

Self-review threats refer to threats that a professional accountant will not appropriately evaluate the results of a previous judgment made or service performed by the professional accountant, or by another individual within the professional accountant's firm – a prior judgment on which the accountant may be tempted to rely in a decision process that is aspect of a current service. This reliance on a prior judgment may become a serious hindrance to uncovering errors made in previous decisions. This type of threat is quite significant, especially when the earlier decisions are made by the accountant himself or by colleagues. Generally, earlier decisions by persons who are close to the accountant are assessed favorably by that accountant. There is also a bias towards believing that decisions previously made within the accountant's firm are correct, when they may, in fact, be wrong.

Advocacy threats refer to threats that a professional accountant will promote a client's or employer's position to the point that the professional accountant's objectivity is compromised. There is a risk that professionals may – consciously or unconsciously – become advocates for clients, in the sense that they may see the interests of the client as being important also to themselves. This may lead to unduly favorable treatment of the client.

Familiarity threats refer to threats that with a long or close relationship with a client or employer, a professional accountant will be too sympathetic to that client's interests or too accepting of their work. A problem in any client relationship is that the bond between the professional and the client may become strong enough to persuade the professional to treat the client in an inappropriate, favorable, way. This may be a threat to the principle of equal treatment and, more fundamentally, to the general principle of objectivity.

Intimidation threats refer to threats that a professional accountant will be deterred from acting objectively because of actual or perceived pressures, including attempts to exercise undue influence over the professional accountant. This type of threat includes direct attempts to make accountants act differently than they otherwise would, as well as various types of more indirect situational pressures to act in ways contrary to how the accountant would without these pressures. Examples are time pressure and various forms of implicit social pressure. We discuss different types of pressure on decision making in more detail in Chapter Seven.

The different types of threats may overlap. For instance, the familiarity and the advocacy threats are fairly similar, and many situations may be characterized by both. Similarly, intimidation threats may often be intimidating solely because they are relevant to the self-interest of the accountant. An explicit attempt at pressure may be: "Prepare the financial statements in this way, or you'll lose your job." A more subtle attempt at pressure may be: "In this organization, we reward team players – those who help us reach our goals." As we can see, there may be overlap between self-interest threats and intimidation threats.

Given these threats against sound professional practice, there is a need for measures that protect the individual professional as well as the profession at large against the threats. As a practical, solution-oriented part of the professional ethics of accountants, the code of ethics also outlines concrete safeguards that the individual accountant may apply to counteract potential threats.

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Safeguards are actions or other measures that may eliminate threats or reduce them to an acceptable level. According to the code of ethics, they fall into two broad categories:

1. Safeguards created by the profession, legislation, or regulation.
2. Safeguards in the work environment.

This implies that threats to the fundamental principles in professional practice may be addressed at the level of the profession (i.e., that the professional body develops and distributes measures that may aid individual professionals and firms in their decision making and behavior). In addition, the firms themselves may develop measures to safeguard against such threats, and these safeguards may be both necessary and effective to ensure professional behavior that complies with the code of ethics.

According to the code, safeguards created by the profession, legislation, or regulation include:

- Educational, training, and experience requirements for entry into the profession.
- Continuing professional development requirements.
- Corporate governance regulations.
- Professional standards.
- Professional or regulatory monitoring and disciplinary procedures.
- External review by a legally empowered third party of the reports, returns, communications or information produced by a professional accountant.

The code also outlines safeguards that may increase the likelihood that the accountant is able to identify or deter unethical behavior. Such safeguards (which may be created by the accounting profession, legislation, regulation, or an employing organization) include:

- Effective, well-publicized complaint systems operated by the employing organization, the profession or a regulator, which enable colleagues, employers and members of the public to draw attention to unprofessional or unethical behavior.
- An explicitly stated duty to report breaches of ethical requirements.

In addition, firms may themselves have a number of codes, rules, and structures in place. These guidelines may support the professional accountant in safeguarding against threats and go beyond the general safeguards of a profession to focus specifically on ethical issues of relevance to the individual firm. An example of this type of safeguard is when an auditing firm has rules about whether and when one of its auditors should be removed from a client relationship to avoid the threats of familiarity or advocacy.

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- b. What were Mr. Sokol's alternatives after having purchased the stock? For each of the alternatives, describe how key stakeholders would benefit or be harmed.
- c. Berkshire Hathaway asked its Audit Committee to investigate the case and publish a report to the public on its facts and how Mr. Sokol's actions violated BHI's code of ethics. This was explicitly requested by Mr. Buffett. Berkshire Hathaway had three alternatives upon becoming aware of Mr. Sokol's actions: (1) do nothing, (2) investigate the case and not disclose the information to the public, (3) investigate the case and disclose the information to the public. From an accounting ethics perspective, do you think Mr. Buffett chose the right alternative? Discuss all three alternatives and evaluate whether they are appropriate choices from an ethics point of view.

16. Ernst & Young and Confidential Client Information

James Gansman, an Ernst & Young partner, met a friend Donna Murdoch at AshleyMadison.com, a website for people in search of extramarital affairs. At the time Gansman advised companies involved in mergers how to combine workforces. Gansman began sharing confidential information with Murdoch about upcoming mergers of Ernst & Young clients.

Murdoch did not have the money to invest in stock so she might benefit from this information, but she met another man on AshleyMadison.com, Richard Hansen, who was willing to lend her money to purchase stock for the companies about to merge. Eventually Gansman also contributed part of his bonus so she could purchase stock in the merging companies. Between November 2005 and September 2007, Murdoch traded on at least 18 Ernst & Young deals, making about \$400,000 from the transactions. Early in 2007, Murdoch's name began to appear on SEC watch lists for suspicious trading around mergers.

Gansman was convicted of six counts of securities fraud. He never made a cent from the transactions, but is expected to spend three to five years in prison for his crimes.⁹

Required:

- a. What is the problem both from an accounting and an ethical point of view?
- b. Describe the technical proficiency and ethical sensibility required of Gansman in this case. Did he meet these requirements?
- c. Identify specific sections of the code of conduct that apply in this situation.
- d. If Gansman did not benefit financially from the transactions, why should he be held accountable?
- e. Why is insider trading an ethical problem for the professional accountant?

auditors act independent of any biases and management pressures, and make objective judgments. At the end of the process, auditors should ask: *How would you justify a judgment or decision?* and *Are you comfortable moving ahead with the judgment process?*

The AICPA Revised Code supports the formal judgment process outlined in Chapter 2 and discussed in this chapter. The underlying foundation of the process in the Code is a conceptual framework to assess whether independence, integrity, and objectivity may be compromised as a result of threats that exist making it more difficult to follow the rules of conduct. Safeguards can be put into place to reduce or eliminate such threats, although nothing can substitute for ethical intent and ethical action. The desire to do the right thing and act in accordance with the profession's ethical standards is a critical component of ethical behavior and influences professional judgment. Integrity is required to carry through intent with ethical action, and to be prepared to respond to reasons and rationalizations given by others that are intended to negatively influence ethical decisions.

The accounting profession is in danger of losing sight of its mandate to protect the public interest because of increased commercial tendencies. Firms have been transitioning away from compliance-oriented services into more lucrative advisory services. On the one hand, we see this as a natural expansion in the scope of professional services and may very well benefit the client in more ways than one. Knowledge and expertise are important hallmarks of the profession. Clients benefit when trusted advisers provide services that otherwise might have been provided by professionals who have a lesser set of technical skills and lower ethical standards.

The problem is the expansion of nonattest services may threaten to alter the ethical culture of a firm, as Andersen found out with Enron. Consultants may have a different mindset than the objective judgment required of auditors. Biases can creep into decision making if firms do not build in the quality controls necessary to ensure independent decision making. Also, increased opportunities to establish business relationships with clients and client management present a threat, and auditors must take care not to get too cozy with their clients.

We are concerned about the nature and scope of audit deficiencies identified by PCAOB in its inspections of the Big Four CPA firms. A "failure" rate of almost 40 percent is unacceptable. Perhaps it is just a matter of time before the public trust that CPAs have fought so hard to regain in the aftermath of Enron and other accounting scandals will be questioned once again. We hope not. We do believe the profession needs to pivot and work on developing the judgment skills so essential in today's complex accounting environment. Certainly, ethics education has an important role to play in this regard.

Discussion Questions

1. In our discussion of the KPMG professional judgment framework, we pointed out that biased judgments can be made because of judgment tendencies. One such tendency that was not included in the framework is self-serving bias. Explain what you think this means and how it might influence audit judgment.
2. Explain the threats to professional skepticism that might influence audit judgment.
3. Explain the safeguards that can be used to reduce or eliminate threats to audit independence.
4. It has been said that independence is the cornerstone of the accounting profession. Explain what this means. What does it mean to say that auditors have special and critical gatekeeping duties?
5. Is independence impaired when an auditor is hired, paid, and fired by the same corporate managers whose activities are the subject of the audit? Does it matter that in most companies the audit

- committee hires, evaluate, fires (if appropriate), and determines the fees of the external auditor with minimal input from senior management?
6. How might financial incentives in the form of client services unconsciously introduce auditor bias into the independent audit function? Are there any solutions to the conflict?
 7. Do you believe the internal audit activity should be independent? Explain.
 8. Do you believe that the SEC should prohibit auditors from providing *all* nonaudit services for audit clients? Use ethical reasoning to support your answer.
 9. Assume that a CPA serves as an audit client's business consultant and performs each of the following services for the client. Identify the threats to independence. Do you believe any safeguards can be employed to reduce the threat to an acceptable level? Explain.
 - a. Advising on how to structure its business transactions to obtain specific accounting treatment under GAAP.
 - b. Advising and directing the client in the accounting treatment that the client employed for numerous complex accounting, apart from its audit of the client's financial statements.
 - c. Selecting the audit client's most senior accounting personnel by directly interviewing applicants for those positions.
 10. What are the dangers of creeping commercialism in the accounting profession?
 11. Can a CPA auditor be independent without being objective? Can a CPA auditor be objective without being independent? Explain.
 12. What is the problem with an auditor overrelying on management's representations on the financial statements?
 13. Andy Simmons is a CPA with his own accounting and tax practice. He occasionally does an audit for small business clients. One day an audit client shows Andy a letter from the local Property Tax Assessor's office. It seems the client inquired about the process to be followed to appeal the 20 percent increase in his property taxes. He already wrote an appeal letter and was denied. The letter said that most folks who appeal those decisions hire a CPA to represent them before the administrative board in property tax assessment hearings. If your client asks you to represent him in the appeal process, can you do so under the AICPA Code? Explain.
 14. You're struggling in your new accounting practice to tap into a potential client base. You have tried traditional advertising and marketing tools to no avail. Your friend tells you to use social media as a tool to reach potential customers. You're not sure about it. Your concern is one of ethics. The last thing you want to do is violate the ethical standards of the accounting profession. Identify the ethical issues that should be of concern to you in deciding whether and how to use social media for advertising and solicitation of new clients.
 15. You have decided to leave your CPA firm. Using the AICPA rules as a guide, answer the following questions: (1) Can you post some negative comments about your former employer on Twitter? (2) Can you call your former clients and tell them that you are leaving? (3) Can you take their files with you when you go?
 16. You previously worked for the Department of Revenue, a governmental agency in your town. You cut all ties with the agency after you left two years ago to start your own tax accounting business. One day you receive a call from the agency asking you to conduct a tax audit of taxpayers in the town. You do not conduct a financial statement audit of any of these clients. Assume the proposed arrangement is to pay you 25 percent of additional amounts collected following your audits of property tax returns plus 50 percent of all first-year tax penalties. What ethical issues exist for you in deciding whether to accept the engagement? Would you accept it? Explain.

17. You were engaged to file the 2015 individual and corporate tax returns for a client. The client provided her records and other tax information on March 1, 2016, to help prepare the 2015 tax return. Your client paid you \$12,000 in advance to prepare those returns. On April 1 after repeated requests to return her records, you informed the client that her tax returns for 2015 would be completed by April 15, and all of the records would be returned at that time. However, you failed to complete the return. The client paid another accountant \$15,000 to complete the returns after the deadline and incurred tax penalties. Do you believe that you violated any of the rules of conduct in the AICPA Code? Did you violate any ethical standards beyond the Code? Explain.
18. In January 2008, it was discovered that William Borchard, who handled due diligence for clients of PwC interested in mergers and acquisitions, divulged controversial plans to Gregory Raben, an auditor at the firm, and Raben used the information to buy stock ahead of a series of corporate takeovers. The SEC found the two guilty of insider trading, a violation of the law. Assume none of the clients were audit clients. What are the ethical issues involved in engaging in such transactions? Were any of the AICPA rules of conduct violated? Explain.
19. Assume that the CPA firm of Packers & Vikings audits Chi Bears Systems. The controller of Chi Bears, a CPA, happens to be a tax expert. During the current tax season, Packers & Vikings gets far behind in reviewing processed tax returns. It does not want to approach clients and ask permission to file for an extension to the April 15 deadline so the firm approaches the controller and offers him a temporary position as a consultant for the tax season. Was it ethical for the firm to make the offer? Would it be ethically acceptable for the controller to accept the position? Explain.
20. Assume you are the senior in charge of the audit of a client in New York who offers you two tickets to the Super Bowl between the New York Giants and the Denver Broncos. The opportunity to see the Manning brothers square off against each other is appealing. How would you decide whether to accept the tickets for the game?
21. In recent years the move by accounting firms to offshore tax and consulting work has grown and expanded into audit work. What are the ethical concerns that might be raised about the practice of electronically transmitting audit information to offshore centers like those in India that provide accounting professionals to audit U.S. corporations' financial statements?
22. According to SOX rules that mandate auditor rotation, the lead audit partner on an engagement is prohibited from providing those services for a client for greater than five consecutive years. The purpose of the rule is to encourage professional skepticism. Discuss the costs and benefits of auditor rotation as you see it. Do you think audit firms should be rotated periodically?
23. In August 2008, EY agreed to pay more than \$2.9 million to the SEC to settle charges that it violated ethics rules by co-producing a series of audio CDs with a man who was also a director at three of EY's audit clients. According to the SEC, EY collaborated with Mark C. Thompson between 2002 and 2004 to produce a series of audio CDs called *The Ernst & Young Thought Leaders Series*. Thompson served on the boards at several of EY's clients during the period when the CDs were produced. What threats to independence existed in the relationship between EY and Thompson? From an ethical perspective, would it have mattered if it was not an audit client but one for whom advisory services only were performed?
24. On May 20, 2014, the SEC settled an investigation of James T. Adams, the former chief risk officer at Deloitte, for causing violations of the auditor independence rules. It seems that Adams accepted tens of thousands of casino markers while he was the advisory partner on a Deloitte casino gaming client. Review the facts of the case and explain how Adams's actions compromised his independence under the AICPA Code.
25. Is accounting a trustworthy profession? How would you know whether it is or is not?

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electronics maker. Akai filed for bankruptcy in 2000 with \$1.8 billion of debt on its books, the largest bankruptcy filing in the city at that time. The raid had been made due to a request from the bankruptcy trustee, Borrelli Walsh. Walsh stated that the accounting firm had been negligent in the performance of the audit and the negligence had led to substantial losses for Akai. Walsh alleged that information in the work papers had been forged during the audit process. Edmund Dung, the manager on the audit engagement was fired by Ernst & Young after being suspected of forgery in preparing audit work papers. Ernst & Young settled Walsh's claim against the audit firm for a "substantial" amount of money.⁵

Required:

- a. Discuss the accounting and ethical problem if an auditor prepares forged audit documents.
- b. What principles in the AICPA and the international code of conduct were violated by the forgery?
- c. What rules in the AICPA and the international code of conduct were violated by the forgery?
- d. Was the bankruptcy trustee right to file a suit against the accounting firm for negligence in the audit? Was the audit firm justified in firing Dung?

12. Ernst & Young Violations of Independence Rules

The Securities and Exchange Commission charged Ernst & Young with ethics code violations for engaging in lucrative business deals with an audit client.⁶ Ernst & Young had entered into a marketing arrangement with PeopleSoft to sell and install PeopleSoft software. Under the agreement, Ernst & Young agreed to pay royalties to PeopleSoft of 15–30% for each software sale, with a minimum guaranteed payment of \$300,000. During the time of this agreement, Ernst & Young served as the auditor for PeopleSoft. According to the SEC: "An auditor can't be in business to jointly generate revenues with an audit client without impairing independence." Ernst & Young vigorously contested the charges, saying that its work for PeopleSoft "was entirely appropriate and permissible under the profession's rules. It did not affect our client, its shareholders, or the investing public, nor is the SEC claiming any error in our audits or our client's financial statements as a result of them."

Required:

- a. Evaluate the statement made by Ernst & Young that they did nothing wrong because no one was harmed. Is the statement true? Is it an appropriate defense against a claim of lack of independence?
- b. Discuss the accounting and ethical issues of this situation. What might outsiders think of this arrangement? What might the competitors of PeopleSoft think?

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CHAPTER 2

Pride and Prejudice . . . and Other Blind Spots

And why do you look at the speck in your brother's eye, but do not consider the plank in your own eye?

—Matthew 7:3 (New King James version)

WHEN THE PUBLIC LEARNED that Supreme Court Justice Antonin Scalia was flying to Louisiana on a government plane to go duck hunting with Vice President Dick Cheney, despite Cheney's having a pending case before the Supreme Court, there was a flurry of protest at Scalia's apparent conflict of interest. Scalia himself was indignant at the suggestion that his ability to assess the constitutionality of Cheney's claim—that the vice president was legally entitled to keep the details of his energy task force secret—would be tainted by the ducks and the perks. In a letter to the *Los Angeles Times* explaining why he would not recuse himself, Scalia wrote, "I do not think my impartiality could reasonably be questioned."

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Neuropsychologist Stanley Berent : hired by CSX Transportation Inc. railroad workers' claims that chemical brain damage and other medical road workers in fifteen states had brain damage following heavy exposure to the company's industrial : conducting their study, which involved files without the workers' involvement as expert witnesses for law filed by workers. Berent saw nothing he claimed "yielded important information." Berent and Albers were subsequently : office of Human Research Protection : this case.¹

When you enter the Museum of Tolerance, you enter a room of interactive exhibits about people you can't tolerate. The exhibits are about people you can't tolerate (women, Jews, gays), but also short people, disabled people, . . . You walk through a series of prejudices, designed to convince you of the few, and then you are invited to enter one of two doors: one marked PREJUDICED. The latter door is locked, but occasionally some people enter the museum one afternoon, we were told. Jews pounding angrily on the Unprejudiced door to let in.

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Neuropsychologist Stanley Berent and neurologist James Albers were hired by CSX Transportation Inc. and Dow Chemical to investigate railroad workers' claims that chemical exposure had caused permanent brain damage and other medical problems. More than 600 railroad workers in fifteen states had been diagnosed with a form of brain damage following heavy exposure to chlorinated hydrocarbon solvents. CSX paid more than \$170,000 to Berent and Albers' consulting firm for research that eventually disputed a link between exposure to the company's industrial solvents and brain damage. While conducting their study, which involved reviewing the workers' medical files without the workers' informed consent, the two scientists served as expert witnesses for law firms representing CSX in lawsuits filed by workers. Berent saw nothing improper in his research, which he claimed "yielded important information about solvent exposure." Berent and Albers were subsequently reprimanded by the federal Office of Human Research Protections for their conflict of interest in this case.¹

When you enter the Museum of Tolerance in Los Angeles, you find yourself in a room of interactive exhibits designed to identify the people you can't tolerate. The familiar targets are there (blacks, women, Jews, gays), but also short people, fat people, blond-female people, disabled people, . . . You watch a video on the vast variety of prejudices, designed to convince you that everyone has at least a few, and then you are invited to enter the museum proper through one of two doors: one marked PREJUDICED, the other marked UNPREJUDICED. The latter door is locked, in case anyone misses the point, but occasionally some people do. When we were visiting the museum one afternoon, we were treated to the sight of four Hasidic Jews pounding angrily on the Unprejudiced door, demanding to be let in.

The brain is designed with blind spots, optical and psychological, and one of its cleverest tricks is to confer on us the comforting delusion that we, personally, do not have any. In a sense, dissonance theory is a theory of blind spots—of how and why people unintentionally blind themselves so that they fail to notice vital events and information that might make them question their behavior or their convictions. Along with the confirmation bias, the brain comes packaged with other self-serving habits that allow us to justify our own perceptions and beliefs as being accurate, realistic, and unbiased. Social psychologist Lee Ross calls this phenomenon “naïve realism,” the inescapable conviction that we perceive objects and events clearly, “as they really are.”² We assume that other reasonable people see things the same way we do. If they disagree with us, they obviously aren’t seeing clearly. Naïve realism creates a logical labyrinth because it presupposes two things: One, people who are open-minded and fair ought to agree with a reasonable opinion. And two, any opinion I hold must be reasonable; if it weren’t, I wouldn’t hold it. Therefore, if I can just get my opponents to sit down here and listen to me, so I can tell them how things really are, they will agree with me. And if they don’t, it must be because they are biased.

Ross knows whereof he speaks, from his laboratory experiments and from his efforts to reduce the bitter conflict between Israelis and Palestinians. Even when each side recognizes that the other side perceives the issues differently, each thinks that the other side is biased while they themselves are objective, and that their own perceptions of reality should provide the basis for settlement. In one experiment, Ross took peace proposals created by Israeli negotiators, labeled them as Palestinian proposals, and asked Israeli citizens to judge them. “The Israelis liked the Palestinian proposal attributed to Israel more than they liked the Israeli proposal attributed to the Palestinians,” he says. “If your own proposal isn’t going to be attractive to you

when it comes from the other side, *other* side’s proposal is going to be attractive from the other side?”³ Closer to home, Cohen found that Democrats will endorse a welfare proposal, one usually associated with the Democrats, but if it has been proposed by the Democrats, they will support a generous welfare proposal from the Republican Party.⁴ Label the proposal the other side, and you might as well favor a policy proposed by Osama bin Laden. The study was aware of their blind spots, but was influenced by their party’s position. Instead, beliefs followed logically from their convictions. At hand, guided by their general philosophy.

Ross and his colleagues have found that Democrats are less biased and more independent than Republicans, partly because we rely on introspection and feeling, but we have no way of knowing if we are really thinking.⁵ And when we introspect, we need to avoid dissonance and to find the best and most honorable of motives. In an issue as a source of accuracy, we are strongly about gun control for years; then we change our mind about it—“talking about”—but we regard such persons who hold different views as a source of bias. We be impartial about gun control because of our years.”

All of us are as unaware of our biases as the water they swim in, but those who have a particular motivation. Marynia Farnham achieved fame and fortune in the 1950s by advising women to stay

asks, from his laboratory experiments the bitter conflict between Israelis and the other side recognizes that the other side perceives that the other side is biased and that their own perceptions are biased for settlement. In one experiment, Israeli negotiators, labeled "A," and asked Israeli citizens to judge a Palestinian proposal attributed to Israel and an Israeli proposal attributed to the Palestinians. The Palestinian proposal isn't going to be attractive to you.

All of us are as unaware of our blind spots as fish are unaware of the water they swim in, but those who swim in the waters of privilege have a particular motivation to remain oblivious. When Marynia Farnham achieved fame and fortune during the late 1940s and 1950s by advising women to stay at home and raise children,

otherwise risking frigidity, neurosis, and a loss of femininity, she saw no inconsistency (or irony) in the fact that she was privileged to be a physician who was not staying at home raising children, including her own two. When affluent people speak of the underprivileged, they rarely bless their lucky stars that they are privileged, let alone consider that they might be overprivileged. Privilege is their blind spot.⁶ It is invisible; they don't think twice about it; they justify their social position as something they are entitled to. In one way or another, all of us are blind to whatever privileges life has handed us, even if those privileges are temporary. Most people who normally fly in what is euphemistically called the "main cabin" regard the privileged people in business and first class as wasteful snobs, if enviable ones. Imagine paying all that extra money for a short, six-hour flight! But as soon as they are the ones paying for a business seat or are upgraded, that attitude vanishes, replaced by a self-justifying mixture of pity and disdain for their fellow passengers, forlornly trooping past them into steerage.

Drivers cannot avoid having blind spots in their field of vision, but good drivers are aware of them; they know they had better be careful backing up and changing lanes if they don't want to crash into fire hydrants and other cars. Our innate biases are, as two legal scholars put it, "like optical illusions in two important respects—they lead us to wrong conclusions from data, and their apparent rightness persists even when we have been shown the trick."⁷ We cannot avoid our psychological blind spots, but if we are unaware of them we may become unwittingly reckless, crossing ethical lines and making foolish decisions. Introspection alone will not help our vision, because it will simply confirm our self-justifying beliefs that we, personally, cannot be coopted or corrupted, and that our dislikes or hatreds of other groups are not irrational but reasoned and legitimate. Blind spots enhance our pride and activate our prejudices.

The Road to St. Andrews

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The greatest of faults, I should say, is to be conscious of none.

—historian and essayist Thomas Carlyle

The *New York Times* editorial writer Dorothy Samuels summarized the thinking of most of us in the aftermath of learning that Congressman Tom DeLay, former leader of the House Republicans, had accepted a trip to the legendary St. Andrews golf course in Scotland with Jack Abramoff, the corrupt lobbyist-turned-informer in the congressional corruption scandal that ensued. "I've been writing about the foibles of powerful public officials for more years than I care to reveal without a subpoena," she wrote, "and I still don't get it: why would someone risk his or her reputation and career for a lobbyist-bestowed freebie like a vacation at a deluxe resort?"⁸

Dissonance theory gives us the answer: one step at a time. Although there are plenty of unashamedly corrupt politicians who sell their votes to the largest campaign contributor, most politicians, thanks to their blind spots, believe they are incorruptible. When they first enter politics, they accept lunch with a lobbyist, because, after all, that's how politics works and it's an efficient way to get information about a pending bill, isn't it? "Besides," the politician says, "lobbyists, like any other citizens, are exercising their right to free speech. I only have to listen; I'll decide how to vote on the basis of whether my party and constituents support this bill and on whether it is the right thing to do for the American people."

Once you accept the first small inducement and justify it that way, however, you have started your slide down the pyramid. If you had lunch with a lobbyist to talk about that pending legislation, why not talk things over on the local golf course? What's the difference? It's a nicer place to have a conversation. And if you talked things over on

the local course, why not accept a friendly offer to go to a better course to play golf with him or her—say, to St. Andrews in Scotland? What's wrong with that? By the time the politician is at the bottom of the pyramid, having accepted and justified ever-larger inducements, the public is screaming, "What's *wrong* with that? Are you kidding?" At one level, the politician is not kidding. Dorothy Samuels is right: Who would jeopardize a career and reputation for a trip to Scotland? The answer is: no one, if that were the first offer he got; but many of us would, if it were an offer preceded by many smaller ones that we had accepted. Pride, followed by self-justification, paves the road to Scotland.

Conflict of interest and politics are synonymous, and everyone understands the cozy collaborations that politicians forge to preserve their own power at the expense of the common welfare. It's harder to see that exactly the same process affects judges, scientists, and physicians, professionals who pride themselves on their ability to be intellectually independent for the sake of justice, scientific advancement, or public health. These are professionals whose training and culture promote the core value of impartiality, so most become indignant at the mere suggestion that financial or personal interests could contaminate their work. Their professional pride makes them see themselves as being above such matters. No doubt, some are; just as, at the other extreme, some judges and scientists are flat-out dishonest, corrupted by ambition or money. (The South Korean scientist Hwang Woo-Suk, who admitted that he had faked his data on cloning, was the scientific equivalent of former congressman Randy "Duke" Cunningham, who went to prison for taking millions in bribes and evading taxes.) In between the extremes of rare integrity and blatant dishonesty are the great majority who, being human, have all the blind spots the rest of us have. Unfortunately, they are also more likely to think they don't, which makes them even more vulnerable to being hooked.

Once upon a time, not so long ago, the lure of commerce. When Jonas Salk developed his polio vaccine in 1954, he replied to critics: "How charming, yet how naïve, his handing over your discovery to the public for a few million bucks for yourself. The confusion of research and commerce, a wall between them. Scientists got their money from independent funding institutions and spend years investigating a problem, either intellectually or practically. A scientist coming from his or her discoveries, was in disdain. "It was once considered unacceptable to think about some kind of commercial exploitation of doing basic research," says bioethicist James Hodge. "The two didn't seem to mix. But as molecular biology began intensively finding commercial applications, they helped to change the attitudes of the multivested scientists who have t

The critical event occurred in 1980 when the Supreme Court ruled that patents could be issued on inventions independent of its process of development. A scientist could get a patent for discovering a new gene, or modifying any other living organism for manufacture." The gold rush was on. Before long, many professors were sitting on the advisory boards of biotechnology companies selling products, seeking new sources of revenue, property offices and providing incentives for their discoveries. Throughout the 1980s, the focus shifted from one in which science was

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Once upon a time, not so long ago, most scientists ignored the
lure of commerce. When Jonas Salk was questioned about patenting
his polio vaccine in 1954, he replied, “Could you patent the sun?”
How charming, yet how naïve, his remark seems today; imagine,
handing over your discovery to the public interest without keeping a
few million bucks for yourself. The culture of science valued the sep-
aration of research and commerce, and universities maintained a fire-
wall between them. Scientists got their money from the government
or independent funding institutions, and were more or less free to
spend years investigating a problem that might or might not pay off,
either intellectually or practically. A scientist who went public, prof-
iting from his or her discoveries, was regarded with suspicion, even
disdain. “It was once considered unseemly for a biologist to be think-
ing about some kind of commercial enterprise while at the same time
doing basic research,” says bioethicist and scientist Sheldon Krimsky.”
“The two didn’t seem to mix. But as the leading figures of the field of
biology began intensively finding commercial outlets and get-rich-
quick schemes, they helped to change the ethos of the field. Now it is
the multivested scientists who have the prestige.”

The critical event occurred in 1980, when the Supreme Court
ruled that patents could be issued on genetically modified bacteria,
independent of its process of development. That meant that you
could get a patent for discovering a virus, altering a plant, isolating
a gene, or modifying any other living organism as a “product of
manufacture.” The gold rush was on—the scientists’ road to St. An-
drews. Before long, many professors of molecular biology were serv-
ing on the advisory boards of biotechnology corporations and owned
stock in companies selling products based on their research. Univer-
sities, seeking new sources of revenue, began establishing intellectual
property offices and providing incentives for faculty who patented
their discoveries. Throughout the 1980s, the ideological climate
shifted from one in which science was valued for its own sake, or for

the public interest, to one in which science was valued for the profits it could generate in the private interest. Major changes in tax and patent laws were enacted; federal funding of research declined sharply; and tax benefits created a steep rise in funding from industry. The pharmaceutical industry was deregulated, and within a decade it had become one of the most profitable businesses in the United States.¹⁰

And then scandals involving conflicts of interest on the part of researchers and physicians began to erupt. Big Pharma was producing new, lifesaving drugs but also drugs that were unnecessary at best and risky at worst: More than three-fourths of all drugs approved between 1989 and 2000 were no more than minor improvements over existing medications, cost nearly twice as much, and had higher risks.¹¹ By 1999, seven major drugs, including Rezulin and Lotronex, had been removed from the market for safety reasons. None had been necessary to save lives (one was for heartburn, one a diet pill, one a painkiller, one an antibiotic) and none was better than older, safer drugs. Yet these seven drugs were responsible for 1,002 deaths and thousands of troubling complications.¹²

The public has reacted to such news not only with the anger they are accustomed to feeling toward dishonest politicians, but also with dismay and surprise: How can scientists and physicians possibly promote a drug they know is harmful? Can't they see that they are selling out? How can they justify what they are doing? Certainly some investigators, like corrupt politicians, know exactly what they are doing. They are doing what they were hired to do—get results that their employers want and suppress results that their employers don't want to hear, as tobacco-company researchers did for decades. But at least public-interest groups, watchdog agencies, and independent scientists can eventually blow the whistle on bad or deceptive research. The greater danger to the public comes from the self-justifications of well-intentioned scientists and physicians who, because of their need to reduce dissonance, truly believe themselves to be above the influence of their corporate funders. Yet, like a plant turning toward the

sun, they turn toward the interests being aware that they are doing so.

How do we know this? One way studies funded independently and consistently reveal a funding bias.

- Two investigators selected 161 studies over the same six-year span, of the period of four chemicals. Of the studies, 14 percent found harmful effects independently, fully 60 percent found them when funded by industry.
- A researcher examined more than 100 studies designed to determine the effectiveness of new drugs over older ones. Of those found to be effective, 13 percent had been funded by nonprofit institutions, 87 percent by industry.
- Two Danish investigators examined 100 studies published between 1970 and 1990 in the *Medical Journal*, where authors were required to disclose potential conflicts of interest. The results compared studies in which the investigators had a conflict of interest with those in which they did not. Findings were "significantly more favorable to the new drug in the conflict of interest studies" (i.e., the new drug was found to be more effective than the older one) when the study had been funded by the drug organization.¹⁵

If most of the scientists funded by industry are cheating, what is causing the funding bias? The answer is complicated by many factors: the severity of the patients' disease, the cost of the drug, and variability in the patients' behavior. The truth of results is rarely clear and unambiguous.

in which science was valued for the profit-private interest. Major changes in tax and federal funding of research declined sharply; steep rise in funding from industry. The industry was deregulated, and within a decade it had profitable businesses in the United States.¹⁰ Growing conflicts of interest on the part of regulators began to erupt. Big Pharma was producing also drugs that were unnecessary at best. More than three-fourths of all drugs approved between 1980 and 1990 were no more than minor improvements over older drugs, nearly twice as much, and had higher costs. New drugs, including Rezulin and Lotronex, were marketed for safety reasons. None had been tested (one was for heartburn, one a diet pill, one an antibiotic) and none was better than older drugs. Some drugs were responsible for 1,002 deaths and complications.¹²

Such news not only with the anger they directed toward dishonest politicians, but also with the scientists and physicians possibly profiting from the industry? Can't they see that they are selling what they are doing? Certainly some politicians, know exactly what they are doing. They were hired to do—get results that suppress results that their employers don't want. Company researchers did for decades. But the pharmaceutical industry, watchdog agencies, and independent groups have the whistle on bad or deceptive research. The public comes from the self-justifications of the industry and physicians who, because of their need to believe themselves to be above the influence of industry. Yet, like a plant turning toward the

sun, they turn toward the interests of their sponsors without even being aware that they are doing so.

How do we know this? One way is by comparing the results of studies funded independently and those funded by industry, which consistently reveal a funding bias.

- Two investigators selected 161 studies, all published during the same six-year span, of the possible risks to human health of four chemicals. Of the studies funded by industry, only 14 percent found harmful effects on health; of those funded independently, fully 60 percent found harmful effects.¹³
- A researcher examined more than 100 controlled clinical trials designed to determine the effectiveness of a new medication over older ones. Of those favoring the traditional drug, 13 percent had been funded by drug companies and 87 percent by nonprofit institutions.¹⁴
- Two Danish investigators examined 159 clinical trials that had been published between 1997 and 2001 in the *British Medical Journal*, where authors are required to declare potential conflicts of interest. The researchers could therefore compare studies in which the investigators had declared a conflict of interest with those in which there was none. The findings were "significantly more positive toward the experimental intervention" (i.e., the new drug compared to an older one) when the study had been funded by a for-profit organization.¹⁵

If most of the scientists funded by industry are not consciously cheating, what is causing the funding bias? Clinical trials of new drugs are complicated by many factors, including length of treatment, severity of the patients' disease, side effects, dosage of new drug, and variability in the patients being treated. The interpretation of results is rarely clear and unambiguous; that is why all scientific