



# ETHICAL CHALLENGES FOR THE NOT-FOR- PROFIT INDUSTRY

May 22, 2024

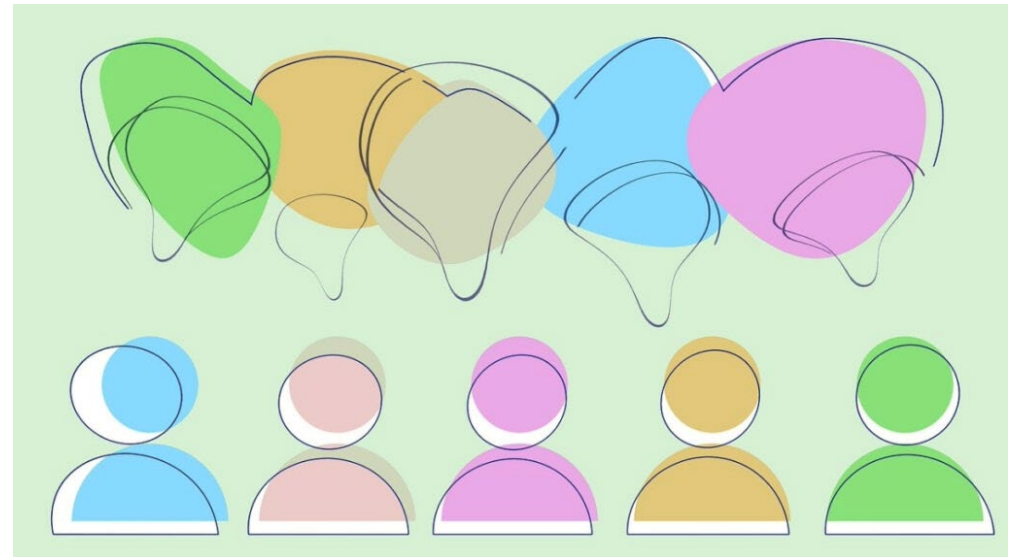
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# GUIDELINES

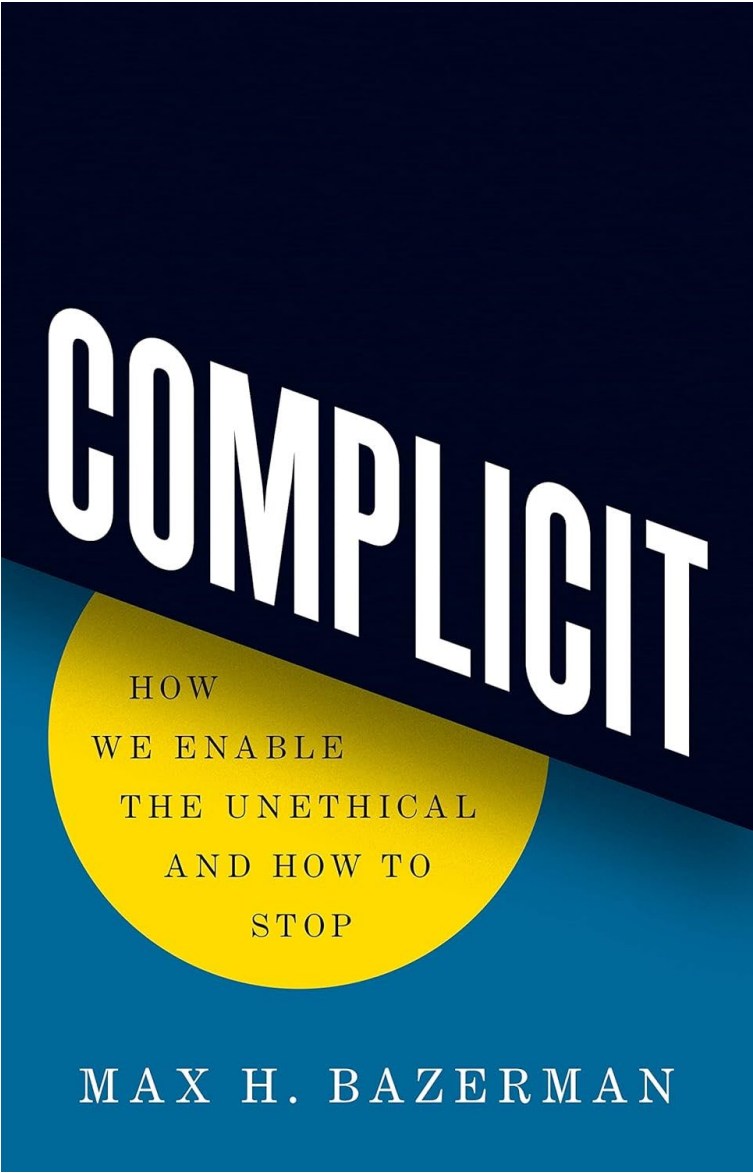
- In today's social environment, it is frequently difficult to avoid political implications in matters that may not be inherently political.
- While discussing professional ethics today, let's all try to keep politics out of the way of understanding how to make the best decisions to serve our clients and our profession.
- This goes for religious/faith views as well.

# ARE YOU LISTENING?

**HIDDEN  
BRAIN**



**EVERYBODY SHOULD BE  
ETHICAL**

The book cover features a dark navy blue upper half and a teal lower half, separated by a diagonal line. A yellow circle is positioned in the teal section, partially overlapping the diagonal line. The title 'COMPLICIT' is written in large, white, sans-serif capital letters, tilted upwards from left to right, spanning across the dark blue background. Below the title, the subtitle 'HOW WE ENABLE THE UNETHICAL AND HOW TO STOP' is written in smaller, white, sans-serif capital letters, centered within the yellow circle. At the bottom of the cover, the author's name 'MAX H. BAZERMAN' is written in white, sans-serif capital letters, centered in the teal section.

# COMPLICIT

HOW  
WE ENABLE  
THE UNETHICAL  
AND HOW TO  
STOP

MAX H. BAZERMAN



Complicit [ kuhm-plis-it ]

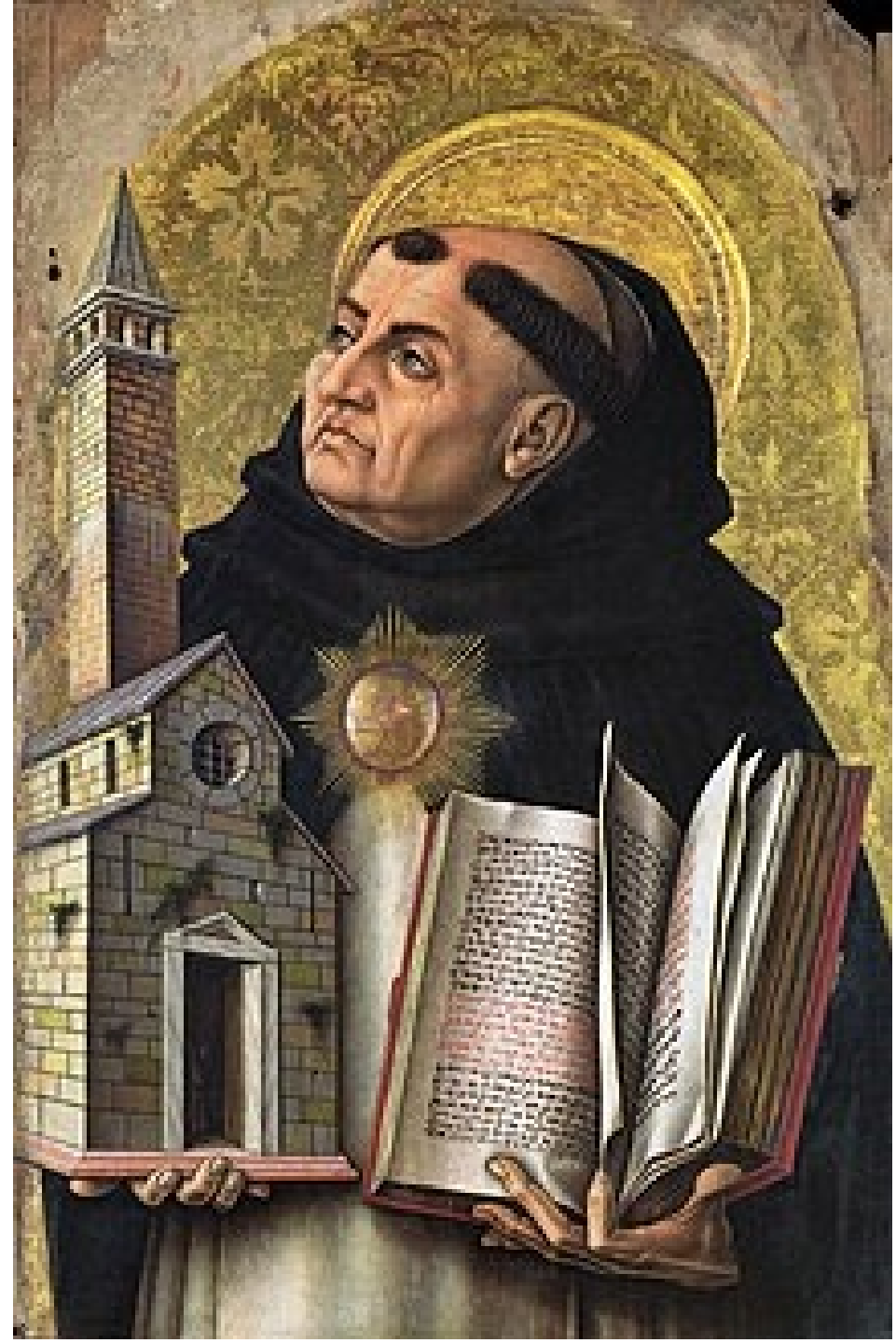
adjective

choosing to be involved in an illegal or questionable act, especially with others; having complicity.

# NOT A NEW CONCEPT

In 13<sup>th</sup> century, Thomas Aquinas listed 9 ways we can be complicit:

- By Command
- By Counsel
- By Consent
- By Flattery
- By Receiving
- By Participation
- By Silence
- By Not Preventing
- By Not Denouncing





# IMPROVING ETHICS

- Socrates, Plato, and Aristotle
- Debates focused on what constitutes the most ethical behavior
- Utilitarians argue it's ethical when it maximizes value for all
- Early 21<sup>st</sup> century corporate scandals created interest in ethics outside philosophical circles
- Philosophical = how we *should* behave
- Behavioral = how we *actually* behave



# BOUNDED ETHICALITY

- Many engage in unethical behavior without conscious awareness
- Studies found many discriminate based on ethnicity and gender without awareness
- Humans have “bounded awareness”
- Fail to notice and use easily accessible, perceivable, and useful information

# ORDINARY COMPLICITY

# BENEFITING FROM PRIVILEGE

- When we benefit from a system, we can become complicit in it and resist systemic change
- U.S. tax code offers favorable treatment for homeowners
- People focus more on inequality when they are disadvantaged than when they are privileged
- When we fail to see our privilege, we risk becoming complicit with structures that breed inequality

# WHAT CAN WE DO?

- Many of us accept the existing system as the way the world works rather than asking how we can change structures that lead to unethical action
- Failing to think about our privilege can lead us to be complicit when bad things happen
- Through greater reflection and a willingness to change, we can better align with our higher ethical standards

# BELIEVING IN A FALSE PROPHET

- Jim Jones and the Peoples Temple
- When people try to keep us from deliberating, we should be concerned
- People are often inspired and affected by leaders with charisma
- In the corporate world, deference to a charismatic leader may enable incompetence, abuse, and unethical and illegal behaviors

# theranos

## WALGREENS AND A FALSE PROPHET

- Founded by Elizabeth Holmes in 2004
- By 2014, market value of \$9 billion
- New technology could conduct 200 blood tests using one one-hundredth of the amount of blood using traditional methods

# MINDLESS COMPLICITOR

- Walgreens was in fierce competition with CVS and needed something new
- Holmes promised that customers could get their fingers pricked and have 200 blood tests results in an hour
- Only one of Walgreens team questioned the technology, all the others trusted Holmes and stopped thinking rationally

# MISSED WARNING SIGNS

- Theranos wouldn't let people with expertise test their technology
- Theranos avoided medical or biological experts on its board
- Leaders have an explicit obligation to provide oversight, detect problems, and act on them
- Putting faith in a charismatic personality may deter from meeting this obligation



# WEWORK

- Founder Adam Neumann presented WeWork as a social movement that could “elevate the world’s consciousness”
- His wrongdoing was enabled by those who believed his false prophecies, including his employees
- Those who blindly accepted his preaching were complicit
- Leaders, investors, and board members more so than lower-level employees

# WHY WE ACCEPT FALSE PROPHETS

- Tend to assert that old business models no longer apply
- Often lack evidence to support claims and suppress deliberation
- When we put our faith in leaders, we have little reason to deliberate
- When we defer to others based on faith without reasoning, we become complicit in their harmful acts

# AUTHORITY AND LOYALTY

- Harvey Weinstein created a “culture of complicity”
- Almost everyone had incentives to look the other way or stay silent
- Fear was a key motivator, they deferred to his authority
- Harvey was the boss, and the boss gets to make the rules
- Later, some of his assistants felt remorse for contributing to a culture of silence

# DEFERENCE TO AUTHORITY

- People vary in how they define ethical behavior
- Some think ethics involves concern for others and fairness
- Other people view deference to authority as a foundation for ethical behavior

# I WAS ONLY FOLLOWING ORDERS

- Anytime we fail to speak up, we are making an ethical choice
- Silence is an action
- Blindly deferring to authority can lead to complicity
- Not just sexual assault but also deception, price fixing, illegal kickbacks, fraud, stock price manipulation, and more



## LOYALTY AND INSTITUTIONAL COMPLICITY

- Larry Nassar at Michigan State
- Jerry Sandusky at Penn State
- Many priests at Catholic churches
- Senior complicitors deferred not to predator's authority but their institution

# THE PROS AND CONS OF LOYALTY

- Loyalty, like the god Janus, has two faces
- Inability to see the bad in people and organizations to whom we are loyal is motivated blindness
- Victims feel psychologically abused by complicitors' failure to stop bad actors



# EVOLUTIONARY ROOTS



Helps our group survive



Helping survival does not make behavior moral or legal



May make us complicit



Decisions about which groups to join can also affect complicity





# THINKING ABOUT BIAS

- This is not another DEI program
- To be human is to have bias
- Unconscious bias results from brain's capacity problem
- We take in 11,000,000 pieces of information each second but can process only about 40
- To handle the gap, our brains build shortcuts



# WE ALL HAVE BIAS

- As logical and ethical as we try to be, we are nearly always operating with a degree of bias
- We are generally not aware of this
- There's no shame in having unconscious bias
- It's a natural part of the human condition that shows up in our decisions



# EXAMPLES OF BIAS

- Only 18% of hiring professionals said heavy-looking women had leadership potential
- People with strong regional accents are paid 20% less than mainstream accents
- 58% of Fortune 500 CEOs are over 6 feet tall compared to only 14.5 % of all U.S. adult males

# OMISSION BIAS

- Irrational preference for harms of inaction over harms of action
- When weighing risky choices, people often follow the rule of thumb “Do no harm”
- We are often complicit through inaction
- Bias toward inaction is exacerbated by uncertainty
- The decision to do nothing is as much an act as the decision to do something

# PSYCHOLOGY OF COMPLICITY

- Most of us tend to center on a single explanation for scandals
- Simple ideas allow us to believe we know and understand
- We falsely assume complex problems can be solved with a single solution
- Single cause fallacy crops up in enduring disputes
- It also explains why we focus on core wrongdoer and ignore the role of complicitors

# ASK BETTER QUESTIONS

- Ask:
  - What are some of the factors that caused the massive fraud at Theranos?
- Rather than:
  - What caused the massive fraud at Theranos?

# PSYCHOLOGY OF INDIRECT HARM

- We justify harm we create indirectly and benefit from more readily than harm we create directly
- Human mind simply does not hold people fully accountable for indirect harm
- We let advisors off the hook
- That encourages them to feel comfortable creating harm

# WHEN COMPLICITY IS OUT OF FOCUS

- Avoiding complicity can be challenging when we work closely with the wrongdoer
- Our relationships can blind us to unethical actions
- When unethical actions are focused on beating the competition, many supporters will simply not notice them
- When we accept unethical behavior because the wrongdoer is on our team, we become complicitors



# THE SLIPPERY SLOPE TO COMPLICITY

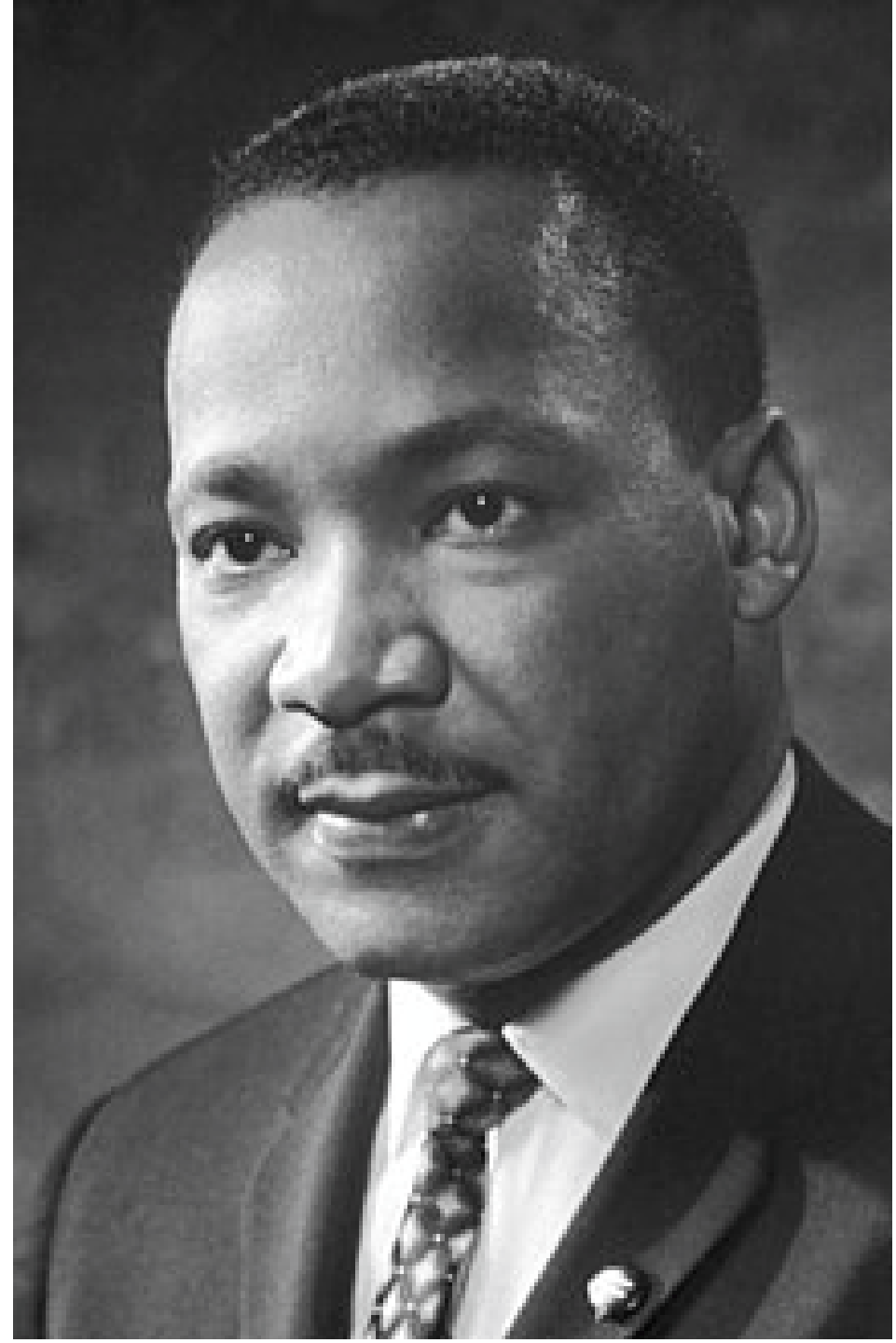
- People are more willing to engage in unethical conduct when they can gradually increase their level of unethicality
- We are less likely to notice and act on unethical behavior when it occurs gradually
- And therefore, more likely to be complicit

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# CONFRONTING OUR OWN COMPLICITY

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- In the end, we will remember not the words of our enemies but the silence of our friends.



# WHAT CAN WE DO?

- Simple awareness of the potential of becoming complicit may be insufficient
- Anticipate that potential and develop explicit plans to avoid it
- Our decisions at critical moments will not be as ethical as those we plan ahead of time
- The time to think about our complicity is now, not when we are facing a moral dilemma

# SPECIAL CHALLENGES IN THE NOT-FOR-PROFIT ARENA

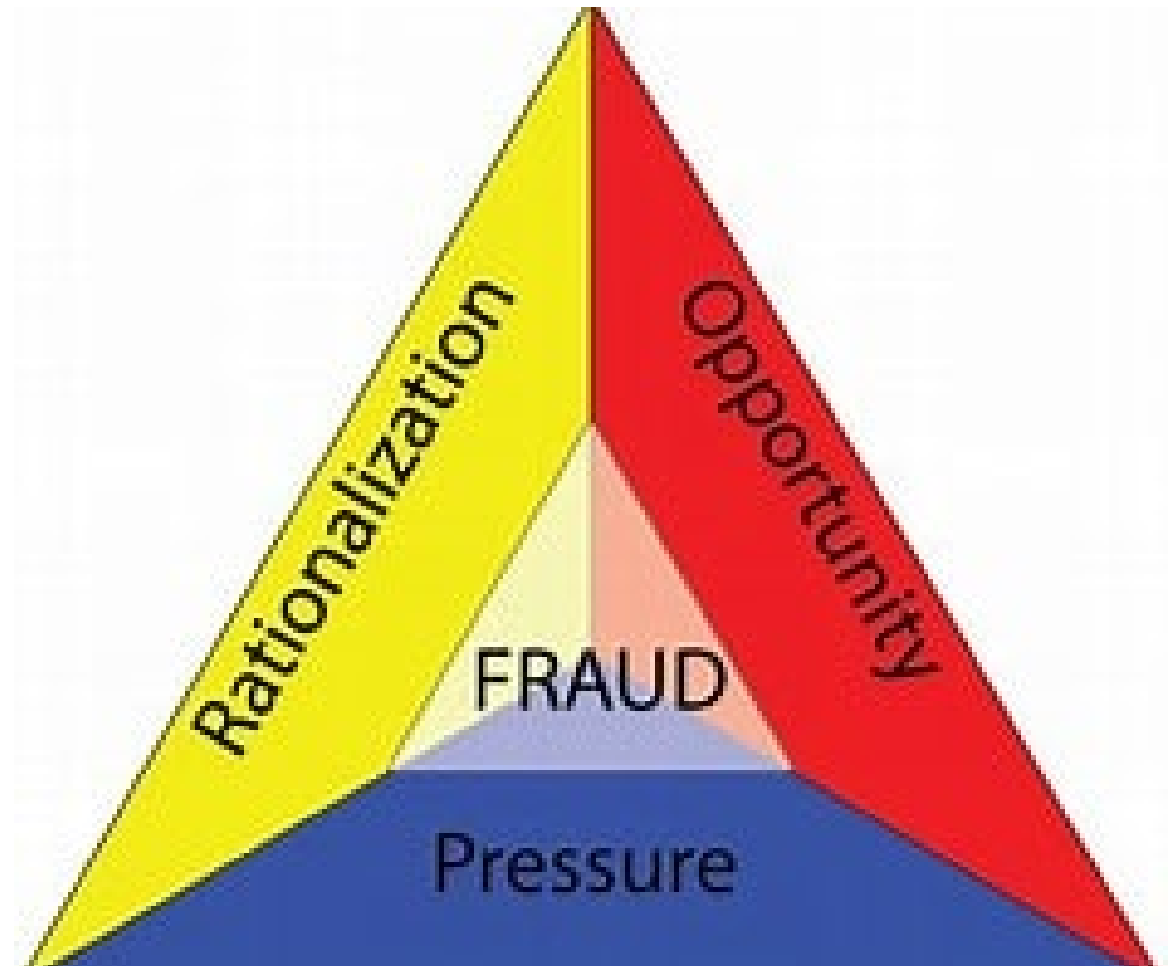
# CHANGING LANDSCAPE



# INAPPROPRIATE SALARIES

- Charlotte United Way CEO made \$1,200,000 in 2007
- Community didn't like that
- Board had authorized all payments
- CEO was asked to resign but ultimately was fired
- Charity Watch shows 41 salaries at NFPs over a million dollars for 2022

# WHAT IF SALARIES ARE TOO LOW?





# ACCOUNTABILITY

- Transparency in reporting is essential
- How do we measure and report program outcomes?
- Is our financial reporting clear and easily accessible?
- Does the organization have an audit of its financials?
- When accountability falters, it can be an indication of ethical lapses



# FINANCIAL FRAUD

- This is what makes the headlines and nobody wants that kind of publicity
- Charlotte CPA (and his wife) stole \$239,000 from high school booster club
- Unfortunately, this happens frequently but ACFE Report to the Nations says:
  - Nonprofit organizations were the victims in only 9% of the reported fraud cases and suffered the smallest median loss of USD 60,000.

# FINANCIAL FRAUD BY NFP

- Medicare fraud—WakeMed paid \$8 million settlement
- Cancer Fund of America paid less than 10% of donations for patient services—paid \$105 million settlement
- Jim Bakker and PTL—Bakker was convicted on 24 counts and sentenced to 45 years in prison

# TAX EVASION

- Tax exempt status does not mean that 501(c)(3)s don't violate tax laws
- Abusing tax exempt status undermines public trust
- In addition, there are significant penalties
- Private inurement is something to watch for
- Employee Retention Credit and other Covid relief programs

# CONFLICTS OF INTEREST

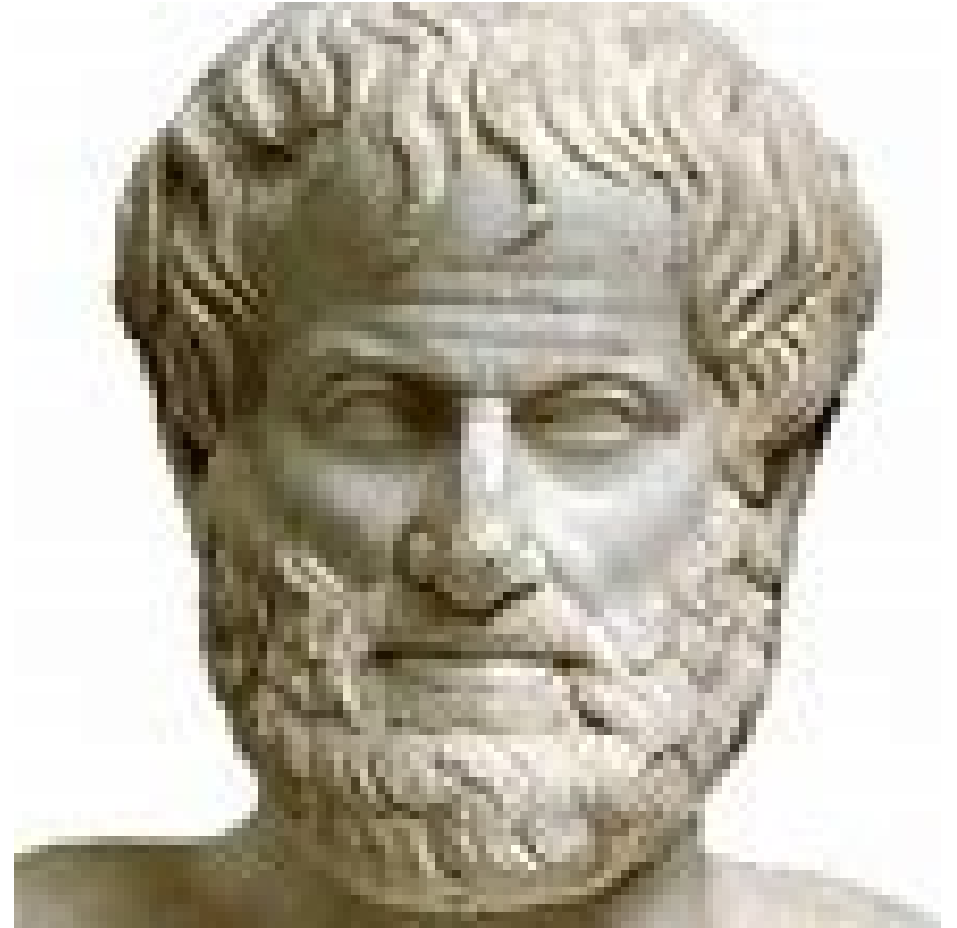
- Conflicts arise when personal interests interfere with NFP's best interest
- Best practice is to have a strong conflict-of-interest policy
- Conflicts also arise when NFP's best interest and ethical behavior are not the same

# BASIC REQUIREMENTS

- First, understand NOCLAR
  - Act of omission or commission (intentional or not) contrary to law or regulation
  - Directly impacts determination of material amounts or disclosures in the financial statements or is fundamental to operations of the business, its ability to continue, or avoidance of material penalties
- If matter falls within scope, disclose to appropriate authorities within the organization
- Go as high up the chain of command as necessary, even to “those charged with governance”

# A RHETORICAL QUESTION

How is  
knowing and  
doing nothing  
different from  
saying it's OK?



# THE OATH OF A NORTH CAROLINA CPA

- I will support the laws and regulations of the state of North Carolina
- I will perform my professional duties to the best of my ability and abide by the Rules of Professional Conduct; and
- I will uphold the honor and dignity of the accounting profession by serving with integrity, objectivity, and competence

*Thank You*