

INTEGRITY AND ACCOUNTABILITY IN ILLINOIS GOVERNMENT

Reasons Behind the Rules

Why the ethics rules exist, and what they protect

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A QUESTION I WAS ONCE ASKED

“How many shrimp
can I eat?”

And why would the law care about a \$20 lunch?

THE THESIS

Ethics rules are controls on ethical judgment, but are not a substitute for ethical judgment.

ETHICS VERSUS RULES

Rules don't think. People do.

Ethics Rules

- Wooden.
- Generalizations.
- Usually written after a harm.
- Enforceable.
- Necessarily incomplete.

Like a speed limit: one number for every driver and every road.

Ethics

- Judgment about the facts in front of you.
- Why the rule exists, and what it is protecting.

Like driving slower in fog at 40 mph when the speed limit is 55.

REASONS FOR THE RULES IN TWO WORDS:

Integrity



Accountability

Every rule is designed to protect one or the other

ETHICS VERSUS RULES

Three ways rules and ethics can part company

1

The rule allows what ethics condemns

“No rule required it,” or
“No law prohibited it.”

2

The rule requires what ethics finds painful or unjust

Rule prevails despite injustice in an individual case.

3

Compliance defeats the purpose

Form over substance.

“Government operates as a system of rules, untouched by human thought.”

ETHICS VERSUS RULES

Three Real Cases: Rules Versus Right

TYPE 1 · 1962

Spaulding v. Zimmerman

Defense lawyers hid a young plaintiff's life-threatening aneurysm and settled cheap.

No rule required them to tell him.

TYPE 2 · 1982–2008

Alton Logan

The real killer told his lawyers.

Killer's lawyers kept it confidential in a lockbox, thereby keeping Logan unjustly in prison 26 years.

TYPE 3 · EVERY YEAR

Use it or lose it

In a fiscal year's last week, federal agencies spend 4.9 times the usual weekly amount.

Year-end IT projects more often rate poorly.

Every purchase is lawful, but often wasteful.

UNDERSTANDING THE REASONS BEHIND THE RULES MATTERS

Values plus rules beat rules alone

2,883

employees responded, at six large U.S. companies

What worked best: a values-based culture.

Combined with enforced rules, it was linked to more willingness to report misconduct.

What hurt most: a culture of unquestioning obedience to authority and of looking out for oneself, and an ethics program seen as protecting top management.

PROHIBITED POLITICAL ACTIVITY

Illinois wrote its history into the statute

1969–83

Shakman

Public jobs as
campaign money and
labor

1990

Rutan

Patronage hiring is
unconstitutional

1992–99

Ryan, Fawell

Campaigns run on
state time

2003

Ethics Act

The legislature
responds

PROHIBITED POLITICAL ACTIVITY

The system that produced the crash and coverup

1 · Quotas

Employees pushed to sell campaign tickets

2 · Rewards

Raises for campaign work

3 · Bribes

Selling commercial truck licenses; \$170,000 to the campaign

4 · Nov. 1994

Six Willis children die.
Driver's license issued by a corrupt office.

5 · Oversight cut

IG investigators fired on false "budget cut" claims

6 · Cover-up

Shredding, wiped computers, perjury

PROHIBITED POLITICAL ACTIVITY

The Fawell case: politics on the payroll

WHO

Scott Fawell

Chief of staff to Secretary of State George Ryan, then Ryan's 1998 gubernatorial campaign manager.

He ran Ryan's campaign fund.

INDICTED · 2002

The scheme

From 1992 to 1999, State workers ran Ryan campaigns on State time.

Records were destroyed to hide it.

CONVICTED · 2003

The verdict

Guilty on all counts: racketeering, tax fraud, perjury, destroying evidence.

6½ years in prison.

PROHIBITED POLITICAL ACTIVITY

Problems

Solutions

The Fawell case revealed	Section 5-15 prohibits
Campaigns run on State time	(a) Politics on State time
Employees as campaign staff	(b) Requiring political work
Raises tied to campaign ticket sales	(c) Pay tied to politics
Promotions for campaign work	(d) Pay as a political reward



The audit trail: time sheets to the quarter hour (5-5(c))

Sources: 5 ILCS 430/5-15, 5-5(c); U.S. Attorney, N.D. Ill. (2002, 2003)

THE GIFT BAN

A

Could a \$20 lunch affect
your judgment?

B

Could it affect a *colleague's*?

NO SUCH THING AS A “FREE” LUNCH

THE GIFT BAN

Gifts buy a relationship.
Relationships create bias.
Bias changes outcomes.

RELATIONSHIP BIAS: AUDITORS STUDIED

30%

more likely to call the accounting GAAP-compliant when 139 professional auditors imagined working for the company instead of an outside investor.

The relationship was only imaginary. No fee, no gift, no job offer.

Source: Bazerman, Loewenstein & Moore, Harvard Business Review (Nov. 2002); full study: Moore, Tanlu & Bazerman, Judgment and Decision Making (2010)

THE GIFT BAN

An experiment: same facts, different sides

1 · Same file

Everyone read the same real lawsuit: a motorcyclist hit by a car.

2 · Sides by chance

Each person was randomly made the plaintiff or the defendant.

3 · Paid to be right

Each guessed what the real judge awarded, with a bonus for accuracy.

The question

The only difference was which side they were on. Would their guesses differ?

THE GIFT BAN

We see bias in others, not in ourselves

Same file

Plaintiffs predicted awards about \$18,000 higher than defendants did.

Awareness failed

Teaching about bias didn't help.

Listing your own side's weaknesses did.

Moral seduction

Good people drift, still sure they're honest

THE GIFT BAN

Free meals and doctors' choice of drugs

MODERATE · ASSOCIATION ONLY

One meal

279,669 doctors studied: one free meal from a drug company, averaging under \$20, was associated with prescribing the promoted drug more often than its competitors.

STRONGER · WITH CONTROLS

Gift and rep limits

19 medical centers limited gifts and sales-rep access.

Promoted drugs' share of prescriptions fell in 6 of 8 drug classes, compared with similar doctors elsewhere.

THE GIFT BAN

Disclosure deters conflicts. It does not cure them.

Disclosure requirement deters many

Having to disclose leads many people to turn a conflict situation down.

Prevents conflicts of interest

But, disclosure of conflict can make conflict worse

Advisors whose conflict was disclosed gave more biased advice, not less.

THE REVOLVING DOOR

24%

drop in revenue for lobbyists who had worked for a U.S. Senator, when that Senator left office.

Their knowledge didn't change overnight. Their access did.

Source: Blanes i Vidal, Draca & Fons-Rosen, American Economic Review (2012)

Rules are the floor.
Ethics are the real control.

One question to carry out of this room:
What would I do if no rule covered this?