Meet Barbara Harmon

**Compliance and Ethics Program Lead
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by Jeffrey M. Kaplan

Behavioral ethics and reality-based law

The breadth and depth of Louis Brandeis's contributions to US law are truly astounding. Not only was he one of the most important Supreme Court justices in history, but he also helped to "develop the modern law firm, in which specialists manage different areas of the law. He was the author of the right to privacy; led the way in creating the role of the lawyer as counselor; … pioneered the idea of pro bono publico work by attorneys"; and was a driving force behind many landmark statutes.[1] But in some ways, his most striking contribution was in developing an important approach to law which we now take for granted. That is in 1908, he persuaded the Supreme Court to consider social research and data in his defense of an Oregon statute limiting working hours.

Kaplan

This may not sound as revolutionary as his other accomplishments, but at the time, court cases were typically decided by reference to abstract principles of jurisprudence. In other words, Brandeis helped to make law more reality-based in general and accepting of social science in particular. Among the many examples of how this changed law for the better was the Supreme Court's 1954 *Brown v Board of Education* decision, which relied heavily on social science research in outlawing racial discrimination.

As this column has discussed at various times, in many ways, compliance and ethics programs rest on a foundation of law. But that foundation, in turn, is built partly on an assumption regarding human nature which underestimates the danger to individuals and organizations of unlawful and unethical conduct.

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That is, the prevailing view assumes that individuals exercise a high degree of rationality in making law and ethics-related decisions. But the research of many behavioral ethicists—much of which is summarized at the Ethical Systems website[2]—has shown how we are not nearly as ethical as we think. And that more informed (i.e., reality-based) view has important ramifications for C&E programs in areas such risk assessment, training, and accountability (as discussed in more detail on the Conflict of Interest Blog[3]). One hopes that in the years ahead behaviorist ideas and information will play a positive role in changing the legal framework regarding compliance and ethics programs similar to what earlier social science research did regarding workers' rights and racial discrimination. ✳

1. Melvin Urofsky: Louis D. Brandeis: A Life (Deckle Edge, 2009) Available at: http://amzn.to/14j6uR3
2. See www.ethicalsystems.org
3. See www.conflictofinterestblog.com

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