

# VIII. Toward a Public Service Ethic

## Toward a Public Service Ethic

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There are those who think we bureaucrats are—or at least should be—an endangered species. My message tonight is that this is not true...it takes people to run government, inevitably a lot of people.

To do the job at all well requires professionalism, impartiality, strong ethical standards and a commitment to public service...our basic goal must be to restore public trust. We need a renewed sense of a public service ethic, a code of conduct that emphasizes again the priority of the public interest and dedication to the missions set by the Congress and the President.

Paul A. Volcker, Address to  
Washington Chapter of ASPA  
June 1997.

### **Introduction:**

The first several presidents, all of whom had been instrumental in founding the new nation, emphasized that public officials must be honest, capable, and faithful to the Constitution. They recognized that the democratic system demanded a certain amount of public spirit, honor, and commitment to justice on the part of those who served. Washington said that the appointment to office of a man who is unfriendly to the Constitution and laws derived from that document must be considered an “act of governmental suicide.” John Adams, the second president, said “...public virtue is the only Foundation of Republics...no republican government can last unless there is a positive Passion for the public good, the public interest, established in the Minds of the People...Superior to all private Passions.” Jefferson looked for rectitude, fitness of character, and allegiance to the Constitution. Those early leaders also applied these requirements to appointed administrators.

This desire for virtuous officials continued pretty much through the administration of John Q. Adams. Later, however, the criterion for selecting public servants through most of the 19<sup>th</sup> century was largely loyalty or contributions to the office holder, known as the “spoils” system. It has continued in one degree or another since, though there have been several actions designed to ensure that administrators would serve the public interest. In 1883 Congress passed the Civil Service Act (the Pendleton Act), which was designed to select and promote civil servants on the basis of merit, especially technical competence. Until lately, however, little emphasis has been placed on the ethical component of professional civil service.

In 1988 the White House perceived a serious loss of trust and confidence in government and a consequent “quiet crisis” in the civil service. The National Commission on the Public Service, chaired by Paul A. Volcker and Elliot Richardson, was appointed to examine the problem and recommend ways to enhance the prestige of public service. The report of the Commission concluded, among other things, that civil service was no longer an attractive career for many of our most talented youth. The Commission recommended a number of things that needed to be done to restore public trust in the Federal Government and, by association, the civil servants who administered the public policy. Many of the recommendations dealt with structural changes such as how the government is organized, the budget process, cutting red tape, personnel policies, and decentralization of decision making. In the end, it concluded, the test will be the restoration of public trust and this would require going beyond structural changes.

In an address to the Washington Area Chapter of the American Society of Public Administration in June 1997, Mr. Volcker called for the restoration of public confidence in the Civil Service. He went on to say “and it requires leadership and courage.... There are those opinion polls that indicate that trust and confidence in government are at a low point. Only 25 percent or so think government can be counted on to do the right thing most of the time. And we don’t need polls to confirm what we know in our daily lives: the drumbeat of complaints in the press, the sense of growing corruption of the political process, the relative lack of interest in public service by most college graduates.” Volcker discussed some of the causes of this lack of respect for government service, pointing out that a recent conference at Harvard came up with a list of over forty plausible hypotheses. Not the least of the causes is our historical resentment of central authority and the growth of programs run by the Federal Government, giving more targets at which to shoot. He acknowledged that there is a need for society to address those external causes to the crisis in public service. But, he said, we (civil servants) ought to focus on the things we professionals in the public service can do to remedy the decline in professionalism, commitment, and quality in the civil service itself, a matter over which we should be expert. He reiterated what the National Commission had said—our basic goal must be to restore public trust, and career civil servants must do their part.

*Arguably, the public’s loss of trust and confidence in government poses the greatest threat to our national security and well being. Nations cannot endure when the people can no longer trust their government to meet their needs.*

The people who crafted the Constitution (Framers) realized they were parting from the form of government that had dominated history—rule by an autocratic political elite, usually in close alliance with religious leaders. They knew that it was a gamble to put power in the hands of the people. As Alexander Hamilton put it in the first paragraph of Federalist 1:

**It has been frequently remarked that it seems to have been reserved to the people of this country, by their conduct and example, to decide the important question whether societies of men are really capable or not of establishing good government from reflection and choice, or whether they are forever destined to depend for their political constitutions on accident and force.**

Many of the Framers, like Hamilton, were skeptical of the ability of the people to make the right selection of people to run their government and to possess the necessary civic virtue to sacrifice for the common good. The Framers were also skeptical about the people who would be in government; would they have an ethic that emphasized public service over personal gain? In the end, they designed a Constitution that gave much freedom and power to the people and discretionary judgment to government officials, but they also provided safeguards in the way they structured the government. As Madison said, “if men were angels, there would be no need for government.” But since men are not angels, Madison concluded, “**ambition must be made to counteract ambition....In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place to control itself**” (Federalist 51). Notwithstanding the checks and balances and divided sovereignty they put in the government structure, they knew it would work only if the people possessed a certain level of **civic virtue** and government officials had a strong **public service ethic**.

### **Societal Values, Civic Virtues, and the Constitution:**

The Framers were concerned that the patriotism demonstrated during the long struggle for independence would evaporate in peacetime and people would resort to selfish, divisive behavior at odds with the common welfare. If that happened, the Framers feared, there would be a need to resort to a political system based on autocratic, imposed **political order** backed by force. They hoped, however, that common values and virtues that emphasized the common welfare and voluntary compliance with societal norms (**moral order**) would be instilled by the family, the schools, and religious organizations. The national government, of course, was to have no way to influence directly these institutions. As we know, they wanted religion separate from government and left responsibility for education to the States.

The Framers knew that social order in the new nation would be maintained by a blend of legal and moral order, but the philosophy underlying the Constitution emphasized moral order. “The least government is the best government” summarizes this philosophy, which is still the dominant view in this country. Individual freedom and privacy (except, of course, for slaves and native Americans) was the bedrock of the original Constitution and they took measures to protect those rights from government intrusion. Sections nine and ten of Article I, the first ten amendments, and several subsequent amendments focus on a guarantee that government will not infringe on those freedoms. This philosophy implies that social order is best left to the people and as a result, the Constitution says little about specific values. The Framers realized the nation would be a diverse mixture of ethnic groups, religions, and cultures; specific values were left to the people to decide. The philosophy of individual freedom and “least government,” however, works *only* if individual freedom does not infringe on the “common good.” The common good is implied in such words in the Preamble as “to form a more perfect Union establish Justice, insure domestic Tranquility...promote the general Welfare and secure the Blessings of Liberty.” These abstract values emphasizing the common good are often in conflict with individual freedom and these conflicts can have far-reaching implications.

### **Societal Values, The Constitutional Process, and Government Activities.**

In addition to the cited fundamental substantive values, the Constitution established a **process** for the people to express their “will.” The process itself reflects a fundamental value (giving power to the people), and is perhaps the most important of all the values expressed in the Constitution, because it establishes procedures for transforming the people’s values into government action. The process goes something like this: The values of a society tend to crystallize into a “public philosophy” that reflects the will of the people regarding what they want their society to be and the government’s role in shaping that society. This philosophy leads to the election of representatives, who presumably share that philosophy and develop public policy to reflect the people’s “will.” This policy is then translated into legislative acts. Government Agencies then establish rules, regulations, and administrative laws to carry out the legislation. Administrators then implement those rules, regulations, and laws. Each step in this process, theoretically, represents the “will of the people.”

At each step of this complex process, however, there are “contaminating variables” and room for judgment about what the public “will” is. Individual values and beliefs about what is in the public interest often differ. Moreover, the end product must conform to the values and process set forth in the Constitution. There are, as we know, differences as to what the Constitution means, with the Supreme Court through judicial review having the final say on this matter. All in all, the process has the potential of producing results that the people do not believe represents their interests. When the people no longer have trust and confidence that the process is meeting their needs, there is a constitutional crisis.

Much of the problem in determining what is in the public interest lies in the conflicting societal values themselves. The dominant individualistic values in economic, political, social, and religious matters are often in conflict with the values of justice, equity, general welfare, etc., which are also American values. At the core of individualism is the belief that each individual is responsible for his/her own welfare, as long as there are no discriminatory legal restrictions. However, the Government is often called on to intervene to balance individualism with the Preamble's competing values to "establish Justice," "promote the general Welfare," and "insure domestic Tranquility." The judicial system determines if these interventions are in accord with the Constitution. In general, the Constitution, largely defined by court decisions, says that individual freedom can be infringed only if there is a compelling government interest to secure the common good. Obviously, this is an ambiguous criterion. The "common good" is often defined according to one's own value system or political philosophy. Perhaps the most significant current difference between the two major political parties is the role of government in "establishing justice" and "promoting the general welfare." Moreover, the Constitution is a secular document, calling for rational analysis of controversial issues, while many of the conflicting values (such as abortion, assisted suicide, and prayer in schools) are based, at least in part, on religious beliefs. While rational analysis and religion are not necessarily incompatible, they often are, leading to discord.

As the Volcker Commission pointed out, there is a strong antipathy in this country to "big government." For many years after the founding of the republic, the Federal government was small and affected the public very little in a direct and visible way, since its basic purpose was to provide national defense, conduct foreign policy, and regulate commerce. As Government involvement in everyday life has grown over the years (at the insistence, incidentally, of the voting public), political rhetoric criticizing the "bureaucrats in Washington" has become the stock in trade of those who want to be elected. President Carter increased the bashing and President Reagan raised it several decibels. It is now standard political fare. While this is grist for the mill for politicians of both parties, there are real differences between the two parties regarding the role of government. Democrats generally believe in fostering national community and see a more active role for the Federal Government in "promoting the general welfare." Republicans favor the private sector for providing services to the people and if government is to be involved, it should be at the State or local level.

In sum, the Constitution established a political process within which the people can solve their problems in a peaceful, civil manner. It contains general values, deliberately avoiding specific answers to how people will live. It leaves to the people the freedom to evolve the societal values they choose within the **framework of the** constitutional guidelines. As much as possible, the framers wanted the people to solve their problems without involving the government. When this cannot be done, the political system allows the people to say how they want the government to intervene, as long as the solutions conform to the general guidelines of the Constitution.

## **The Public Service Ethic:**

The role of the government, and thus the civil servant, is to help manage the constitutional process for the benefit of the people. This must be done in a manner that maintains the trust and confidence of the public. The abstract values and the complex political process for resolving societal value conflicts, however, leave public administrators with some discretion in carrying out their duties. In exercising this discretion—and in trying to be faithful to our constitutional oath—they face many ethical challenges. As government administrators, they live in a world where their personal values, organizational values, and professional values may compete with their obligations to the constitutional process. It is sometimes difficult to separate what the Constitution requires from competing value-sets. What are the ethical implications for the civil servant? Just what are the ethical obligations in executing our oath of office? These ethical implications go beyond just being “honest.”

**Personal Conduct:** Government officials, whether they are elected, appointed, or career civil servants, pledge to uphold the trust and confidence of the public. Is there a set of values, other than those each brings to our job, which can be said to represent a civil service profession?<sup>271</sup> At the core of any value system, of course, is the concept of honor, at the heart of which is honesty and trustworthiness in all interpersonal relations. This applies to the relationship with colleagues within the government and with the public, which we serve. Trust and confidence of the public is essential for effective government. If this trust is eroded, we are less effective; if it is destroyed, the nation is in peril. As the noted author Sissela Bok puts it:

**Trust is a social good to be protected just as much as the air we breath or the water we drink. When it is damaged, the community as a whole suffers; and when it is destroyed, societies falter and collapse.**

**...Trust and integrity are precious resources, easily squandered, hard to regain.”**

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<sup>271</sup> By profession we mean a body of people who provide expert, trustworthy, service—requiring special education and training—to the public. The group must have corporate cohesion based on shared values and a code of behavior accepted by individual members. Members, individually and collectively, have a duty to ensure that all members are competent in the service they provide and that they are trustworthy in their relationships with their colleagues and the public. Implicit in this duty is the non-toleration of incompetence and unethical behavior of colleagues. This, of course, imposes ethical obligations that go beyond those of ordinary citizens.

Lying, Sissela Bok, 1978, p. 28.

We can all agree on the need for honor in our interpersonal relations, but this is not so simple in the real world of bureaucratic politics. For example, open, honest communication within an organization may be officially espoused, but the informal organizational culture may not reflect those official values (especially during budget battles and dealings with other perceived adversaries such as the media and Congress). This is often rationalized by pointing out that the perceived adversaries are less than forthright and one must respond in kind. This kind of thinking is reflected in “bureaucratic hardball.” With respect to values conflict within the organization, e.g., “killing the messenger of bad news,” standing firm for one’s personal values, even when it reflects loyal dissent, may entail personal cost.

**Policy Decisions and Values:** Honesty and trust are at the heart of interpersonal relations and personal conduct and while these are also critical in policy making, other values have to do with what is best for the public we serve. The constitutional process involves values at every step of converting public interests into government programs. People can honestly differ on their concepts of the public interest. The civil servant is faced with a choice of where to look, other than to one’s own set of values, for the values that will guide his/her actions in resolving these dilemmas. Professional codes are one source.

The differing philosophies/values about the role of government in regulating behavior, which come into play at each step of the political process, impact on the civil servant in several ways. Government agencies, particularly those providing such services as health, education, welfare, or equal opportunity which involve “distributing justice,” may come under pressure in a Republican Administration or from a Republican Congress, since that party tends to favor the private sector for such services. Outright elimination of certain agencies or programs is always an option.<sup>272</sup> On the other hand the civil servant may see a duty to protect the public from programs that waste taxpayers’ money, promote a “welfare mentality” that destroys individual initiative, or unfairly favor certain elements of society through preferential treatment. Nothing in what has been said here should be taken to endorse either philosophical view; rather, it is merely to point out a dynamic of which civil servants in policymaking positions need be aware. They sometimes get caught in the middle and need guidelines to assist in carrying out their oath of office.

One needs only to look at economic activity to see how government intervention divides on philosophical grounds. Until industrialization occurred, there was little government intrusion in economic activity. Laissez-faire capitalism was the guiding economic philosophy. Although many business practices clearly were not in the public interest, there was a hands-off attitude for a long time. It was only when there was strong

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<sup>272</sup> Some argue that the Government Performance and Results Act has been used to reduce or eliminate programs when a direct attack fails.

public protest that the government stepped in to regulate economic affairs. Even then, the regulations were rarely enforced and when enforcement was attempted, the Supreme Court declared several of the laws to be unconstitutional. It was not until the late 1930s that the Court opened up government regulation to any extent. Since then, the regulation of economic activities has expanded from anti-trust legislation to labor laws, advertising, safety, equal opportunity, and a myriad of other areas. There is a sharp difference among the political parties, and the public, on how far the government should go in this regard.

Government has also become heavily involved with "social issues." Connecticut banned the sale and use of contraceptives, even among married couples. Was this an unconstitutional infringement of private behavior? The Supreme Court in **Griswold v. Connecticut** (1965) said yes. Later, Texas banned certain abortions. Was this an unwarranted intrusion in private behavior? The Supreme Court, in **Roe v. Wade**, said yes. As we know, these issues are very controversial. Prayer in the schools is another controversial issue, illustrating the tension between religious beliefs and the separation of church and state.

The easy solution for the career civil servant is to look only at the terminal output of the process as determined by his/her immediate supervisor. If the policy is legal, as determined by the legal counsel of the agency, the official executes the policy, regardless of her/his personal values and beliefs about the public interest. After all, the people have spoken through the election process, and the elected people speak for the public until the next election. "Theirs is not to reason why, but to do or die," a traditional military dictum, sums this view of loyalty. In the extreme, it reflects the Nuremberg defense of German officials tried for war crimes. "They were just following orders."

Others see the ethical obligation of civil servants to be different from that described above. They argue that career civil servants are more than automatons who blindly carry out policy without question. This view suggests civil servants have a professional ethical obligation to question policy through loyal dissent, jumping channels, and/or whistle blowing. According to this view, civil servants have an ethical obligation to serve the public interest as defined by the Constitution (as they understand it) and that interest may not be reflected in the policies of their agency, the administration, Congress, the Courts, or any other segment of the process. Even Supreme Court decisions are influenced by personal ideology, religious beliefs, and a perception of the public philosophy, so why shouldn't the career civil servant have a right to say what is in the public interest?

Those who support the second concept of public service acknowledge that it opens the door to zealots who have their own personal beliefs which may be contrary to the "public interest." Personal philosophy may be based on other than rational thought, or represent one's own self interest. Carried to the extreme, this can lead to anarchy within government agencies. On such controversial matters as abortion, prayer in schools, sexual orientation, affirmative action, or any other number of emotional issues, personal values may be based largely on non-rational thought. How far one goes in

advancing his/her own personal values is a matter of discretion. For example, recent revelations indicate senior officials knew very early that the Vietnam War was a mistake; yet, the American people were not informed of that and tens of thousands of young men died while the American people were kept in the dark. Daniel Ellsberg evidently believed the public had a right to know and “leaked” the secret Pentagon Papers that alerted the people. Was he disloyal, or did he have a moral obligation to inform the people? Oliver North insisted that his defiance of legislation and his lying to Congress about support for the Contras in Nicaragua were in the “public interest.” While it is difficult for one to know the validity of his/her convictions, the civil servant has an obligation to be as objective as possible in making policy.

The consensus of Public Administration scholars seems to come down in the middle. Certainly one should not be an automaton who carries out policy without question. One does have a moral obligation to speak up when he/she has serious question as to the moral consequences of a given policy. How far one goes in this “loyal dissent” depends on many factors. Thus, there is a continuum: on one end we are asked to do what is asked as long as it is legal. On the other end, we become the arbiters of what we think the Constitutional oath demands, perhaps irrespective of what elected officials decide.

As a general statement, a civil servant, after providing loyal dissent, has a **prima facie** duty to follow the policy of legitimate authority as long as the policy is legal. This prima facie obligation may be overridden in special circumstances, but the burden of prove is on the individual, especially if it involves whistle blowing. To assist in handling such dilemmas, some guidelines for loyal dissent (enclosure 1) and whistleblowing (enclosure 2) are provided.

### **Ethical Codes of Conduct for the Civil Service:**

An ethical/moral code is a set of norms/standards of conduct that reflects the values shared by a group of people; it “operationalizes” the group’s shared values. If the civil service is to qualify as a profession as defined in the footnote on page six, it must have an ethical code that guides the behavior of its members. The code may be written or unwritten, but is usually a combination. Professional and religious organizations usually have written codes, although these organizations also have many unwritten norms of behavior. Written codes may involve sanctions to ensure compliance, or they may merely serve the purpose of clarifying norms of expected behavior. In the case of some professional codes, they are largely *proscriptive* and approach the status of legalistic documents, enumerating what is legally prohibited. There are several documents that one might consider in defining a set of standards of conduct for the civil servant.

In 1978, Congress passed the Ethics in Government Act to “preserve and promote the integrity of public officials and institutions” of the Federal government. The Code of Ethics for Federal Employees was published to complement that legislation. Most of

these standards listed in this code, however, focus on proscriptions against illegal acts punishable by law. The American Society for Public Administration (ASPA) has also published principles for public administrators and a code of ethics, Standards and Ethics in the 21<sup>st</sup> Century, that reflects those principles. These principles, and the code, are stated in a more aspirational and positive way than the standards in the official government employees' code. The Council for Excellence in Government has also published Ethical Principles for Public Officials that is also stated in aspirational and positive terms. In essence, these documents advocate the basic virtues of moral rectitude, honesty, trustworthiness, etc., and putting public service above private gain. The overarching value is loyalty to the Constitution and the democratic process. As we have seen in the foregoing discussion, this is a complex loyalty.

Publication of ethical principles and codes, even when stated in aspirational and ideal terms, are of little value unless they are internalized by members and institutionalized in the organization. Research shows that ethical codes are rarely internalized unless accompanied by frequent discussion (seminars) of ethical principles in small groups with the use of case studies based on real events in the workplace of the discussants. Therefore, managers should establish an ethical development program that employs such techniques if they want to have an effective program. This requires identification and training of discussion leaders and allocation of time to conduct the seminars.

### **Civil Service Education in Ethics:**

Congress passed the Civil Service Act in 1883 to improve professionalism in the federal workforce. However, no provisions were made for education of civil servants, as the military had done with the establishment of the military academies at West Point and Annapolis. Two Hoover commissions, one in 1949 and another in 1953, recommended steps to improve professionalism, to include a systematic educational system. Congress passed the Government Education and Training Act in 1954, but education and training for civil servants has still lagged far behind the military.

Efforts to improve the performance of federal civil servants have generally focused on technical competence and managerial skills and it was not until recently that the education of civil servants in their ethical obligations was taken seriously. Even now, little has been done in the way of developing the "virtues" cited by the Founding Fathers and more recently by Paul Volcker and others. Federal employees are required to attend one hour of "ethics" training annually, but this is usually a perfunctory session where someone, usually a lawyer, reviews the legalistic "standards." While this may be of some value, it does not address the aspirational virtues of a true professional ethic.

## Ethical Studies:

The professional obligation to support the content and process of the Constitution would be clear if everyone were in accord about the meaning of those features. However, we know there is sharp disagreement on the interpretation of the content, and even the process of resolving the disagreements. The Constitution itself is not a static document; rather it is a work in progress, for as Thomas Jefferson said, every generation reinvents the Constitution. Even the meanings of the terms in the Preamble, as well as other provisions of the main body, are subject to this reinvention. There are complex and elaborate processes for this reinvention. One process involves the everyday process where societal values, through elected representatives, are translated into action programs. The Supreme Court is the final arbiter of whether this process has conformed to the provisions of the Constitution and whether or not a more formal means of reinvention, i.e., amendment, is required. Obviously, this presents a dilemma for career administrators who may have different values and interpretations than those held by society, their agency, their superiors, Congress, and/or the Supreme Court. There are also honest differences about how to resolve these conflicts. These differences create ethical dilemmas about how to be faithful to one's oath. **The important thing to remember is that the Constitution is the standard reference, both in its content and process, for resolving differences in a peaceful manner.**

**Ethical Temptations versus Ethical Dilemmas.** Some ethical decisions involve tough choices between doing what is right and the personal costs associated with those decisions. One is often asked to pay a high price for standing up for what is right. Situations where the choice is clearly between right and wrong present what Rush Kidder calls "**moral temptations.**"<sup>273</sup> One knows what is right, but is tempted to choose unethical behavior because of expediency. Many, but not all, of personal conduct decisions involve moral temptations. Being the bearer of bad news to a boss who "kills messengers" may clearly be the right thing to do, but carries a heavy personal cost. Padding travel vouchers may be tempting to "make up for low pay", but it violates basic honesty. Legal rules and the basic value of honesty are helpful in these kinds of decisions.

Other situations involve a genuine dilemma—a choice where what is right is a matter of judgment. In policy matters, there may be no clear-cut answers of right or wrong. Consequences may not be clear, all the facts may not be available, and the situation itself may involve conflicting principles, e.g., favoring welfare programs while avoiding the creation of a "welfare mentality," supporting Aid For Dependent Children without condoning children out of wedlock. Kidder calls these sorts of choices "**moral dilemmas.**" That is why it is important to understand the constitutional process and one's oath to respect that process. People differ in what they believe to be "right" on many of the issues in public policy.

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273 Kidder, R.M., How Good People Make Tough Choices, NY: Simon and Schuster, 1995.

Nevertheless, senior officials should:

1. Consider the ethical dimension in all their actions and decisions
2. Maintain an ethical climate in their organization by:
  - a. Setting the example
  - b. Articulating values and norms of behavior
  - c. Rewarding ethical behavior and punishing unethical behavior
  - d. Non-tolerating unethical behavior by colleagues, whether they are superiors, peers, or subordinates<sup>274</sup>
3. Always put public service above personal gain
4. When making, or influencing, policy, be objective and rational, avoiding ideological dogma

**Summary:**

Trust and confidence of the American people in their government is critical to the welfare and survival of this nation as a democratic society. Gaining and maintaining that trust and confidence is perhaps the most important duty of each civil servant. Every act, whether it be personal conduct or influencing policy, impacts on that trust. Many factors that influence people's perception of their government are beyond our control, but what each of us does in our daily work and lives contributes to that perception for better or worse. Much of ethical behavior involves situations where the choice is clearly between right and wrong, but where it is often tempting to choose the convenient path for selfish reasons. The choices one makes about these moral "temptations" will reflect one's basic values of honesty. These basic values are part of one's personality and can be influenced little at this stage of life. The most one can do is reflect on the duty to be above reproach. "Moral dilemmas" are another matter. These situations are complex and require a well-developed moral decision-making calculus that requires understanding of one's

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<sup>4</sup> Non-toleration does not necessarily involve formal action. It can be nothing more than speaking to a colleague about something that bothers you. One of the most effective ways to give feedback is through discussion of case studies in seminars. This method has the advantage of "non-tolerating" without direct confrontation while at the same time sensitizing people to behaviors of which they may have been unaware.

constitutional oath and the process that the Constitution established for the people to solve their problems.

The higher one goes in the system, the greater the obligation to set the example and be above reproach. We have all seen the costs when senior officials breach trust. As someone has said, **“for if gold rusts, what can you expect of iron.”** And as Shakespeare said, **“to thine own self be true.”**

Enclosure 1

## **Guidelines for Loyal Dissent in Government**

As a career civil servant, you have a professional obligation to stand on principle in your policymaking role. Even as a relatively junior member, you will have occasion to provide input on policy matters. There will be times when you find that you differ with your superiors; these differences may be on opinions about how best to implement a policy, or they may involve different beliefs about what policy should be. You may believe that you know best what is good for the country, what Congress intends by a given piece of legislation, or what the current administration's policy is. The difference may involve a question of what is ethical. Whatever the reason for differences, you should have the moral courage to give your honest opinion; indeed, I believe your oath of office imposes an ethical **obligation** to do so. This is a delicate matter, because even the most understanding superiors can tire of people who "fight the problem".

1. Choose your issues carefully. Dissent tries the patience of superiors. Use your credits for dissent judiciously. Some criteria in choosing issues:

- a. How important is it?
- b. What are your chances of success?
- c. What are the costs to your career and family in challenging my superiors?
- d. Do I have a moral responsibility to challenge?

2. Do your homework and think it over! Do not shoot from the hip every time you disagree with a position taken by your superiors.

3. Clearly take ownership for your dissent.

4. Don't personalize the challenge; focus on the issue. Remember that reasonable people can honestly differ, sometimes with strong conviction, on issues.

5. Be objective and balanced in your analysis of the issue. Each of us is a product of our own unique experiences and we view the world based on those experiences. Try to put yourself in the shoes of the opposition, remembering that higher officials tend to view issues in a broader context.

6. Don't paint your superiors into a corner by challenging their judgment in public (or at a staff meeting unless the superior asks for a discussion of the issue), especially if they have taken a public stance.

7. Do not expect radical change in opposing views.

8. Know your boss. What are his/her central values and does the issue at hand relate to those central values? If so, change will be difficult.

9. Provide alternatives to the position you are challenging, i.e., don't be merely negative.

10. Choose your time to challenge. In general, try to get your oar in the water before a position has been announced.

11. Recognize when you have pushed to the limit. Bosses differ in their tolerance of dissent, even when it is loyal.

12. Always remember that you may be wrong; you may even be ideologically biased.

13. Accept defeat graciously, i.e., don't pout. On the other hand, if you cannot live with the decision from a moral standpoint, you have the option of going to higher authority, or ultimately resigning. (You may also feel justified in contacting congress, interest groups, or the media. This **may** be loyal dissent in some instances, but it is often called "whistleblowing" and is judged by different criteria than what I am calling loyal dissent. Whistleblowing is discussed in enclosure 2)

\*These guidelines are stated with the full knowledge that many lectures on ethics will urge subordinates to "always speak their piece" regardless of consequences. Often, seniors who offer such inspirational rhetoric to others would not be in their positions if they had followed such advice. This is not to suggest that one should let expediency be the dominant factor in governing his/her behavior; rather, it is to recognize consequences in the real world of bureaucratic behavior. Personally, I have found that some who strongly emphasized the need for subordinates to "speak their piece" were in fact the most intolerant of dissent.

## Enclosure 2

### Whistle Blowing in Government

Some of the most difficult ethical choices one can face in discharging one's oath of office are situations where the public's right to know override loyalty to the employee's organization and chain of authority. Going outside the organization in exposing policies or practices is commonly referred to as "whistle blowing". While some forms of whistle blowing may be classified as "loyal dissent", this form of dissent is best treated as a separate category, as will be shown in the following discussion.

During the Vietnam War, a government employee, Daniel Ellsberg, objected to U.S. policy. In a memo he prepared for the National Security Advisor to be given to President Nixon, he included withdrawal as one of the three policy options. The NSA deleted that option in the memo that went to the president. Although Ellsberg argued strongly that this option should be presented to the president, he did not go public with his dissent. Later, when he was working in the Pentagon on what came to be known as "The Pentagon Papers", Ellsberg became convinced that the war could not be won and that senior officials knew this. And yet, this knowledge was being withheld from the American Public. Ellsberg copied Top Secret documents and "leaked" them to the press. As we now know from books written by the senior players in the Pentagon, e.g., McNamara, Ellsberg's views were vindicated. A 1998 book by McMasters, Dereliction of Duty, castigates those officials who kept facts from the public while continuing to send young men to their deaths. Ellsberg was persona non grata in the government and in society at large.

When the Army decided to replace its M113 Armored Personnel Carrier (a vehicle designed to carry soldiers from one site to another where they would disembark to fight on foot), they developed the Infantry Fighting Vehicle (Bradley). This vehicle originally was designed to fight alongside tanks, with soldiers remaining at times to fire from ports in the vehicle. An Air Force colonel in the Office of the Secretary of Defense, who was charged with monitoring certain weapons research and development, was convinced that the vehicle, as designed, was a "rolling coffin". He cited placement of fuel tanks and ammunition; and armor composition and thickness as examples. He was unsuccessful in getting the Army to conduct live-fire tests to expose these weaknesses. He made these concerns known to congress, which led to live-fire tests and significant modifications to correct the flaws exposed by the tests. Also, the doctrinal role of the Bradley, with respect to fighting "alongside tanks", was modified to be a "stand off" vehicle. The colonel was persona non grata in the Pentagon.

Obfuscation and cover-up clouded the well-known case of the Challenger space vehicle disaster, even though the facts are now quite well established.

Engineers at Thiokol warned against the dangers of launching in cold weather (they had had trouble with the “O Rings” even at 53 degrees; the Challenger launch was at 29 Degrees). The two engineers who argued against the launch and made calls outside the chain of authority the night before seeking to delay the launch, were demoted (Thiokol was later forced to re-instate them, although they were never accepted as “team players” and one quit the company because of the stress).

The cases cited above are just a sample of instances in which federal and private professional employees are faced with the moral dilemma of loyalty to their superiors and loyalty to the American people. Of course, the officials who declared the whistle blowers *persona non grata* will give a different version of events. Rarely are these situations clear as to facts. When one decides to go public, he/she must go through a deliberate decision making process and weigh many factors, such as those discussed in the paper “Guidelines for Loyal Dissent in Government” (Guidelines). But the employee must also be prepared to face retribution, notwithstanding the Whistle-Blowing legislation passed by Congress to protect such people. In general, whistle blowers, regardless of the validity of their case, are never trusted by the organization and are generally unwelcome in other organizations.

While acknowledging the need for protection of whistle blowers, Weston<sup>275</sup> offers the following factors that have to be taken into account in framing such public policy as represented by the Whistle-Blowing Act:

7. Not all whistle blowers are correct in what they allege to be the facts of management’s conduct, and determining the accuracy of whistle-blowing charges is not always easy.
8. There is always the danger that incompetent or inadequately performing employees will take up the whistle to avoid facing justified personnel sanctions.
9. Employees can choose some ways of blowing the whistle that would be unacceptably disruptive, regardless of the merits of their protest.
10. Some whistle blowers are not protesting unlawful or unsafe behavior but social policies by management that the employee considers unwise.

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<sup>275</sup> Alan Westin, *Whistle Blowing: Loyalty and Dissent in the Corporation*, (New York: McGraw-Hill, 1981).

- 11. The legal definitions of what constitutes a safe product, danger to health, or improper treatment of employees are often far from clear or certain.**
- 12. The efficiency and flexibility of personnel administration could be threatened by the creation of legal rights to dissent and legalized review systems.**
- 13. There can be risks to the desirable autonomy of the private sector in expanding government authority too deeply into internal business policies.**

**It is clear that whistle blowing is an activity that should not be undertaken lightly. Not only is it hazardous to one's well being, it may do a disservice to the public. Having said that, I believe that a public servant is morally justified in blowing the whistle under certain circumstances. If you are convinced that a policy or activity poses a significant threat to the public's interests and welfare, you should report it to your immediate supervisor. If your immediate supervisor does not satisfy the concern, you should take the matter up the chain to exhaust the procedures in the organization. This may require that you alienate your immediate and intermediate supervisors. Only when you have exhausted internal procedures are you morally justified in taking your concern outside the organization, even to Congress. You are not morally required to go outside the organization if these steps fail. Depending on the seriousness of the issue and the level of evidence you have, you have moral discretion in this matter. Review the Guidelines for assistance in making such a decision**

**When are you morally obligated to go outside your organization to expose policy or practices? I believe your oath of office and professional duty places a moral obligation on you to blow the whistle if the following conditions are met:**

- 1. You have documented evidence that would convince an impartial, reasonable person of your point of view.**
- 2. The policy or practice poses a serious threat to the public's interests or welfare.**
- 3. You have good reason to believe that by going public you will be successful in changing the policy or activity (as pointed out in the Guidelines, you must balance the risks you take against the likelihood of success and the seriousness of the issue).**

The standards for morally justified whistle blowing are quite naturally less stringent than those that require the action. Many factors must be taken into account in your decision-making calculus. People will have honest differences of opinion on each specific issue. One difference concerns the practice of taking your complaint to Congress. Is this whistle blowing, or is it within the boundaries of loyal dissent. One can argue that the oath of office is to the constitutional process and that elected representatives are entitled to full disclosure of everything the executive branch does. Personally, I endorse that view, but am aware it is not widely shared in the executive branch.

Whistle blowing is a difficult issue. Each person must weigh carefully the pros and cons of complex, ambiguous, uncertain factors. And yet, there comes a time when moral courage is required even if the costs are high. In making this decision, you might consider the attached summary of research on whistle blowers' experiences.

## Attachment to Enclosure 2

### Whistleblowing Experiences<sup>276</sup>

When employees publicly reveal hazardous, illegal, or fraudulent problems in their organizations, what can they expect? Although their colleagues, the public, and the press may applaud their revelations and their honesty, company management typically has a different reaction.

**Why do people risk corporate wrath—which can include harassment, blackballing, intimidation, being transferred to jobs with less pay and status, loss of promotions, demotion, or even termination—and blow the whistle on mismanagement, corruption, and dishonesty?**

**A recent survey of 55 Whistleblowers, all with excellent employment records, found that their main motivation was a strong sense of responsibility and accountability, believing that if a system is unethical or corrupt the individual has to make a moral decision to be a part of it or not to be a part of it. The survey also found that whistleblowers often feel an ethical commitment to internal values, religious morals, or community bonds which drive their decisions to make a public disclosure. They make a decision not to go along and to accept the personal price they will most likely pay.**

What advice do those who have lived through this experience give those who are considering whistleblowing?

- Find out what it takes to be a successful whistleblower**
  
- Find out the possible consequences in terms of your career, friendships, and health; and determine if you can cope with them and how you will cope.**
  
- Never act from an emotional or hasty response to an event**
  
- Go through channels first**
  
- Do not make the mistake of thinking that if the person in charge only knew what was going on it would be fixed or resolved**

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<sup>276</sup> From Myron P. Glazer and Penina M. Glazer's Whistleblowing in Psychology Today. August, 1986.

**-Never make an accusation without complete documentation and unless you are prepared to go all the way**

**-Be prepared to be attacked, criticized, or embarrassed**

**-Do not threaten to go to the media, Congress, etc., unless you are really prepared to do so**

**-Rally your family support. What you are undertaking will affect not only you, your career, and your finances; it will affect the well being of each family member.**

What about the psychological stress reactions most Whistleblowers experience?  
Here are the most common stages:

- 1. Discovery. Denial followed by anger, shock, and a feeling of betrayal are experienced by the employee who discovers the corporate problem or mismanagement.**
- 2. Reflection. The employee weighs the costs and benefits of speaking out. This stage is often accompanied by fear, anxiety, tension, and obsession with the dilemma.**
- 3. Confrontation. Once the decision to act is made, fears about being found out or about retaliation are common.**
- 4. Retaliation. Most retaliation is designed to discredit the Whistleblower or to coerce him into retracting or withdrawing his accusation. The reality of retaliation is much harder to live with than the anticipation of it. This stage can be accompanied by feelings of regret and isolation.**
- 5. The long haul. It may take months or years before a resolution of the case. In the meantime the Whistleblower has to devote considerable time, energy, and often expense to proving his accusation. Usually, when it is finally resolved there is a period of relief and a final feeling of closure.**