen and to understand the importance of these programs is by talking about things they care about; things that align with their realities.

Jonathan Aronie is a partner in the Washington office of Sheppard Mullin LLP. He leads the firm's Governmental Practice and is the co-founder of the firm's Organizational Integrity Group. In 2013, Jonathan and his colleague (and OIG-co-founder) David Douglass were appointed by the U.S. District Court to serve as the Federal Monitors over the New Orleans Police Department Consent Decree. Jonathan can be reached at jaronie@sheppardmullin.com.