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## Feature Comment: Ethics, Compliance, And The Dispiriting Saga Of Craig Whitlock's Fat Leonard

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# THE GOVERNMENT CONTRACTOR<sup>®</sup>

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## ¶ 118 FEATURE COMMENT: Ethics, Compliance, And The Dispiriting Saga Of Craig Whitlock's *Fat Leonard*

In the concluding chapter of the recently published book, *Ethical Dilemmas in the Global Defense Industry* (Daniel Schoeni & Tobias Vestner, eds., Oxford 2023), <https://global.oup.com/academic/product/ethical-dilemmas-in-the-global-defense-industry-9780190675813>, I struggled to explain the chasm between “the complex world of ethics, morality, and values ... [and] the far more mundane topic of compliance.” At some level, most of us easily distinguish between a culture that values “doing the right thing” (and, of course, “not doing the wrong thing”) and the staggering array of oft-formalistic statutory, regulatory, and institutional mandates and prohibitions that guide and constrain the behavior of Government officials, military servicemembers, and, of course, Government contractors.

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*Prof. Schooner will interview the author on June 8 (at 4:00) at the National Press Club. The event is open to the public. Pre-registration is free at [gwlawgovpro@law.gwu.edu](mailto:gwlawgovpro@law.gwu.edu).*

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Our institutions, leadership, and colleagues expect us to tell the truth and not stab our colleagues in the back. Many of us embraced these fundamental “virtues” early in our homes, our schools, or religious studies. But these virtues don’t necessarily translate into a Government employee understanding that they should neither accept (nor should a contractor offer) a gift (including a meal) worth more than \$20 per occasion, or gifts from a single source worth more than \$50 per year. See generally 5 CFR § 2635 (standards of ethical conduct).

Whether someone who fails to scrupulously follow such a rule is noncompliant, unethical, or merely uninformed is excellent fodder for discussion, and different legal rules serve different purposes, whether attempting to constrain impropriety or maintain appearances to foster trust in public institutions. But what does one make of an individual or institution where neither set of guardrails constrains behavior? At what point does what might be excused as lack of discipline, inadequate training and supervision, or inattention to details become susceptibility or, quite simply, corruption? And at what point within an organization do the volume and pervasiveness of missteps reflect institutional rot?

From early mythology to modern video screens our storytelling is replete with tricksters, troublemakers, rogues, temptresses, and seducers who test mere mortals' mettle. Alas, real life is no different. In his exhaustively researched *Fat Leonard: How One Man Bribed, Bilked, and Seduced the U.S. Navy* (480 pp, Simon & Schuster, 2024), <https://www.simonandschuster.com/books/Fat-Leonard/Craig-Whitlock/9781982131630>, longtime *Washington Post* reporter Craig Whitlock offers us a ringside seat as Leonard Francis—a modern-era Anansi, Br'er Rabbit, Loki, or Puck—demonstrates that temptation trumps ethics, compliance, and, alas, pretty much everything else.

**A Sordid Tale Told Well**—The Fat Leonard saga is familiar to many GC readers. This was a massive scandal, a front-page mainstream media story, easily followed and relentlessly discussed and dissected. But even as the scope and scale of the multi-agency investigation widened, and the *Washington Post* published its extraordinary summary infographic, it was difficult to grasp the enormity of the debacle. See *Prostitutes, Vacations and Cash: The Navy Officials 'Fat Leonard' Took Down*, Wash. Po. (originally published May 27, 2016; last updated Sept. 20, 2018), <https://www.washingtonpost.com/graphics/investigations/seducing-the-seventh-fleet/>.

For the communities of public corruption and oversight professionals (including attorneys, investigators, inspectors general, auditors, prosecutors, etc.) or Government contracts (or public procurement) professionals, there's more than a whiff of *War Dogs* here. I'm not sure this one will jump as seamlessly to the big screen (and feature the likes of Jonah Hill and Miles Teller), but it's every bit as insane and, in many ways, more so. Guy Lawson, *Arms and the Dudes: How Three Stoners from Miami Beach Became the Most Unlikely Gunrunners in History* (2015; later editions adopt the movie title); *War Dogs* (Warner Bros. Pictures, 2016). Still, the analogy is apt in that, reading the book, it's hard not find yourself shaking your head and muttering "you can't make this stuff up."

The title pretty much tells the story, and the book does exactly what you'd expect, systematically unveil-

ing a slow-motion horror story morphing into a train wreck in painstaking detail. If you're unfamiliar with the Fat Leonard saga, here's the basic outline (which, as they say in review parlance, *contains spoilers*):

- From humble roots, lacking a post-secondary education and burdened with a criminal record and jail time for armed robbery, Leonard G. Francis, later widely known as "Fat Leonard," dramatically expanded Glenn Marine, his Asia-based ship husbanding business, by showering Naval officers (and other personnel) with excessive and (yes, quite obviously) prohibited and inappropriate bribes and gratuities including cash, travel, fine dining, alcohol, and gifts of all kinds, including sex workers (or, in the book, prostitutes);
- This strategy included not only identification and grooming of susceptible targets, but systematic record-keeping of a mind-blowing array of incriminating evidence, from photographs and signatures to emails and receipts, etc.;
- On top of garden-variety contract fraud, including flagrant overbilling for unnecessary or unperformed services and steering Naval vessels to more lucrative ports, Fat Leonard:
  - persuaded a jaw-dropping number of Naval officers to leak sensitive and classified information regarding ship movements so that he could preposition resources throughout the Pacific and gain a competitive advantage for future work; and (in what may be my personal favorite)
  - *retained and paid a senior Navy Captain, while serving as the Pacific Fleet's chief of public affairs, to serve as his "ghost-writer,"* crafting talking points, correspondence, and emails "in a style and tone designed to put admirals at ease[;]"
- In addition to winning the loyalty and favor of many within the Navy's surface fleet, he successfully recruited and retained the services of Naval Criminal Investigative Service (NCIS) personnel

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who shared sensitive law enforcement files and helped thwart various criminal investigations;

- His career and demise eventually prompted investigations of (many) hundreds of Naval servicemembers, including 90 admirals, which led to multiple criminal plea bargains and a staggering number of military administrative actions. See generally, Robert T. Rhoad & W. Stanfield Johnson, “Fraud, Debarment And Suspension—Part II: Suspension And Debarment,” 2018 GCYIR 24, Section II: The Navy and the “Fat Leonard” Scandal (at the time, “19 have pleaded guilty in court, 10 have criminal cases pending, 5 have been charged under military law, and 5 admirals have been disciplined or admonished by the Navy”). Most significant among these was what was apparently the first criminal conviction of an active-duty admiral;
- While in pretrial confinement, he persuaded a federal judge and prosecutors that he should be permitted to live in and underwrite private housing (initially an apartment, then, over time, a condominium, and, ultimately, a \$7,000 per month home with a pool and three-car garage in a gated community, *shared by his family*) and personal security, during which he:
  - Sought a biographer or potential film platform, despite “[h]is lawyers [having] cautioned him not to talk to reporters, because anything he said on the record could be used against him in court. [He] didn’t take the warning seriously.” Indeed, he identified a partner in Singapore who spent six months conducting interviews resulting in a popular, hugely entertaining, and wildly ill-advised nine-episode podcast, <https://fatleonardpodcast.com/>, which, of course, generated nightmares for both pending prosecutions and investigations;
  - Welcomed a documentary film crew into his home for multiple days of filming; and later
  - Shipped his furniture and personal goods to Asia before removing his ankle bracelet and

fleeing, via Uber to Mexico, then Cuba, and ultimately to Venezuela. See, Department of Justice U.S. Marshals Service News Release: U.S. Marshals Seeking Bribery Fugitive Leonard Francis, AKA “Fat Leonard,” (Sept. 6, 2022), 2022 WL 4079498. Before Russian officials could respond to his pending application for asylum, he was discovered, captured, detained, and eventually returned via a prisoner swap package, where he now again awaits trial.

And that’s the condensed version! But, against that backdrop, what’s so remarkable is the breadth and diversity of the Government contracts, Government ethics, and compliance issues the case study implicates and the book recounts.

**Crimes, Noncompliance, and Rank Stupidity**—Inspectors general, Designated Agency Ethics Officials (DAEOs), experts at the Office of Government Ethics, auditors, or fraud counsel could easily craft entire training courses (or, in the case of DAEOs, far more entertaining and engaging annual refresher videos) working exclusively from the material in this book. In the private sector, the Defense Industry Initiative on Business Ethics and Conduct or in-house compliance counsel could demonstrate the benefits—to both contractors and the Government business partners—of comprehensive compliance regimes, codes of conduct, internal oversight, and effective whistle-blower mechanisms, etc. But the point remains: the book chronicles an extraordinarily diverse and audacious collection of missteps, misdeeds, and easily avoidable failures, including:

- Deeply troubling criminal violations that implicated national security, such as selling classified information;
- Behaviors easily understood to be criminal, including accepting bribes, see generally 18 USCA § 201(b) or 18 USCA § 1346 (honest services fraud);
- Innumerable personal conflicts of interest—actual and apparent, see 18 USCA § 208; 5 CFR § 2635.402;

- The full range of complicity and cooperation with fraudulent contracting activities. “When Francis pleaded guilty in 2015, he admitted to defrauding the Navy of \$35 million over a nine-year period. But investigators suspected him of fleecing U.S. taxpayers of far more.” Estimates from prosecutors and NCIS officials suggest the sum was “upwards of \$50 million ... towards possibly \$100 million.”; and
- The full panoply of prohibited behaviors, primarily falling under the umbrella of accepting inappropriate gifts or “illegal gratuities,” 18 USCA § 201(c). While these infractions may seem minor in comparison to theft or misuse of taxpayer funds, they reflected a culture of noncompliance and derailed otherwise promising careers.

On the latter point, consider this introductory guidance from 5 CFR § 2635.201(b), which offers “Considerations for declining otherwise permissible gifts.”

Every [Government] employee has a fundamental responsibility ... to place loyalty to the Constitution, laws, and ethical principles above private gain. ... [E]mployees should consider declining otherwise permissible gifts if they believe that a reasonable person with knowledge of the relevant facts would question the employee’s integrity or impartiality as a result of accepting the gift ... [taking into account], among other relevant factors, whether:

- (i) The gift has a high market value;
- (ii) The timing of the gift creates the appearance that the donor is seeking to influence an official action;
- (iii) The gift was provided by a person who has interests that may be substantially affected by the performance or nonperformance of the employee’s official duties; and
- (iv) Acceptance of the gift would provide the donor with significantly disproportionate access.

See also Federal Acquisition Regulation 3.101-2. It’s unlikely that the regulation drafters intended the preceding passage as an instructional manual. Yet Francis’s business model entailed, among other things:

- (i) bestowing such lavish gifts upon Navy personnel that there could be no doubt of the high market value—from events at the finest venues to the most exotic dishes and alcohol.

Subtlety was never Francis’s preferred approach;

- (ii) ostentatiously bestowing these gifts (and a broad array of favors) upon senior Navy leaders (and, let’s be clear, his clients) and cultivating the image that the gift giving and receiving was routine;
- (iii) doing so with the specific goals of, among other things, obtaining information to which he should not have had access, gaining a competitive advantage for future contracts, billing for unnecessary services, inflating prices charged for services rendered, securing protection against the oversight community, and derailing investigations into his business practices; and
- (iv) flaunting his unusual and inappropriate access to locations, high-profile events, and high-ranking officials to intimidate critics and recruit new conspirators.

In retrospect, many officers conceded that they “knew [they] weren’t supposed to accept freebies from someone who did business with the U.S. government.” Others simply could not resist. One Captain later explained that, after another Captain (at Francis’s urging) prodded him to attend a private event at a skyscraper restaurant (featuring, among other things, Dom Perignon and Cristal champagnes, ice-sculptures, a three-piece band, an eight-course gourmet meal, cigars, and rare and reserve cognacs): “My initial thought was, ‘This is the height of decadence ... I should not be here. We should not be here. This is wrong.’ And yet [struck by how comfortable his colleague seemed] I stayed.” His colleague subsequently admitted that he was “trying to get on Leonard’s good side ... so I’ll get another bottle of wine .... I was certainly looking for the next dinner and a nice hotel room.” That was exactly the point for Francis despite that fact it ran contrary to the far more prudent advice:

Even if [an] exclusion[] applies, contractors should not offer gifts so frequently that a reasonable person may believe that they are being offered for an improper purpose.... A contractor analyzing the frequency of its

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gift-giving should consider...: if you saw a competitor doing this, would you think it was an attempt to obtain an unfair competitive advantage? If so, then the gift or hospitality should not be extended.

Jessica Tillipman, “Gifts, Hospitality & the Government Contractor,” [14-7 Briefing Papers 1 \(June 2014\)](#); see also Jessica Tillipman, Chapter on “The United States,” *Routledge Handbook of Public Procurement Corruption* (Williams and Tillipman eds., Routledge, 2024) (“These rules are designed to guard against even the mere appearance that a federal government official is providing favorable treatment in exchange for the gifts or hospitality.”); Jesse Green, *The Glenn Marine Asia Problem: The Role of Ethics in Procurement Reform*, 28 Pub. Cont. L. J. 15 (2018) (focusing on “the importance of the ethical principle that requires all executive branch employees to avoid even the appearance of violating the law or ethical standards.”).

### **Yes, There IS a Rule (and Guidance) for That!—**

Unlike a typical GC subscriber, the average reader could be forgiven for missing the reference to what the author describes as an “obscure” exception to the gift rules for “widely attended gatherings.” *Fat Leonard* at 43; see also 5 CFR § 2635.204(g). The exception permits Government employees (with written authorization) to “accept an unsolicited gift of free attendance” at an event:

if it is expected that a large number of persons will attend, that persons with a diversity of views or interests will be present, for example, if it is open to members from throughout the interested industry or profession or if those in attendance represent a range of persons interested in a given matter, and that there will be an opportunity to exchange ideas and views among invited persons.

See also, Tillipman, Gifts, *supra* (“This is a complicated exception, and contractors should be certain that the event qualifies as a widely attended gathering before offering free attendance to a government official.”) In painstaking detail, based on menus and receipts, the book recounts memorable evenings of excess and debauchery that make my exam hypotheticals seem tame by comparison. Putting aside the frequent correspondence from Naval personnel requesting (and, yes, at times, demanding) that entertainment or perks be provided, event after event showcases

the kind of red flags—from stunning venues and Michelin-starred restaurants, culinary experiences costing \$800–1,000+ per person, limousines, and sex workers—that could enliven an otherwise mundane mandatory ethics training course.

Indeed, GC readers may find it amusing to compare any individual event described in the book in the context of not only the rules, but the *intent* of the rules. See generally, Tillipman, Gifts, *supra* (emphasis added, endnotes omitted), explaining:

The broad definition of “gift” also includes many business courtesies that are quite common in the private sector, such as meals, entertainment and transportation ....

If an item is not excluded from the definition of “gift,” it is likely prohibited unless a limited exception applies. Notably, *the exceptions are not broad loopholes that may be exploited to ply government officials with lavish meals and vacations. They are purposefully narrow* .... Unless a gift falls neatly within one of the following exclusions or exceptions, “the safest course of action is to assume the gift is prohibited.”

Granted, Francis wasn’t particularly interested in the safest course of action. And Francis’s targets proved stunningly susceptible to entrapment. The bold displays of entitlement—Government officials posing for photographs at lavish events and signing over-the-top event menus—are disturbing. All of which aligned with Francis’s modus operandi:

Francis had a talent for spotting people who, with a little encouragement, would break the rules. He’d start by offering a modest inducement: a drink, an inexpensive lunch, a cigar. But if his target took the bait, he’d ratchet up the value of the gifts.

**Not a Virtuous Cycle and “Different Spanks for Different Ranks”**—The author makes little effort to hide his disappointment, bordering on disdain, for the Navy’s inclination to sweep as much of the scandal as possible under the rug (and “wish the story would go away”). One would hope that that Navy leadership would have recognized this as an opportunity for transparency and sought to make the most of the bad behavior and mistakes by treating the scandal as a lesson learned and teaching tool. Alas, “as an institution, the Navy did everything it could after Francis pleaded

guilty in 2015 to hide the extent of the rot in its ranks and avoid a full public accounting.”

The author spotlights the Navy’s tolerance of its tainted culture and its incompetent efforts to reform, remediate, or address misconduct and wrongdoing among its ranks. Whitlock harkens back to the 1990s Tailhook sexual assault scandal, involving the same service (the Navy) but a different community (e.g., Naval aviation), in which:

The Naval Criminal Investigative Service ... bungled the biggest investigation in its history .... The case was triggered when a female Navy officer alleged that gangs of drunken male aviators molested her and other women during a convention in Las Vegas. After investigating for six months, the agency tried to close the case by pinning the blame on a handful of suspects, ignoring evidence that scores of women had been victimized while hundreds of male officers—including nearly three dozen admirals—participated or stood by and did nothing.

Decades later, despite a far more robust investigative effort and, as noted above, an extraordinary cache of evidence, “in most instances, the Navy excused misconduct on the dubious grounds that its personnel didn’t know any better. In case after case, the Navy let people off the hook ... because they were following the lead of an admiral or a senior officer who did the same thing.” Nonetheless:

[V]eterans have a saying—“different spanks for different ranks”—to describe the widespread belief that enlisted personnel are punished far more harshly than officers. Indeed, while admirals largely avoided culpability ..., enlisted sailors and junior officers got hammered.

As inequitable as that outcome may seem, it also ignores the root cause of much of the prohibited and inappropriate behavior. In its report following the Darleen Druyun debacle, the Defense Science Board explained that, in ethically grounded organizations:

Ethics is treated as more than a “check the box” activity. Senior executives emphasize ethics in their interactions and presentations to employees, they accept personal responsibility for maintaining ethics in the corporate culture, and they are almost obsessive in reiterating the company’s values upon which “doing the right thing” is based.

*Report of the Defense Science Board Task Force on Management Oversight in Acquisition Organizations* (March 2005), <https://dsb.cto.mil/reports/2000s/ADA435469.pdf>; “DoD Must Reform Acquisition Oversight to Reduce Opportunities for Self-Dealing, Task Force Finds,” 47 GC ¶ 228; see also Tim Weiner, Ex-Boeing Financial Chief Pleads Guilty to Felony, NY Times (Nov. 16, 2004) (“Ms. Druyun [formerly the head of US Air Force Procurement] and Mr. Sears are, respectively, the highest-ranking Pentagon official and military contractor to go to jail on ethics charges since the 1980’s.”), <https://www.nytimes.com/2004/11/16/business/exboeing-financial-chief-pleads-guilty-to-felony.html>. In other words, members of an organization *look up and around* for cues and models to learn and decide how to behave. Whether you view this through the lens of modelling appropriate behavior or the process of “observational learning” in which we all subconsciously engage, the outcome remains the same. Leadership (and colleagues) set the tone for what behaviors are desired and acceptable. See also Brittany Kouroupas, *Corrupts Absolutely: How Power, Unhappiness, and The Need for Recognition Can be Mitigated by Implementing Psychology into Public Procurement*, 51 Pub. Cont. L. J. 623 at 635 (2022) (“corrupt actions will still occur if people fall into the trap of engaging in corrupt activity by adapting to the behaviors of those around them.”).

One of the book’s pervasive themes is that, when it came to modelling behavior, senior Navy leaders routinely behaved like pigs at the trough rather than cautious and deliberate role models for ethical (let alone compliant) behavior. “[W]hen admirals pocketed [Francis’] perks, other officers assumed it was permissible for them to do the same.”

**A Crazy Story, A Public Service**—My hat’s off to the author for sticking with the story and somehow condensing it into a readable, cohesive storyline. It’s difficult to imagine how much work, year after year, went into the book.

Meanwhile, the sordid tale is far from over. As the book’s *Epilogue* makes clear:

[The p]rosecutors’ biggest single accomplishment—the conviction of four former Seventh Fleet officers on

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bribery and conspiracy charges in 2022—crumbled months after Francis fled to Venezuela [and a steady stream of motions sought] to throw out the verdict because of prosecutorial misconduct.

It seems inordinately ironic that prosecutorial misconduct could shape this saga's conclusion. One dramatic failure to disclose evidence involves an interview with a sex worker who "admitted that Francis paid her to spend the night with an officer who matched the description [of a Navy Captain] but said he rebuffed her advances. 'Nothing happened, I even slept on the couch lol,' she texted the agents." In the last few months, an increasing number of convictions have been vacated and guilty pleas have been withdrawn. The Federal Judge who has presided over these matters for more than a decade deemed the prosecutorial misconduct "outrageous," rendering the future of innumerable pending and seemingly resolved matters unclear.

Sure, many of us would like to know more about the various contract terminations and any potential civil fraud actions (whether offensive or raised as a defense to an affirmative claim), but that fell beyond the scope of the author's endeavor. As GC readers would expect, yes, Leonard G. Francis and Glenn Marine (as an enterprise and in numerous named entities and locations) are currently listed as indefinitely "Ineligible (Proceedings Pending)" in the System for Award Management (SAM.gov) Exclusions database, <https://sam.gov/content/entity-information>, and described with the largely unhelpful boilerplate language:

upon adequate evidence of conduct indicating a lack of business honesty or integrity, or a lack of business integrity, or regulation, statute, executive order or other legal authority, pending completion of an investigation and/or legal proceedings; or based upon initiation of proceedings to determine final ineligibility based upon regulation, statute, executive order or other legal authority or a lack of business integrity or a preponderance of evidence of any other cause of a serious and compelling nature that it affects present responsibility.

Despite all of this, I concluded the book fearing that the public (for a host of reasons) has become so desensitized to public corruption, abuse of office, and whether, even if they make it to the end of the book, readers will shrug their shoulders and ask, "so what?" I sincerely hope that is not the case here.

Rather, as a career member of the defense and federal acquisition professional community, I'd prefer to see Whitlock's monumental effort to craft this cautionary tale, in at least some small way, exert a positive influence on future Naval personnel (and, yes, military and Government personnel, generally), acquisition professionals, and the oversight community. Time will tell whether Navy leaders or aficionados read it or whether Naval tradition and culture is so strong that the Navy's institutions and leaders discourage talking about it and prefer to pretend it didn't happen.

Pedagogically and professionally, I hope they're assigning this as required reading at the Naval Academy and, more broadly, introducing it to cadets (at the other military academies and in ROTC programs, etc.), mid-career officers, and senior leaders at the military's various professional schools. As philosopher George Santayana reminds us: "Those who cannot remember the past are condemned to repeat it."

*This Feature Comment was written for THE GOVERNMENT CONTRACTOR by Steven L. Schooner, the Nash & Cibinic Professor of Government Procurement Law at the George Washington University Law School, where he currently serves as the Jeffrey & Martha Kohn Senior Associate Dean for Academic Affairs. In addition to private law practice, Professor Schooner previously served in the Army, the Department of Justice, and the Office of Federal Procurement Policy. He is a Fellow of the National Contract Management Association, a Certified Professional Contracts Manager CPCM, a director of the Procurement Round Table, and a member of the GC Advisory Board.*