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Gerry Zack ([gerry.zack@corporatecompliance.org](mailto:gerry.zack@corporatecompliance.org), [twitter.com/gerry\\_zack](https://twitter.com/gerry_zack), [linkedin.com/in/gerryzack](https://www.linkedin.com/in/gerryzack)) is CEO of SCCE & HCCA in Eden Prairie, Minnesota, USA. Please feel free to contact Gerry anytime to share your thoughts: +1 612.357.1544 (cell), +1 952.567.6215 (direct).

### Repetition and intent

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By Gerry Zack, CCEP, CFE, CIA

I've written about proving intent before, but a recent session (and subsequent conversation) at a conference reminded me of its importance, as well as a common misconception. Not all laws require intent be proven; some are strict liability laws. But in many criminal and civil cases, the outcome rests upon whether the subject intended to do wrong.

The discussions I referred to above involved what I would call a fixation on repetition as a sign of intent. Prosecutors often use the expression “pattern of wrongdoing” to describe criminal behavior. But equating repetition with a pattern of wrongdoing would be a mistake.

If someone repeatedly does the wrong thing, does that mean they intend to do the wrong thing? Hopefully, everyone agrees that repeating a noncompliant act again and again is not by itself proof of intent. I've witnessed far more repeated mistakes than repeated intentional acts of wrongdoing. In fact, it was recently pointed out to me that I have been misusing a particular kitchen tool for many years without any malicious intent, but that's another matter entirely.

So, if repetition alone doesn't prove intent, what does? A variety of possibilities exist, including:

- Taking preparatory actions needed to carry out a scheme, where those actions would not be necessary for a legitimate action (e.g., setting up a shell company prior to using it to fraudulently transfer funds).
- Taking actions to conceal acts of wrongdoing (e.g., record alteration or destruction).
- Documented instances of the subject's awareness that they knew better, such as participation in training programs, signing off on policies and procedures, etc.
- Witnesses to discussions in which the subject acknowledged their wrongdoing.
- Witnesses who had pointed out to the subject that they were doing something incorrectly, only to see the subject continuing to violate the procedures.
- In cases in where the subject financially benefited from their noncompliant actions (e.g., bribery or hidden financial interests)—unexplained wealth.
- Finally, there's always the possibility of careless emails, texts, and instant messages that crooks seem to be vulnerable to.

This is only a partial list, and much of the strongest evidence of intent is circumstantial rather than direct. But, accusing someone of intentional wrongdoing based solely on their repeated noncompliant acts can backfire. First, look for other signs of intent.

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