William P. Hobby Distinguished Lecture:
Fostering Integrity in Public Service

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Alan Bojorquez, April 7, 2017

*"Always do right—this will gratify some and
astonish the rest."* — Mark Twain

Introduction. This paper was prepared for presentation at a conference entitled "Meeting the Ethical and Political Challenges of the Next Decade." That is a lofty moniker for a one-day seminar. Nevertheless, I applaud the organizers for addressing the ethical state of affairs and pray this gathering is a good start to a longer process for each public manager in attendance.

As a municipal lawyer, I'm often introduced at seminars as someone adept at keeping city officials out of trouble. I'm proud of that characterization, as it has spawned a successful career and a thriving law practice. But this message is about more than avoiding jail. I'm hoping to do more than help you stay out of trouble. Together, let's strive to do more than the moral minimum.

The purpose of this material is to aid you on your journey to become an ethical public servant and to provide you with information that is helpful in cultivating an ethical environment at your agency. I hope to give you an intellectual foundation and framework so that you can go forth to help your team build an organization of which your constituents can be proud.

*"What we see depends mainly on what we
look for."* — Sir John Lubbock

If it Bleeds, It Leads.   Divert your gaze from Texas, just briefly, to look at our neighbor to the west. Note the headlines:

- *Corruption, cronyism stifle NM economy* — ALBUQUERQUE JOURNAL
- *Can New Mexico Break Its Cycle of Corruption?* — GOVERNING
- *2015 was a year of political scandal in New Mexico* — SANTA FE NEW MEXICAN

Does anyone doubt similar headlines can be found regarding our own Texas institutions?

- *State Legislators Talk about Ethics Reform Bill* — DAILY TEXAN

- *Will Texas lawmakers toughen the ethics rules governing themselves?* — AUSTIN AMERICAN STATESMAN
- *Texas ethics reform bill marks progress but doesn't touch dark money* — DALLAS MORNING NEWS
- *In Texas, a Collapse of Ethics Reform* — TEXAS TRIBUNE
- *Why Is Public Corruption So Common in South Texas?* — GOVERNING
- *Texas Has a Corruption Problem* — NATIONAL REVIEW
- *The FBI just arrested almost all of this Texas town's leaders* — WASHINGTON POST

Is this a state problem, or an American problem? In 2015, the Pew Research Center affirmed that the public's trust in the federal government was at a historically low level: only 19% of Americans stated they trusted the government in Washington to do what is right. The downward spiral of public trust began in the 1960s with just a few upward spikes, those being brief periods in the 1980s and post-9/11.[1] A 2016 Gallop Poll revealed that Americans' trust in their political leaders and in the American people themselves to make political decisions continues to decline. The percentages trusting the American people (56%) and political leaders (42%) are down roughly 20 percentage points since 2004.[2]

> *"Few men have virtue to withstand the highest bidder."* — George Washington

Erosion of Trust. Headlines highlighting ethical lapses can be effective in selling newspapers. While such coverage by the dutiful press is helpful in empowering citizens to hold their servants accountable, the sensational manner in which the news is sometimes conveyed can have a harmful effect on the public's trust in general (not necessarily limited to the actors being accused in the articles). So we, as public servants, should strive not only to avoid acts that degrade the public's confidence, but should also take steps to bolster citizens' faith.

The perception that government actors are unethical is damaging. Ethical problems in government include fraud, waste, abuse of government funds, abuse of the public trust, improper acceptance of gifts for political favors, and failure to disclose conflicts of interest. Some government employees use their positions and the services they deliver to the public as vehicles for personal gain and increased power, manipulating the system for maximum benefit to themselves, family, friends, or business associates.[3]

> *"The time is always right to do what is right."* — Martin Luther King, Jr.

Trust Matters. Because we in public service draw our power from the consent of the governed, the element of trust is vital. Public trust in government is an essential ingredient for a vibrant democracy. Ethical behavior—which includes respect for citizens, the promotion of democratic values such as citizen participation in governance, and commitment to the rule of law—is of paramount importance. Service, ethics, and trust are interconnected values that influence the

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[1] http://www.people-press.org/2015/11/23/1-trust-in-government-1958-2015/ (Nov. 23, 2015).

[2] http://www.gallup.com/poll/195716/americans-trust-political-leaders-public-new-lows.aspx.

[3] Weitz, Jerry, *The Ethical Planning Practitioner*, American Planning Association (2015), citing Steinberg and Austern 1990).

language we use in public administration.[4] Regardless of whether you work for a service agency or regulatory agency, you should hope to provide citizens with peace of mind, and that confidence depends on trust.

The behavior of those who deliver public services is an important factor for citizens' trust, support, and participation in government. Ethical, effective, and equitable public services tend to inspire public trust. That trust facilitates collaboration and a sense of partnership that must exist between public servants and citizens to achieve good governance. Citizens expect public servants to pursue the public interest and manage public resources for the common good. When it comes to ethics, the expectation is that public servants will do more than what is publicly required and less than what may be privately permissible.

> *"Ethics are a code of values which guide our choices and actions and determine the purpose and course of our lives."*
> — Ayn Rand

What is "Ethics"? In order to proceed, we need a good working understanding of what we're talking about. "Ethics" refers to well-based standards of right and wrong that prescribe what humans ought to do, usually in terms of duties, principles, specific virtues, or benefits to society.[5] We can break the term down into three companion definitions:

(1) Ethics are the moral guide we choose for our behavior. They are the sum of the ideas, experiences, information, and beliefs that guide us toward doing whatever we believe to be the next right thing.
(2) Ethics are the rules we choose to follow even when no one is looking. In other words, ethics are not the rules; rather, ethics are what we chose to do with the rules.
(3) Ethics are our internal moral compass.[6]

> *"Action indeed is the sole medium of expression for ethics."*
> — Jane Addams

Conduct, not Thoughts. Ethics is about actions. *Behavior*. It's not about thoughts. I recall my favorite president, Jimmy Carter, and his comments to *Playboy* magazine in 1976, while he was still a presidential candidate, about "having committed adultery in my heart many times" because he had looked lustfully at women other than his wife. When we engage in a dialogue about ethics, we are addressing conduct. What you did. What you should do. Not what you contemplated.

Basis for Ethics. For some, ethical standards may seem arbitrary and fashioned of thin air. For others, they are purely relative in a random *in the eye of the beholder... I know it when I see it*

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[4] Menzel, Donald C., *Ethics Moments in Government: Cases and Controversies*, American Society for Public Administration p. xv, and 3.
 (2010).
[5] Svara, James, *The Ethics Primer for Public Administrators in Government and Nonprofit Organizations*, p. 10 (2007), citing Andre and Velasquez (1987).
[6] Bauer, Christopher, *Better Ethics Now: How to Avoid the Ethics Disaster You Never Saw Coming*, 2nd, p. 26 (2008).

sort of way. For purposes of public administration, I've identified four common sources of ethics:

(1) Duties: behaviors expected of persons who occupy certain roles (i.e., obligations of a professional position).
(2) Virtues / Values: qualities that define what a good person is; ideas, objects, practices, or almost anything we attach worth to (e.g., thrift, piety, charity, courage, or benevolence).
(3) Principles: fundamental truths that form the basis of behavior (i.e., kinds of behavior that are "right" or "good"). A principle is a prescription for action.
(4) Societal Benefits: actions that produce the greatest good for the greatest number (i.e., good consequences).[7]

Of these listed, it is duty that most commonly serves as an internalized set of values and is the foundation of accountability.[8] And it is duty that is at the core public service ethic. Duty is reinforced and expanded by balancing attention to virtue, principle, and good consequences.

Constituents. When contemplating one's sense of duty, it is relevant to asses to whom a public manager is responsible. Might the answer(s) provide insight into the conflicts that sometimes arise due to conflicting loyalties? In the public realm, it's easy to envision duty toward the:

(1) Organization as an entity.
(2) Administrators (i.e., the managers and supervisors who guide daily operations).
(3) Electeds (i.e., the political superiors elected or appointed to the top posts).
(4) Citizens / Clients / Customers (either at-large / in-general, or those populations specifically receiving benefits or services).

The audience for the public servant as a responsible citizen goes beyond customers. Customers need only consume government's goods and services. Citizens need to be actively engaged in the ongoing process of self-government and thus might have broader interests (and a wider perspective) than customers-- those individuals who are regarded as merely recipients of a particular service.[9]

That being the case, consider the frequent tension between:

(a) a sense of duty to serve and act responsibly; and
(b) the deference shown to superiors, cultural norms, and established rules.

Because we are human, we must also acknowledge there may even be duty to one's self and family. Isn't that a source of problems? Imagine the degree of rationalization that occurs when people under pressure convince themselves that they must *look out for #1* and take care of their children, etc.

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[7] Svara at 10; Menzel at 8.
[8] Svara at 11, and 16.
[9] Newell

Virtues. Common virtues among public administrators include being:

- Honest
- Independent
- Competent

- Committed to doing their best
- Integrity.[10]

Values. When it comes to identifying the values most commonly associated with public managers, we think of being:

- Efficient.
- Effective.
- Equitable.
- Inclusive.
- Legal.

- Transparent.
- Timely.
- On budget.
- Politically palatable.

With all these being admirable and legitimate, can they be reconciled? Might one be exclusive of others? Inclusiveness might delay momentum, thus frustrating timely action. Transparency might come at the cost of efficiency. Ensuring the legalities can blow the budget for a project. In such instances, public managers must weigh the issues and prioritize what is most important among competing values.

"What we think, we become." — Buddha

Stages of Development. A person's ability to successfully engage in the process of assessment among the competing values described above may depend on where that person is in terms of ethical development. Ethical maturity is part of the process of growing up, becoming educated, and absorbing values from the people around them. There are, in essence, six developmental stages:

(1) Pre-conventional:
    a. *Punishment and Obedience:* Obey rules to avoid punishment
    b. *Instrumental Relativist:* Conform to obtain rewards, have favors returned, and generate other's goodwill.
(2) Conventional:
    a. *Good Boy / Nice Girl:* Meeting the expectations of others with whom one interacts: Conform to avoid disapproval and dislike by others.
    b. *Society Maintaining / Law & Order:* Meeting standards imposed by society through law and convention: Conform to avoid censure by legitimate authorities and resulting guilt.
(3) Post-conventional:
    a. *Societal Contract:* Seeking to promote the rights of all as agreed to by society: Conform to maintain the respect of the impartial observer, judging in terms of community welfare.
    b. *Universal Ethical Principle:* Conform to avoid self-condemnation for failing to live up to the values to which one is committed.[11]

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[10] Id.
[11] Svara at 19, citing Stewart and Springhall 199, and Kohlbert, 1981).

The last two stages are often referred to as the "P" stages ("principled stages"). Most college students operate at Stages 3 and 4 (2.a. and 2.b.). Most public administrators in the U.S. are likely to use Stage 4 (2.b.) reasoning, and less likely to use principled-stage reasoning.[12] Thus, continuing education of public managers is crucial to their ability to process ethical decision-making at a broader level and help shepherd their organizations toward a more ethical culture.

> *"A long habit of not thinking a thing wrong gives it a superficial appearance of being right."* — Thomas Paine

Overcoming Obstacles. If public managers and the organizations they serve are to rise above the moral minimum (i.e., "stay out of trouble"), there are four failings they must overcome:

(1) **Leadership Myopia:** Public Administration is a pragmatic profession. Accordingly, many leaders tend to focus primarily (or even exclusively) on getting the job done. Emphasis is placed on being on-time, on-budget, consistent with agency policy, and in accordance with the law. Leaders often neglect to place a high priority on the ethical aspects of the endeavor.

(2) **Lack of Awareness:** Top-level managers are often unaware of the conduct (or misconduct) of their subordinates. While it may not be healthy for an organization to encourage a system of tattletale vigilantes constantly outing their coworkers to the top brass, it is incumbent on leaders to devise a means of remaining informed about the ethical conduct of their teams.

(3) **Culture:** The past has an enormous influence on the present. It is unlikely that governments with a checkered history of misconduct will change overnight. A history or tradition of doing things a certain way, or of tolerating particular behaviors, is difficult to overcome.

(4) **Ethical Illiteracy:** Supervisors and their staffs must develop a basic working knowledge of ethics and how ethical conduct is achieved. A deeper understanding of ethics needs to work its way into an agency's routine vernacular if those serving the agency are ever going to rise above the bare minimum.[13]

Approaches. When fashioning a system promoting ethics, public managers should give serious consideration to what they wish to achieve. Is the purpose of the program merely to attain *compliance* (i.e., failure to follow rules results in punishment), or is it also striving for *integrity* (i.e., a value-driven system in which individuals grasp the fundamental differences between right and wrong)?

> *"If men were angels, no government would be necessary."* - James Madison

Compliance Approach. The most common means of addressing the subject of ethics relies on a system of rules and procedures that establish limitations on behavior and mandated conduct

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[12] Svara at 19, and 21 citing Gardiner 1988), and Stewart, Sprinthall (1994), and Kem (2002).
[13] Menzel at 3-4.

designed to keep individuals out of trouble. Rules are enacted, behavior is monitored, infractions are detected and investigated, and admonishment is administered accordingly.

Compliance relates to the structures, controls, and oversight that organizations put into place to assure legal and ethical behavior.[14]

Perhaps it is because of the very nature of public administration that we, as administrators, are more comfortable with rules, processes, and outcomes and less likely to embrace the importance of virtues, values, and principles—regarding them as too *touchy-feely*.

The enactment of ethical codes is often reactionary. Leadership is responding to pressure as a result of a scandal.

> *"Those who stand for nothing, fall for anything."* — Alexander Hamilton

Integrity Approach. Conversely, efforts to instill integrity in a public sector organization involve a value-driven methodology that focuses on awareness, leadership, inspiration, and culture. The integrity approach is more positive and less punitive. It is more likely to incentivize reaching lofty goals than to admonish for crossing a line.

Ideal Approach. Modern ethicists promote a *fusion model* through which an organization incorporates both approaches. Ethical behavior is usually seen as the absence of wrongdoing. Ethics codes and training seldom say much about how an ideal public servant should behave.[15]

It is simply not possible to formulate a rule for every ethical dilemma that will be faced. Organizational cultures that reinforce values, virtues, and principles provide guidance that fills in the gaps.

Fostering Integrity in Public Service is about more than achieving compliance with written codes. Ethics is about more than just identifying and preventing fraud, waste, and abuse.

Ethical Issue v. Management Issue: Achieving ethical competency requires the ability to distinguish between ethical and management issues. When is a situation best addressed by a supervisor in an employment context versus when is it an issue of integrity? For example, if a department purchases supplies using funds from an improper account, is that a matter for the purchasing department (and possibly human resources) or the ethics commission? Is the workplace solicitation of donations or purchases for a noble but unaffiliated nonprofit (e.g., the Girl Scouts or United Way) an ethical issue or a management issue?

Unethical public officials are likely to behave poorly regardless of the codes that are enacted and the punishments that are doled out.

> *"You can pay me now, or you can pay me later…."* — Aamco Transmission mechanic

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[14] Bauer at 47.

[15] Newell, Terry, "Beyond Ethics: Honor and Public Service," PA Times, American Society for Public Administration (December 13, 2016).

Role of Legal Counsel. Legal does not mean ethical. If the lawyer doesn't determine a specific legal barrier to the conduct, it might be deemed acceptable despite less than obvious political or ethical pitfalls.[16]

There are many legal standards that are often caught up in discussions of ethics compliance but are more commonly assigned to specific disciplines (and thus departments). Efforts to legislate good behavior and prevent bad behavior have been historically embedded in many aspects of public administration, which also constitute areas commonly addressed by government lawyers, including:

(a) **Purchasing** (e.g., Competitive Bidding, Competitive Proposals, Disclosure of Relationships)
(b) **Human Resources:** (e.g., Nepotism, Discrimination, Retaliation against Whistleblowers)
(c) **Elections:** (e.g., Campaign Finance, Disclosures on Advertising)
(d) **Open Government:** (e.g., Open Meetings, Open Records, Records Retention)

Training.   Educational intervention to broaden ethical thinking can increase the use of state P reasoning.[17] Most useful in raising the level of moral reasoning are techniques that include the active involvement of students in learning. Considering cases that present moral dilemmas and relating the levels of moral development to resolving these dilemmas help students recognize how one reasons at a higher level.

In addition to training in the traditional sense, these organization provide networking with a peer group that shares and reinforces their values and principals. Sometimes these groups actually play a role in self-policing and enforcement (e.g., TCMA, State Bar).

Caution. Resist attempts by others to use ethics as a weapon. It has become increasingly common to see ethics complaints that seek resolutions to what would otherwise simply be political disputes (e.g., candidates filing complaints against one another in an effort to score political points or disqualify (or at least distract) their opponent).

Also for some, an ethics commission (aka, "board of ethics") is viewed as some catch-all court of last resort. When an employee or citizen fails to find satisfaction in other tribunals, they sometimes file an ethics complaint hoping to launch an investigation and punish the offender.

We must not allow the mechanisms we create to nourish ethical environments to be degraded to complaint desks, where any and all unsatisfied customers are welcome to lodge complaints that have more to do with dissatisfaction with service or political disputes, and less to do with right and wrong.

Tool for Ethical Program Building (L.A.R.I.A.T). The final portion of this paper is a prescription for action. LARIAT is a guide to crafting or amending an ethics ordinance (or policy, procedure manual, executive order, etc.). Because public management is such a practical profession, it was prudent to convey to the audience an organized means of structuring the deliberations that go into drafting rules.

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[16] Duggan, Kevin, "Why You Can't Rely On Your Attorney… To Keep You Out of Ethics Trouble," Public Manager, ICMA (September 2016).
[17] Svara at 21, citing Rest *et al*, 1999).

Fostering Integrity at City Hall

Leadership
Administration
Regulation
Instruction
Accountability
Transparency

1. **Leadership:** Inspiring the troops and role-modeling by the top brass. Leaders not only play a symbolic role in setting the tone and the agenda, they also are crucial when it comes to resource allocation and prioritization of tasks. For an organization to truly embrace ethical decision-making (and rise above mere rule following), the top executives must lead by example and, when necessary, cheerlead.

2. **Administration:** Modifying routines and procedures for daily implementation of policies to ensure equity, fairness, and procedural justice. Evaluate how the organization provides services, processes permits, awards contracts, and makes employment decisions. Procedures are not just a means to an end; in terms of ethics, fair procedures are an end themselves.

3. **Regulation:** Enacting rules that require certain actions and prohibit specific behavior, accompanied by the requisite oversite and enforcement. Adopting and following rules is not enough, but it is a legitimate component of a broader ethical program.

4. **Instruction:** Facilitating ongoing training that provides information, and promoting networking opportunities that reinforce shared norms. Educational events and professional memberships are vital to changing organizational culture and nourishing a community of ethical decision-makers.

5. **Accountability:** Assuring that there will be consequences for unwelcomed behavior, either internally or at the ballot box. There should be a system of rewards and punishments. Incentivize positive behavior and look for examples that can inspire good

governance. Provide a means of reprimanding those who exhibit poor behavior and deviate from established norms.

6. **Transparency:** Promoting Open Government through not just adherence to the mandates of Open Meetings and Open Records laws, but by also nurturing a culture that favors disclosure. For citizens to more fully participate in government and trust their public servants, the citizens need to have greater access to data and the decision-making process.