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PLENARY 4
Effective Regulation

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The Regulatory Craft

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Examples: IRS, and patterns of non-compliance

1991, Fred Goldberg's Question: What are the major non-compliance problems in the U.S. tax system?

No 1 : Non Filers

1991: Fred Goldberg's 3 questions:

- Who's responsible for this?
- Which *process* to improve?
- Which database do we analyze?

Different Types of Work

$$\begin{array}{r} (1) \quad \text{Functions} \\ + (2) \quad \text{Processes} \\ \hline = (3) \quad \text{Problems/Risks} \\ \hline \end{array}$$

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Different Competencies

- Functional Expertise
 - Organizational Form: Specialist enclaves, state of their art.
 - Focus: Productivity/Efficiency
"Quality" Defined in Function-Specific Terms
- Process Management/Improvement/Re-engineering
 - Form: Organized around Core, High-Volume Processes. Cross-Functional Teams. "Quality Circles."
 - Focus: Process Improvement/Redesign/ Re-Engineering.
Efficiency/Timeliness/Customer-Satisfaction/Coordination
- Risk Control/Problem-Solving/Compliance Management
 - Form: Temporary project teams; organized around specific, identified risks [Problems/Patterns/Concentrations.]
 - Focus: Measurable Impact on Specific Risks.
Elimination, or Substantial Mitigation.

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Regulatory Style: Presented as Dichotomy

"Old Model"

- Enforcement
- Reactive
- Adversarial
- Incident-Driven
- "Hard"

"New Model"

- Compliance Assistance
Customer Service
- Preventive
- Partnerships
- Problem-Solving
- "Soft"

Effects:

- + Schism within organization
- + Enforcement Agents disenfranchised, demoralized
- + Precipitous drop in enforcement numbers (the "Bean-Dip Bunker")
"We don't do enforcement any more"
- + "Get the numbers back up"...

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Regulatory Styles: Dichotomy (con't)

Strategic Innovation

- Risk-
Orientation*

Tactical (Risk-Specific) Choices

- Tool
selection/combination
- Regulatory style to fit
audience
- Best time for
intervention.

* Or "problem-orientation," or "compliance-management."

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Regulatory Reform: 3 Core Elements

- (1) Focus on effects/impacts/results
- (2) Adopt a "Risk-Control," a "Problem-Solving," or "Compliance-Management" Approach
- (3) Invest in Collaborative Partnerships

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3 Core Elements...

- (3) Invest in Collaborative Partnerships
 - shared purpose through collaborative agenda setting
 - more effective interventions, through engagement of multiple parties
 - optimal leveraging of scarce public resources

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3 Core Elements..

- (1) Focus on effects/impacts/results
 - reject reliance on output measures
 - persevere in search for more meaningful impact measures
- (2) Adopt a Problem-Solving (or "Risk-Control" or "Compliance-Management") Approach
 - systematic identification of important problems
 - risk assessment and prioritization
 - broader range of tools embraced
 - tools organized around the work, not vice versa
 - retain and enhance the enforcement sting

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PICK IMPORTANT PROBLEMS: FIX THEM

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Recognizing the Challenge/ Opportunities of Risk Control

“Risk management is much more than the technical models used to calculate probabilities and consequences. To be useful as an alternative regulatory approach, risk management must be an integrated program of activities institutionalized into the way that the company conducts its business on a day-to-day basis.”

[Richard Felder, Office of Pipeline Safety, Washington D.C.]

The Office ... intends to use “Risk Management” as an *alternative basis for operations and for relationships with the regulated community.*

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Recognizing the Challenge/ Opportunities of Risk Control

“We have several new partnerships with our stakeholders in the maritime industry. In our experience, conflicts commonly arise over activities, such as the scope and frequency of inspections, or specific corrective actions. *Outcomes* [risk-reduction objectives], on the other hand, give us common ground in things we all care about, and it has been helpful in general to be able to agree first on the scope and magnitude of the problem before addressing solutions.”

[Commander Rick Kowalewski, U.S. Coastguard’s Office of Marine Safety and Environmental Protection]

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Some Agencies Now Recognizing the Challenge of Risk Control

“The challenge we face is how to ensure that problem-solving—or our preferred terminology of an “integrated risk based approach to compliance and enforcement”—becomes the organizational framework and not just an add-on activity ...It is a much more difficult task to seek to adopt this as an overall whole-of-organization approach.”

[Shane Tregillis, Australian Securities and Investments Commission]

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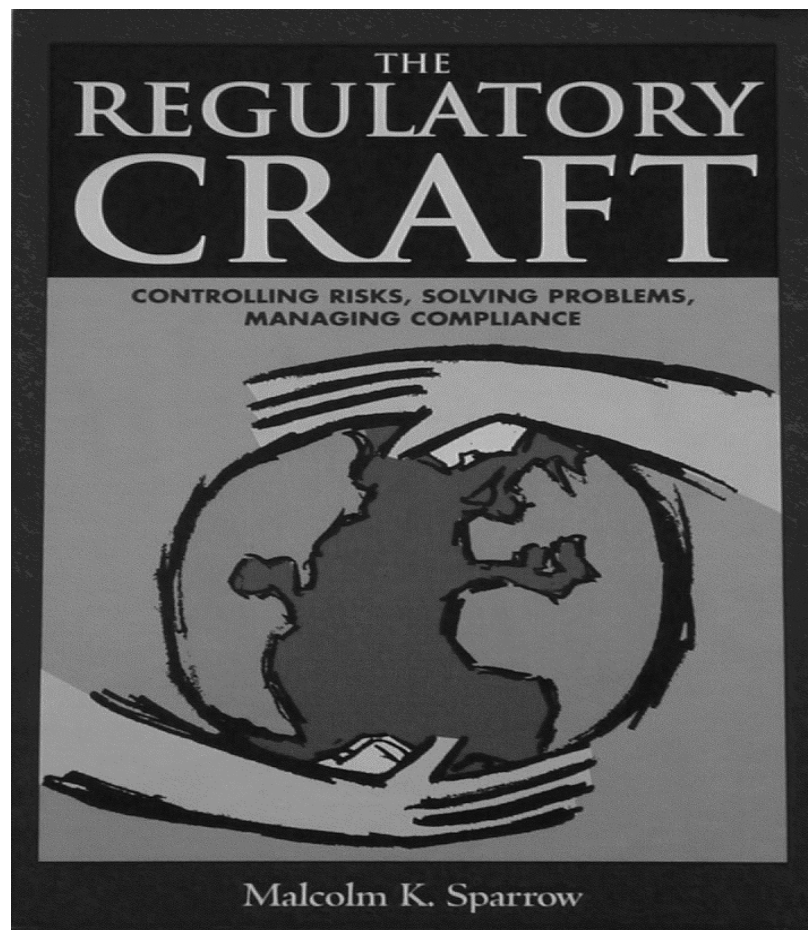
Pick Important Problems: Fix Them

Experienced by those who have grappled with it as:

- Different
- Intellectually demanding
- Analytically demanding
- Organizationally awkward
- "Unrelentingly difficult"

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Pick Important Problems: Fix Them

Joe Dear (formerly head of OSHA, now Chief of Staff to the Governor, Washington State):

I'm only half joking when I suggest that [the author] ought to put a warning box somewhere in [here] that says something like:
"WARNING: Trying these methods is more difficult than you can imagine. You must really be desperate to have an impact, or be totally dissatisfied with your program's status quo to make this undertaking worthwhile."

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