



Fox Rothschild Podcast

The Presumption of Innocence

Episode 30: *Why They Do It: Inside the Mind of a White Collar Criminal* – A Discussion With Author Eugene Soltes

Featuring Matt Adams of Fox Rothschild and Eugene Soltes

Adams: Hi, everyone, and welcome to "The Presumption of Innocence," a podcast brought to you by the White-Collar Criminal Defense & Regulatory Compliance Practice at Fox Rothschild.

I'm your host, Matt Adams, a partner and co-chair with the practice group. And today I have the distinguished honor to have Eugene F. Soltes as my guest. Professor Soltes is a professor of business administration at Harvard Business School, where his work focuses on corporate integrity and risk management.

His research utilizes data analytics to identify organizational cultures and compliance systems that can effectively prevent, detect and respond to reputational and regulatory threats. Professor Soltes is actually also the author of the book *Why They Do It: Inside the Mind of a White Collar Criminal*. And when I tell you that this is a must read for anybody interested in this field, I can't say that and understate that point.

And professor, thanks for joining us today. I want to jump, really, right into it. When I talked to you offline, I told you I really couldn't put your book down, *Why They Do It*, because we talk a lot about, on this program, the different legal structures that create white-collar offenses. We talk about the ways you can defend white-collar offenses. But we seldomly get into the actual motivations for why people commit white-collar offenses. Because as much as I like to think that the presumption of innocence is alive and well in our society today, there are people who are proven guilty of these white-collar offenses. And your work focuses right on that. And your book, *Why They Do It* is just a tremendous compilation of your own personal research. And really, just centuries of social science research summarized, to get at the motivation.

We'll get to the conclusion in a little bit and some of the central themes, but you really do a great job surveying the universe of white-collar crime. And before we, sort of, get into the way that the book is laid out and the structure of the way you present your research, I really want to start with the question of why did you take this turn in your academic work? Why did you start to try to get inside the mind of a white-collar offender? What drove you to that? And as a preview for our audience, I kind of know the answer because you write about it in the book, but let's hear it from you directly.

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Soltes: Well, thanks so much, Matt. It's awesome to be able to join you here. But, you know, what drove me there is exactly, I think, the same question that I think why the "Wall Street Journal", "The Economist," "New York Times," has every one of these cases become front page news. We're all really quite genuinely intrigued by these powerful, smart, oftentimes wealthy individuals, seemingly go wayward.

My own journey there, which I, you know, I kind of described early on in the book, is I was just really quite curious. Up late at one night, watching this TV show called "Lockup." They're interviewing people that have committed violent offenses. And most of them are explaining, gangs and drugs and other things as what's led them to engage in misconduct. And what was really fascinating at the time when I was watching the show, you know, back 15 years ago is most of the people -- well, you know we're talking Enron, Madoff at that time, the most prominent cases -- they face none of those same difficulties or obstacles. So why are they still now in the same place?

They're sitting in a medium security prison alongside these offenders that are on the show. So, that night, I literally wrote -- personal curiosity, this is not a research project. I was not doing this with my academic head on. I simply wrote a number of people whose cases I've been following in the news and ask them the first questions that came to top of my mind. One thing leads to the next. And it was really only a couple of years after starting these conversations that I realized maybe there was something more than just my personal curiosity that was being satisfied. But maybe something that I could try to put together that would be useful for others to learn from. To think about from the standpoint of people that are operating -- like yourself and colleagues in this sphere -- people that are facing this, companies that are trying to figure out how to prevent it, regulators that need to know how to respond, because of these learnings and thinking about the why.

Adams: I too have been up late at night, watch that "Lockup" show and a whole host of things come to mind. Not the least of which is I never want to actually be an extended guest in one of these facilities. I've been to plenty of them, but don't want to ever have to sleep there.

Your work is chock full of examples of what people on the top of the world in most of the public's mind.... sort of, what happens to them when they plummet to convicted felon status. And a lot of your work appears to be -- and maybe it's, it's humble roots watching "Lockup" raw -- but a lot of it seems to be that comparison contrast between the so-called street criminal -- the drug dealer, the murderer, the rapist -- and a white-collar criminal.

And talk to me a minute about what your research has found is sort of the, the, the common threads between those types of offenses and the not-so-common threads. I think you spend a good part of 400-so pages talking about why white-collar crime and white-collar regulatory structures are different. But in examining the white-collar offense, and the mind of the person who might be accused of a white-collar offense, you seem to make a lot of parallels back to those roots of watching your run-of-the-mill burglars and things like that on that show. How does that factor into your research, that comparative and contrast?

Soltes: Yeah, Matt, have you seen the movie "Office Space?"



Adams: Yeah, absolutely.

Soltes: Classic. Okay, good. I suspect a lot of listeners have seen that too. So, there's this great scheme they come up with the end of the movie where they decide they're going to basically take the rounding errors from the pennies. So to the extent there's a bank transfer and there's .152, kind of, cents. And they're like, well the .002, it's not a penny. So we'll just take all those rounding errors and we'll start putting it together and we can make a boatload of money.

The reason I'm giving this example is, it's kind of like the clever -- or depending on how you want to look at it -- not so clever scheme. Well, you know, like, well, who's harmed? No one needs the .002 cents, it's not that big of a deal. Who's really harmed? In fact --

Adams: Is it really a thing? Is .002 cents, can you even buy it something with it?

Soltes: Exactly. And you don't know who it is, but it's presumably these large corporations that are moving money around that have these rounding errors quote "rounding errors" in the first place. Who's harmed?

And I think that's kind of the essence of what I was getting at in the book is that, you know, with most quote "street offenses," you have to see the victim. You know the victim. Actually, in many instances, the goal of the offense is to cause harm to the victim.

But in white-collar settings none of those things are really present. There's both physical and psychological proximity. Most time, you know, the managers or what we think is the perpetrators of the crime, never even see or know the victim. Inside of trading is the classic example. You can't even identify the victim. We say it's the integrity of the market that's harmed. And so that distance allows people to potentially create tremendous harm on others, but in a way that's much more diffuse and much more distant, without that feeling of actually having harmed. And unlike street offenses, the goal in many instances is to create a company that's going to grow. You want to keep a company alive. Your goal is not to cause harm. That's like an externality associated with the conduct. I don't think anyone in my book that I spoke with, or anyone since I've spoken to that's a senior level, actually wanted to harm someone. That was a secondary effect. Even the most egregious cases of trying to achieve some broader objective and maybe it was a very selfish or self motivated objective, but harm was not the be-all and end-all of the scheme.

Adams: Yeah, that theme of physical distance really permeates your book and your research. And if you'll indulge me for a second, I'm just going to read a brief passage from the prologue where you say, "Stealing money from another's pocket involves a high level of intimacy. The perpetrator sees the victim, physically touches his property and witnesses his immediate reaction after being robbed. But manipulative corporate conduct lacks all these sensations associated with theft. Executives never need to get close, physically or psychologically to their victims. Instead, the victims of financial crimes often remain distant and amorphous."

I mean, that in a nutshell is you drawing that comparison and that contrast to the street level offenses, right there at the outset.

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Soltes: And that's a hard part, you know, from a regulatory standpoint, from a company standpoint of presenting is that most of the people that are engaged in these issues, while it has tremendous harm, are not bad people trying to harm other people. But people that are highly motivated -- in many instances often times very strategic -- that because there's not that sense of immediacy, don't appreciate the extraordinary ramifications that those actions might have at the time they're engaged in that.

Adams: And it's against that sort of backdrop of the comparison and contrast between the white-collar offense and maybe the street level offense that you lay out in a very solid, academic way in part one of your book, the history, really, of criminalizing white-collar offenses.

And at the very outset, you also say something like, if this book had been written 300 years ago, much of the business misconduct described here would not have been illegal. And you go on to sort of, in a very succinct manner, summarize how white-collar offenses came to be. And I found it really fascinating for somebody that operates in this world every day that we are really a century removed from most of what I do for a living not even having legal consequences. Whether it be the counseling side of my practice or the defense side of my practice, this was just capitalism. This was just business. This is how things get done and how money gets made.

And you talk about some fairly significant historical events along the trajectory of that, say, century removed from the Wild West of no white-collar offenses. So talk to us a little bit about that. Your research, I think, hits all the spots. And it also coincides in my mind as I was reading that history with a rather significant technological advancement that drove us apart in the same manner that you really have laid out as this metaphor of distance that creates the white-collar offense, where good people do things that they don't think are that bad.

In that space and time, we've got the ability to sit hundreds of miles away from each other and have this conversation on a video conference. We've got the ability to do our banking from a device anywhere in the world. I mean, heck, most of us these days can really run our lives off of our smartphone. And we've seen this corresponding curve of technological advancement sort of drive us further and further apart, in an interpersonal manner. And at the same time, we need to now have these legal constructs come on the scene to police that whole environment.

Soltes: Absolutely. I mean, one of the things I found so remarkable is that 100 years ago, the main reason why you would seek to become a director of a publicly traded company is so you'd get access to information before other people by virtue of being a director. So you could trade on it. I mean, now there's probably a few more flagrant ways to think about engaging in insider trading than doing that. But that was just how was it the time.

I mean, even if we go back even much shorter, 30 years ago, much of what we would call bribery with Foreign Practices Act was tax deductible in the better parts of Europe. So some of this is actually incredibly recent. And while it's so easy to say, of course insider trading is bad, bribery is bad. These are very, very new constructs. And we can see them changing frequently now. I mean, the most kind of ongoing and fluid or sanctions. Where, you know, in some of the programs that I lead at HBS,



where we have students from a variety of parts of the world, you know many of them see some of the sanctions that are being agreed by the United States, some of them are very much aligned with and believe are important. Some think they're very political and they're actually very deeply frustrated because those are areas of the world they would like to do business with.

And so, it is an ongoing and fluid construct, rather than being deep rooted, like a commandment, like, thou shall not, one of those. Um, these are things that we're creating, kind of, every decade we've been evolving and creating.

Adams: What I found particularly fascinating when I read the book was some of the parallels you make to some of the earliest social science research that involved decisions about when a killing would be justified. And I think it goes back to that idea of the space, the space and separation. And I think you really do a great job of tracing the early days of, I guess, the founders of this concept of white-collar really go back to the late 30s. Any particular reason that your research and your study has demonstrated as why that time?

To me, it really centers around the Great Depression. And sort of coming out of that and the government's role in trying to rehabilitate the country after that time, whether it be through economic stimulus and what have you. And that's really a microcosm, and maybe, for what's going on today, and also perhaps a little bit of a cyclical thing that we revisit every so often.

But I'm interested in your take on why, as you describe, December 27, 1939, the president of the American Sociological Society, Edwin Sutherland, taking to the podium, addressing his colleagues and saying, you know, the biggest threat is these white-collar offenses. These folks that hold prestige in society, hold status, have money, committing crimes.

Soltes: That's a great observation, Matt. And I would say it's hardly been a smooth trajectory. Because, so Edwin coins his term "white-collar criminal" at the time. He decides he's going to publish a book on white-collar crime. And the first thing both his publisher and his university forbid him to do was really discuss any company because they were afraid they'd be sued. Because at the time, none of this was a white-collar crime.

That suggests this is really slow and hard going at the time. I mean, calling out pretty blatant things that we would find wrongful today. But because there weren't laws at the time, it technically wasn't criminal, even though it had the impact. But I'll say, it was under that, spirit at the time of the social environment that there was at least some people starting to speak up around some of these challenges and areas.

I actually think, just to show how slow it was, though, because we go fast forward to mid-century when Kennedy was prosecuting the case of with, Westinghouse and GE when several senior --

Adams: The bid rigging, the bid rigging.

Soltes: Yeah, the bid rigging, exactly.



Adams: In Tennessee.

Soltes: When several of those executives were let out of prison, they were immediately hired back to their executive level position. And then the company put out a release saying, these are fine, upstanding gentlemen that are pillars of their community. Like, why would we not hire them back? It was kind of like a two-year sabbatical while you were in prison. And I mean, that's mid-20th century.

So, I will say there was kind of like trying to light the fire, it was kind of like an engine that kind of stop and starts. I mean, probably even today, when we think about this, it may be one irony is one of the other later training points was when one of the most aggressive people that really started taking at really senior people at very prestigious company was Rudy Giuliani when he was U.S. Attorney. And holding, people account, actually using RICO to actually hold people to account. And I think obviously under the current environment where now he himself is facing fairly serious... it's both ironic and just shows you the kind of extraordinary turn these things take. That the position he was at the time, if we go back 40 years ago, just showing it's taken a while to get to where we are today.

Adams: I was, I was creating a little set of notes for myself as I read the book and right next to the Rudy Giuliani comparison to Al Capone and the use of RICO in that period of time in the development of white-collar offenses, I wrote and underlined in big capital letters "irony." So, I think your point that you made in the book was well taken.

Soltes: It's something that's interesting. And, you know, I saw with a lot of people and -- I've never spoken with Rudy Giuliani -- but I will say I suspect he's no different than anyone else in the book in this regard is that you have individuals who just could never fathom -- I mean, he was using RICO against others, that was being used for Mafia -- could never imagine being on the other side of potentially facing something that could almost become RICO-esque. And that's true with everyone. Everyone in my book. If you go to you great schools, you work for great, well-respected companies, you don't imagine your company ever facing criminal sanctions. Let alone you individually facing criminal sanctions.

This is why, for a lot of organizations, compliance is a cost center. Because you think those are for people that are on Lockedup, on the TV show, that are engaged in street offenses. It doesn't apply to people like myself that wear nice suits at the nice company that I went to that went, to the background school that I have.

But it's true. If you look at most of the cases, the headlines of whom the Department of Justice is prosecuting, especially at the organizational level, these are not little holes in the wall. These are prestigious companies that are doing, in fairness, a lot of very good work, but in the process also may have some serious errors, which have negative ramifications and aren't able to account for them.

Adams: Yeah, and as I read part one of your book, I really look at, you know, you do a great job of laying out the chronology. And one of the high watermarks of the evolution of white-collar crime seems to be Watergate. And history has a way of repeating itself, because now we're living, once



again. And, obviously this is some years after your book was first published, but we're living through another time, as you pointed out, where our laws are actually being tested to determine exactly whether they apply to everyone or some people may be above the law.

And I'm envisioning that moment in the movie Nixon, where he's professing that when the president does it, it's not a crime. The D.C. Circuit said otherwise, but, was that a high watermark in the evolution of, of white-collar crime in the country?

Soltes: Yeah, very much so.

As we're having this discussion, one thing that's really interesting is we see, because this wasn't the institutions that are holding people to account, you know, which goes for, the Department of Justice, the SEC, we have a lot of different regulatory bodies. Some are federal, some are state. There's not just one person or one thing. These have been built over decades. I mean, sometimes as we're discussing that, over a century they've been built. And in some ways, that's what's given them their robustness as well, is because they're not relying any one person or one thing.

The media plays an important role of identifying misconduct. Regulators and enforcement agencies have their own incentives, some of which are political incentives. Some of which are actually --this is how people actually gain prominence, by holding people to account. So there's a lot of different bodies involved. Which both give them robustness, but also rightfully means they're always imperfect. And so I think, you know, what we saw at the time with both Watergate and I think some of the things that we see emerging today is testing those. And testing how robust they are, where there are gaps. And I don't think anyone can say any of these institutions are perfect, but, um, how do we actually seek to improve them, as well?

And we see in the book, I think a lot of people throughout the 20th century, and this goes back to the 30s, where you have a sociologist, and otherwise fairly, you know, academic giving a talk, but raising something that actually got some newspaper coverage. That newspaper coverage led to some politicians becoming interested and maybe saying, hey, this is an area that maybe we should create some laws around.

They didn't do it overnight, but it started to build that energy and spirit, which then created the kinds of policies that allow the robustness that we have today.

Adams: And that raises a question from the practitioner standpoint, right? Some would say that our white-collar laws have gone too far. I, in a couple of weeks, will have a guest on this very program who was convicted of wire fraud in the Bridgegate scandal in New Jersey, Bill Baroni. And his conviction was overturned by the United States Supreme Court. Nine-nothing. The Supreme Court doesn't do anything nine-nothing. They don't order lunch with nine votes in this day and age.

And they overturned the convictions of he and his co-defendant, Bridget Kelly, because the prosecutorial theory went too far. It extended the wire fraud statute to a manner and to a set of facts that it was not designed to cover. And therefore, the justices held it to be unconstitutional, threw out his conviction.



And that evolution of our white-collar legal structure that forms the basis for your academic work forms the basis for my practice. Is there a risk that we could go too far?

Soltes: It's such an important point, particularly when we talk about, kind of, individual freedoms, in this particular instance. You know, what's so fascinating is how, what is the right level? So there's a well-known book, Jesse Eisinger, known as the *Chicken Shit Club*, which basically makes argument.

Adams: I've read it. I've read it.

Soltes: Which basically makes argument that prosecutors are, you know, well, chicken shit: don't go after enough cases that are vicious because they're afraid to lose. Suggesting that actually, you ought to lose more.

On one hand I appreciate that argument. But on the other hand, I appreciate that every time you lose a case and you throw down an indictment against an individual, their career is over. Whether they win or lose their career is over. If you do that to someone in finance, they're never going to work in a financial firm again. Even if they're totally cleared of all charges later on.

And so I think we need to be really sensitive. Because I think every loss still comes with extraordinary ramifications. And so, finding that balance where the prosecutors and regular enforcement agency truly believe they're going after things that matter.

So, this is where making sure those people in that position have the right mindset to approach it because of those, those ramifications. I mean, individuals will fight it to the end, rightfully, because that's all they have is the reputation left uh at the end to try to defeat it.

At the corporate side you can say there's a similar, but kind of different twists in that problem. Corporations don't want to fight it because the ramifications of going to court and having things extend. So, they'll inevitably always settle. And so the challenges that you can get a lot of marks on your belt for being successful against large organizations and having to pay, you know, billion dollar fees, but you've never actually won a case.

They're settling and paying a billion dollars because it's comparatively cheaper to settle for a billion dollars than draw this out over years, go through the core and all the reputational damage associated with it. And so how do we find that right balance between making sure we're actually holding people accountable?

Which probably doesn't mean we're a hundred percent. But it also suggests that if your win record, if you're batting like a 200, you're probably creating like so many bodies in the street in the process from people who are losing their livelihood and reputation that I think that would be deeply problematic.

Adams: Professor, in part two of your book, you really go in full-bore, as they say, on the social science of why these offenses get committed. And I guess when I first endeavored to go down part two of your book, I was looking for your answer. And, uh, ironically, I guess, I didn't find it. But I



found a lot of conceivable explanations that go into the pea soup behind why these offenses get committed. And every one of them sort of goes back to this theory of distance. And every one of them seemingly, and as you present them -- whether they be cost benefit or a lack of self control, or even in the early days of the study of eugenics, which would, as you say, in your book would be defunct today as pseudoscience, if not blatantly racist or, certainly, had components of it that were.

You summarize all these things to say that if you're looking for something black and white, you're really not going to find it. Because it's a pea soup of operating in the gray. And you even reference your research in the corporate world is sort of managing in the gray at times. And what I took from part two of your book was really more so that there's not one single environmental or biological or psychological or neuroscientific explanation for why these offenses get committed. But instead, the human experiment is on display. That human frailty and the idea that we all are susceptible on any given day to committing one of these offenses is just innately human.

Was I supposed to take something else away from...?

Soltes: You know, that's good. It's complicated.

Adams: Yeah.

Soltes: The question I did pose to myself a lot while writing this and working on this project over seven years is: why wouldn't I do this? Or why would I be different than the individual that I'm writing about? Because, you know, a lot of people that are in the book, you know, there's former leaders from, McKinsey, former leader from Tyco. I mean, strategically and managerial -- they were remarkable individuals. You don't get to the head and CEO of an organization like McKinsey without being a strategic, thoughtful, organized person over, not just day to day, but over weeks, months, years, decades of your career. So, to see an heir making an inappropriate trade, um, divulging information that you ought not to have, I actually was pretty humbled by.

So, I try to imagine if I was putting myself in their shoes, why would I not do that? And I always, I guess I come down to when we sit here and think about these ethical quandaries. It's pretty convenient. I don't say this is true for both corporate training exercise, but also taking an academic class, for example, in a business school. You know, we tell you the ethical dilemma. We isolate that from the hundreds or thousands of other decisions you're making over the course of the day. You're generally going to spend, what, a half an hour, maybe an hour discussing it, and you're going to do that in a room with dozens of other people who have different views and opinions.

In practice, that's not how decisions are actually made. They're generally made in, like, isolation, quickly, and among the thousands of other decisions you're making. And so what might seem so black and white to us when we sit here, or when we do some exercise, I think, for a lot of those environmental reasons and social reasons that are described in the book, are actually considerably harder.

Adams: Yeah, and if I didn't say it already, I'll say it again: this book is chock-full of examples of the who's who of the high profile white-collar cases. Particularly at the beginning phase of the 2000s,



really, where this type of corporate malfeasance was running rampant and being prosecuted rather routinely. You couldn't go a day without seeing this in the headlines, or you would be under a rock.

Soltes: A little less common today, yeah.

Adams: Yeah. In fact --

Soltes: It's like the FTX and the Theranos today. But, I feel like once every six months or a year there's a headline-grabbing case. At that time there was one seemingly every month or two.

Adams: Yeah, and if you look at statistically, you know, and there's some recent data to suggest this, that the prosecution of white-collar offenses has actually really taken a significant decline over, say, the last 10 years.

Some of that could be political. Administrations, the executive in particular, the president, holds a lot of discretion to set the priorities of the Department of Justice. But you also see new phenomenons in the place of that. Like, perhaps never before, states are going after white collar-crime at perhaps new heights. As opposed to it was always a traditional federal prosecution.

And you pick out, as part of part three of your book, you call it the business of malfeasance. And it's really standalone case studies of some of the biggest white-collar cases that have come through, at least our generation, and may very well go down in history as some of the biggest white-collar cases ever, like Bernie Madoff.

But what made you select the folks that you did to highlight as those case studies? Because I think you intended them to be standalone reads onto themselves. If somebody wanted to pick up your book and put it back down, they could really look at one of those later chapters and say, all right, I want to learn about Bernie Madoff. And you first educate them on what the Ponzi scheme is and the history of it. And then you go into Bernie Madoff for a... you spend a lot of time on Bernie Madoff and I can see why. But what made you choose some of the other individuals that you chose to present as your case studies?

Soltes: Bernie Madoff is a little bit different than anyone else, which is why he's the only one that did get his own standalone chapter. I mean, his just, make up and worldview. He -- in my opinion -- saw the world very differently, interacted with it quite differently than the other executives that were in the book.

But I will say, it was a combination of, again, personal curiosity of the cases that were in the news that didn't make a lot of sense to me of why that person was there. I immediately wanted to spend some time with it and understand.

It's interesting, as you did more and more of those cases, you got to see some themes, you know. One of things that was interesting is people that engage in insider trading would ultimately come away with some rationalization that, "although you're right, it was wrongful, you can't do it, there was



not anyone I could specifically harmed. It was the people who engaged in fraud that were really harmful."

And then, if you have to talk to people engaging fraud, they said, "yeah, you're right. Like, we adjusted some of the books and numbers and some goals, but we were trying to build an extraordinary firm. And unfortunately, we thought we'd solve it and we didn't. That created the gap. It's the people who engage in pyramid schemes that weren't trying to create a business that are a real problem."

You talk to people that engage in pyramid schemes or Ponzi schemes -- top five are all in the book and spent time with -- they would say, "well, yes, it was a legitimate business at one point, and then kind of just lost it and probably should have stopped it. But just, kind of, didn't have the guts to do it. But actually it was the leaders of the banks that lost trillions of dollars in the financial crisis that really hurt people. Because in the end, this was still only a quote couple billion dollars."

So there was a degree of irony that kind of, of, you talked to groups of people and you got to see these similar themes. And everyone always was able to look to someone else as being the bigger villain in, kind of, the story.

Adams: And as your book sort of sets out what it calls a quote, humble conclusion, you go back to this theme of distance. You go back to this, what you call "the ever-growing psychological distance, separating people engaged in commerce." And you, posit quote, "our antiquated moral institutions are not well designed for the modern business world."

I know, coming full circle and sort of leaving the book for just a second, a good portion of your professional study now is the use of data analytics to predict, detect and mitigate issues related to organizational misconduct of the type that you outline in the book. And at the very outset, I identified my view that I think technology is one of those variables that may have actually contributed to that quote, "ever growing psychological distance separating people engaged in commerce." Is there some good that technology can bring to helping corporations around the world as we engage in a more increasingly global marketplace? Can we use technology to sort of repair the damage that was done?

Soltes: That --

Adams: --seems like your scholarship, yeah, it seems like your scholarship is headed that way.

Soltes: Yeah. I mean, you know, most of the, everything I do now is what would be described as work on compliance programs and compliance program design, particularly analytical compliance work. I mean, every single person does it in their course of their work compliance training and other compliance exercises. But, like, I think, like, many, most, it's like a check the box exercise. Ideally, you have a second screen to put the video on so you can do something else. You have to attest to various things. You get through the code of conduct. You try to check that box. And no one really gives it that much credit. It's actually pretty annoying and frustrating, takes you away from other work is, I think, how it's generally perceived.



But I think we all simultaneously think it's really important to not defraud people and to not have these really bad things happen. So, what's the gap between what we're doing to actually prevent and stop that -- which is these check the box things -- and what we all believe is really important. There must be some better way to mine that.

And I think what's been really fascinating is to better understand within organizations where they're facing heightened risk. And so this is not trying to do *Minority Report*, but trying to think about where there are subgroups. So subcultures, so groups of a hundred, 200, a couple hundred people that are facing elevated risks. And what we can observe, particularly simply looking at the data, that if you have a manager that's engaged in misconduct, the likelihood that someone on the team will engage in misconduct in the next six to 12 months is heightened. To the extent that people on your team are raising concerns, I'll say what we generally think is HR concerns, and those are not being substantiated. What we know in practice as well, those employees -- and there's a lot of good reasons why those concerns may not be substantiated -- but to the employees, they don't really care what the legal bar for harassment or discrimination might be.

They think that the company is not treating them respectfully. So what happens in practice? They're probably going to not respect the company as much. People that fill out on the surveys that they're experiencing business pressure. If every day that you're experiencing pressure to violate policies, probably at some point, someone in your groups or your teams is going to cross one of those, because you're experiencing this day in and day out.

I'm throwing out all those examples, because what you can imagine is a world in which you have all these disparate pieces and signals of information suggesting there's an elevated risk because of the social phenomena around you and what you're facing. If a company is able to isolate which those teams have a lot more of those, which is a lot versus a lot less, they can target their efforts to try to get ahead of those issues before they, you know, explode into a regulatory front page news -type issue.

Also, I think it's a matter of respect is that rather than just blanketing everyone with check the box compliance, maybe what we can do is leave a lot more people alone and let them go to their daily work and do it well. But when we see these elevated risks, we're going to do a lot more and a lot more targeted efforts to try to prevent and mitigate that. So, I'm trying to imagine a world in which we can align what our views are about why we really all don't want this stuff --because it distracts and productivity, distracts the people being able to do an amazing job at their work -- and actually marry that with what people experience around compliance in a day-to-day setting.

Adams: Wow. So, if we're looking at one of those temperature maps where, you want to get out of the red, you're taking focused energy and putting it at the trouble spots and using data analytics to help you do it.

Soltes: Yeah. And this is what, I mean, now if you look at enforcement regulatory bodies, the Department of Justice is effectively asking companies to design risk-based compliance programs.



What's a risk-based program? It's one where if you can, and not every organization can, but to the extent you can design systems, processes or have data support, this is riskier than this one. Focusing your intention that way is not only a better way of spending resource, but it's more efficient. And you're likely to get a higher return for that time and effort made.

Adams: Well, professor, thank you so much for being with us today. We're talking with Professor Eugene Soltes of the Harvard Business School, the author of "Why They Do It: Inside the Mind of the White-Collar Criminal," and a leading authority on using data analytics to predict, detect and mitigate issues related to organizational misconduct.

Professor, I hope this is not our only conversation. Because in the world in which I operate, the use of effective compliance programs is pretty much all that you have as a defense, sometimes, in the corporate investigation space. And so, designing effective ones and being able to substantiate that they are indeed effective and not just a piece of paper that nobody's ever looked at are incredibly important.

So, your work has far-reaching implications. I think we've come full circle on the book and your scholarship. Thank you so much, professor, for being with us. And that's all the time we have for today on "The Presumption of Innocence." And until next time, I'm your host, Matt Adams. See you then.