

Fordham Law School

FLASH: The Fordham Law Archive of Scholarship and History

Reports

State of New York Commission on Government
Integrity

2-1990

Raising Our Sights: The Need for Ethics Training in Government

New York State Commission on Government Integrity

Follow this and additional works at: http://ir.lawnet.fordham.edu/feerick_integrity_commission_reports



Part of the [Law Commons](#)

Recommended Citation

New York State Commission on Government Integrity, "Raising Our Sights: The Need for Ethics Training in Government" (1990).
Reports. Book 15.
http://ir.lawnet.fordham.edu/feerick_integrity_commission_reports/15

This Book is brought to you for free and open access by the State of New York Commission on Government Integrity at FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in Reports by an authorized administrator of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact tmelnick@law.fordham.edu.

Raising Our Sights:
**The Need for Ethics Training
in Government**

**FORDHAM
Law Library**

New York State Commission On Government Integrity
February 1990

Raising Our Sights:
**The Need for Ethics Training
in Government**

State of New York
Commission on Government Integrity
Fordham University School of Law
140 West 62nd Street
New York, New York 10023
(212) 841-5698

February 1990

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. RECOMMENDATIONS	5
A. Public Employees Need Clear Guidelines Explaining In Plain Language How To Comply With Existing Conflict Of Interest Laws	6
B. Each Agency Needs To Develop A Code Of Conduct Clearly Articulating Its Mission And Its Expectations For Ethical Conduct	14
C. Greater Emphasis Must be Placed On Encouraging and Rewarding Ethical Conduct	20
1. Ethics Training Programs Are Needed To Help Employees Withstand Pressures To Condone Wrongful Practices	20
2. Agency Heads Need To Make Ethical Issues A Key Management Concern	26
3. Whistleblowers Need Greater Protection And Encouragement	28
III. CONCLUSION	35

APPENDIX

Ethics Training Resource List

I.

INTRODUCTION

The Athenian Oath, developed more than two thousand years ago, remains unrivaled as a simple and eloquent declaration of the ethical responsibilities of a public servant:¹

We will never bring disgrace to this our city
by any act of dishonesty or cowardice,
nor ever desert our suffering comrades in the ranks;

We fight for the ideals and the sacred things of the city,
both alone and with many;

We will revere and obey the city's laws and
do our best to incite to a like respect and reverence
those who are prone to annul or set them at naught;

We will strive unceasingly to quicken
the public sense of public duty;

That thus, in all these ways, we will transmit this city
not only not less, but greater, better and more beautiful
than it was transmitted to us.

With the passage, in the intervening years, of ethics-in-government laws at both the state and local level, the fundamental and simple ideal poignantly captured by the Athenian Oath is often overlooked in a blizzard of financial disclosure forms and conflict of interest rules. The message that "public service is a public trust," worthy of the highest standards of honor and integrity, is lost in a tangle of complex prohibitions. Not enough public employers make the effort to teach their

¹ The Athenian Oath, reprinted in The Ethics Factor Handbook, published by the International City Management Association (May 1988).

employees about the special obligations which public servants owe the public or to inspire them by an ideal of public service which prizes honesty, integrity, truthfulness and impartiality. Too few public employees are ever told that public service is an honored and honorable tradition, which demands the utmost in personal commitment and integrity. As a result, the public's belief in the integrity of government is eroded.

Over the course of the past 14 months, the Commission has collected materials used by over one hundred government agencies in New York City and New York State to educate their employees about their ethical obligations as public servants. We have gathered similar materials from other states and from public and private institutes and organizations around the country dedicated to developing the ethical consciousness of public employees.

Based on this survey, it is apparent that only a few City and State agencies have made a strong commitment to ethics training. Far too many agencies see their responsibility in this area as beginning and ending with the dissemination to new employees of a hodgepodge of provisions of the State penal code, the New York City Charter's conflict of interest provisions or the State Public Officers Law, and a stack of executive orders and Board of Ethics opinions. Frequently, these materials are

short on explanations and guidelines and lack a positive, inspirational message.

Even rarer is the use of challenging and innovative ethics training materials designed to encourage public employees to recognize the many ethical dilemmas they face in the course of their day-to-day work and to help them to withstand the often formidable pressures not to "do the right thing." While sources of excellent ethics training materials abound,² only a few State and City agencies have taken advantage of these materials. As a result, a majority of State and City workers are not exposed to them. The price for this failure to lead and to inspire public servants is paid by all of us, in wasted tax dollars and in acts of fraud and corruption.

There are, of course, exceptions. A small but significant minority of City and State agencies responded to our survey by sending us employee manuals, guidebooks and training materials which reflect a sensitivity to the need to make each employee aware of the special mission of his or her agency and inspire each employee to make that mission his or her own. These agencies have recognized that ethics training for employees is a crucial management responsibility, as important as budgeting or strategic planning. These agency heads have devoted thought,

² A list of organizations which have developed ethics training materials or which are a source of information about ethics training is appended to this report.

time, and energy to identifying the kinds of ethical dilemmas which employees are likely to encounter in the course of their work. By the leadership example they themselves set, by constantly raising ethical issues at staff meetings and by exposing their employees -- in workshops and seminars -- to case studies in ethical choices, they strive to set a tone which consistently emphasizes personal integrity over expediency.

Well thought-out ethics training programs for public employees need not remain the exception. Public servants in New York can come to feel that it is their privilege "to transmit [their] city [or their state]" to their successors "not only not less, but greater, better and more beautiful than it was transmitted" to them. Even if ethics training, alone, cannot ensure a return to the values of the Athenian Oath, it can begin to breath new life into them.

II.

RECOMMENDATIONS

Based on our review of the materials we have gathered, it is clear that an effective ethics training program consists of several components:

1. Employees at all levels of government need clear guidelines explaining in plain language how to comply with existing "conflict of interest" and "ethics in government" laws. All too often, public employees are not even made aware of the special duties and obligations which accompany public service, let alone how to conform their conduct to the law.

2. It is not enough, however, for public employees merely to know what the law requires. The public is entitled to expect more than simple adherence to the law. Each state and local government agency needs to develop a code of conduct which clearly identifies the key issues of ethical importance to that agency and which establishes a link between those issues and the agency's overall values and goals. At the same time, senior agency officials must demonstrate by their own actions that ethical conduct is valued and expected.

3. The pressures faced by public employees to cut ethical corners and to turn a blind eye to misconduct of all sorts can be enormous. Agencies need to help their employees withstand those pressures by publicizing the protections of the whistleblower law,³ and actively encouraging and rewarding

³ Recommendations for strengthening the protections of the State whistleblower law will be set forth in a separate Commission report.

whistleblowers. Ethics training workshops designed to help employees spot ethical dilemmas and sort out their reactions to them can give public employees the confidence to "do the right thing."

As our survey suggests, ethics training in New York has a long history of neglect. Although some of the agencies surveyed appear to try hard to broaden their employees' sensitivity to the ethical issues they confront, others barely begin to acquaint their staffs with the rudiments of the ideal of public service. With new approaches to ethics education continually springing up around the country, there can no longer be any justification for so many agencies remaining on the sidelines.

A. Public Employees Need Clear Guidelines Explaining In Plain Language How To Comply With Existing Conflict of Interest Laws

Public employees face a thicket of laws and regulations designed to prevent conflicts of interest and to insure that the employee's private interests are subordinated to the common good. Public servants may not accept valuable gifts from those engaged in business dealings with government.⁴ They are prohibited from moonlighting at jobs which would conflict with their public employment or impair their judgment in the exercise

⁴ See, e.g., New York City Charter ("City Charter") section 2604(b)(5); New York Public Officers Law, 46 McKinney's Consolidated Laws (1988) ("Public Officers Law") section 73(5).

of their official duties.⁵ They may not make personal financial investments if the investment would create a conflict between their official duties and their private interests.⁶ The kinds of employment they can accept when they leave public service are tightly restricted.⁷ Their sources of income and private financial arrangements are subject to detailed disclosure requirements.⁸

Though conflict of interest laws have been on the books for years, public employees of New York have, for the most part, been left to their own devices to sort out the implications of these laws for their own conduct. Many agencies have failed to translate these complex rules and regulations into clear and simple guidelines understandable to non-lawyers. As a result, public employees are often left to cross a minefield of restrictions and prohibitions without a clear map.

Typically, new City employees receive an orientation packet containing copies of the City Charter's Code of Ethics and a pile of mayoral executive orders, Board of Ethics opinions, and

⁵ See, e.g., City Charter section 2604(b)(2); Public Officers Law sections 74(2), 74(3)(a).

⁶ See, e.g., City Charter section 2604(a)(1); Public Officers Law section 74(3)(g).

⁷ See, e.g., City Charter section 2604(d); Public Officers Law section 73(8).

⁸ See, e.g., New York City Administrative Code, title 12, section 110; Public Officers Law section 73-a.

excerpts from the State's penal code. Some City agencies supplement this daunting package of laws, legal codes and formal legal opinions with clear and simple explanations in laymen's language designed to assist the average public employee to comply with the requirements of the law.⁹ Many, however, do not.

At the State level, the situation is only slightly different. In many State agencies, new employees receive no more than a printed copy of the State Public Officers Law and are asked to swear that they will abide by its provisions, even though, like most statutes, the Public Officers Law is not self-explanatory.¹⁰

⁹ For instance, the New York City Department of City Planning has prepared a memorandum succinctly explaining the significance of the City Charter's new conflict of interest provisions which took effect January 1, 1990. See Memorandum from William Valletta dated January 5, 1989. The City Department of Finance has sought to adapt a key Board of Ethics opinion to the specific circumstances of Finance Department employees. See Department of Finance, Code of Conduct, Addendum #3.

In the absence of one clear, centralized set of guidelines, City workers are in danger of receiving mixed and even contradictory messages. The New York City Conflicts of Interest Board has recently circulated a set of proposed rules defining a "valuable gift" for purpose of ensuring that all City employees comply with the Charter's ban on the acceptance of gifts from those doing business with the City. See New York City Conflicts of Interest Board, Notice of Opportunity to Comment, Section 9, Definition of a Valuable Gift, January 10, 1990. Rules of this nature, provided that they are widely disseminated and explained to all employees, play a crucial role in helping public employees conform their conduct to the law.

¹⁰ The State Ethics Commission, like the City's Conflicts of Interest Board, has begun the process of issuing proposed regulations to flesh out the prohibitions of the Public Officers Law. See, e.g., New York State Ethics Commission, Ethics

(continued...)

There are, however, a number of individual State agencies which have tried to fill the vacuum and to spell out for their employees, in simple and vivid terms, the meaning of restrictions imposed by the State Public Officers Law. A two-page advisory entitled "The Public Trust", published by the State Department of Transportation ("DOT"), is circulated to employees with a cover memo which leads off with the reminder that:¹¹

As public employees, we have a responsibility to insure that our conduct will not violate the public trust placed upon us. We must make certain that our conduct will not raise suspicion or give the appearance that we are in violation of this trust. We must be above reproach!

The advisory goes on to ask and answer questions like "What is a 'Conflict of Interest'?", "What about the appearance of a Conflict of Interest?", "How do I determine if an outside activity might interfere with my job duties at DOT?" and "What are some examples of Conflict of Interest situations?" Along the same lines, the New York State Department of Agriculture and

¹⁰(...continued)

Advisory Notice 90-3, Regulations on Outside Activities and Ethics Advisory Notice 90-6, Regulations on Limitations on the Receipt of Honoraria and Reimbursement for Travel Expenses. It will be important for the State Ethics Commission to follow up with training courses and other plain language materials to make sure that State employees understand these new regulations.

¹¹ New York State Department of Transportation, Regional Bulletin 5B-8-04, dated August 11, 1988.

Markets disseminates an employee manual which lists general categories of moonlighting jobs prohibited by the Public Officers Law, as well as specific examples of prohibited employment.¹²

The State Office of General Services ("OGS") goes to great lengths to ensure that employees understand how the Public Officers Law applies to them. The agency has prepared a convenient, pocket-size "Code of Conduct" which takes pains to explain, in simple terms, what a conflict of interest is. Sections on gifts, outside employment, contacts with the private sector, and invitations to non-business activities clearly spell out agency policy and are supplemented with specific directives illustrating prohibited and permissible activities. For instance, OGS makes the following distinctions:¹³

Prohibited - Meals paid for by persons doing business with the State.

Permitted - Light food during meetings paid for by persons doing business with the State

¹² New York State Department of Agriculture and Markets, Employee Manual 2100, p. 5.

¹³ See Memorandum to All Design and Construction Employees from Ray Casey, Executive Director, New York State Office of General Services dated December 8, 1987. These specific rules are supplemented with a general rule of thumb which would be useful to any public employee:

[I]f a question is generated in an employee's mind about accepting an offer or participating in an event, that question should be enough to cause the employee to decline the offer or refrain from participating in the activity.

where the food is brought in to facilitate the work at hand.

Prohibited - Accepting tickets to sporting, theatrical or other entertainment events from persons doing business with the State.

Prohibited - Accepting gifts, regardless of value, including lodging, vacation trips, transportation, product samples, or arranging for a family member to so benefit.

Prohibited - Personal intervention with a person doing business with the State to obtain employment or personal discounts for yourself, a friend or relative.

For every agency like OGS or DOT which has tried to make the Public Officers Law come alive for its workers, there are others which still do no more than hand out copies of the law itself, without guidelines or explanation. The job of translating key "ethics in government" laws into terms which the average employee can understand and abide by should not fall to individual state or local government agencies. It is a task which should be shouldered centrally, so that all employees are made aware of the legal obligations which public service carries with it and can conform their conduct to the law. In New York City, the job of making the law intelligible to employees belongs to the Conflicts of Interest Board. At the State level, it belongs to the State Ethics Commission.

Fortunately, materials developed by ethics commissions in other states are available as a prototype for New York. For instance, the Massachusetts State Ethics Commission's Practical

Guide to the Conflict of Interest Law and Financial Disclosure Law for State Employees¹⁴ is a well-organized 32-page booklet which offers general guidance to state officials and employees on how to comply with the state conflicts of interest law. It is divided into clearly labelled sections such as "Restrictions on the Job" (which covers bribes, gifts, nepotism, the influence of private financial interests, and the misuse of confidential information), "Restrictions After Hours" (which covers outside employment and multiple jobs), and "Restrictions After Leaving Government Service" (which covers the misuse of government connections). Each section is written in plain English, with clear, concise explanations in laymen's terms of provisions of the state's conflict of interest law. Concrete examples are used to illustrate the point of each of the different sections of the law as well as key exceptions.¹⁵

¹⁴ Copies of materials published by the Massachusetts State Ethics Commission are available upon request by calling (617) 727-0060 or by writing to the Massachusetts State Ethics Commission, One Ashburton Place, Room 619, Boston, MA 02108.

¹⁵ The section on prohibited gifts, for instance, is illustrated with examples such as:

Example: A car dealer which holds a major contract with the state Police Department offers a 40% discount to all state police officers. The car dealer violates section 3 [on gifts] by offering the discount because it is being given only to state police officers who potentially could affect the car dealer's contract by praising or complaining about the cars' quality. The police officers will violate section 3 if they take the discount and it totals \$50 or more.

(continued...)

Although neither the State Ethics Commission nor the City Conflicts of Interest Board has yet disseminated to public employees the kind of simple, clear guidelines which Massachusetts has developed, the situation is likely to change soon. The New York State Ethics Commission is in the process of drafting a practical guide to the State Ethics in Government Act, similar to the Massachusetts Practical Guide, which it hopes to disseminate later this year.¹⁶ The City Conflicts of Interest Board is further behind, although it has expressed interest in finding out more about Massachusetts' efforts and appears to

¹⁵(...continued)

Example: A complaint is filed with the Alcoholic Beverages Control Commission regarding a restaurant. An investigator screens the complaint and determines that no action should be taken on it. Grateful for this resolution of the matter, the restaurant owner invites the investigator and his family to a free dinner at his restaurant. If the investigator accepts this invitation he violates section 3 [on gifts] if the dinner is worth \$50 or more

See Massachusetts State Ethics Commission, Practical Guide to the Conflict of Interest Law and Financial Disclosure Law for State Employees, pp.6-7.

¹⁶ Commission staff members met informally with the chair of the New York State Ethics Commission and its executive director in December 1988 in order to share with them the preliminary results of our survey of state agency ethics training materials. The need for the State Ethics Commission to look beyond the warehousing of financial disclosure forms in order to play an active role in stimulating ethics training throughout the State was also discussed.

recognize the need to develop such materials.¹⁷ We recommend that both agencies complete this job quickly, so that employees throughout the City and the State may be in no doubt as to what the public expects from them.

B. Each Agency Needs To Develop A Code Of Conduct Clearly Articulating Its Mission And Its Expectations For Ethical Conduct

Although clear guidelines spelling out a public employee's obligations under existing laws are essential, they alone are not a sufficient yardstick against which to measure the conduct of public servants. The law's concerns lie overwhelmingly in prohibiting certain actions. The focus of many of the City Charter's conflict of interest rules, as well as those of the Public Officers Law, is a negative one. It is the public's way of saying "we will absolutely not tolerate you acting in these ways, and if you do, we will punish you."

Conflicts of interest laws represent a minimum standard for public employees, the far boundary of acceptable action. The problem with a minimum standard is that obeying the law should not be all that we expect from our public servants.

Unfortunately, however, it sometimes ends up that way. "But I

¹⁷ Commission staff have also discussed with the Conflicts of Interest Board's executive director the kinds of resource materials available nationwide as a model for the development of ethics training programs in the City.

was not indicted" echoes as a defense to a wide spectrum of charges of inattentiveness to the public trust vested in our public servants. What should be a starting point, a point of departure for the ethical debate, becomes a resting place.

While a focus on prohibitions rather than on a public servant's larger, affirmative ethical obligations is understandable, especially when those prohibitions carry punishments, the consequences of such an exclusive focus is a barren ethical code which pays only occasional lip service to positive action. As Michael Josephson, President of the Josephson Institute for the Advancement of Ethics, has pointed out, "persons are not 'ethical' simply because they act lawfully. One can be dishonest, unprincipled, untrustworthy, unfair and uncaring without breaking the law."¹⁸

A small but significant minority of City and State agencies have recognized the importance of going beyond the

¹⁸ Michael Josephson, "Limitations of Ethics Laws", reprinted in ETHNET, The Ethics In Public Service Network (Spring 1989), p.2. See also Power, Politics and Ethics: Ethical Obligations and Opportunities of Government Service, published by the Government Ethics Center, Josephson Institute for the Advancement of Ethics (Spring 1989) at 3.

The Josephson Institute has drafted a set of principles of public service ethics. These standards of conduct, together with extensive commentary and detailed guidelines, are due to be released soon under the title Preserving the Public Trust: The Principles of Public Service Ethics. Copies are available from the Government Ethics Center, Josephson Institute for the Advancement of Ethics, by calling (213) 306-1868 or writing 310 Washington Street, # 104, Marina del Rey, CA 90292.

strictures of existing conflict of interest laws to develop and communicate a positive, aspirational mission for their agencies and their employees. They have sought to define, clearly and simply, their vision of what makes their agency special, what its goals and ideals are, and why those ideals must not be betrayed.

One such agency is the New York City Department of Juvenile Justice ("DJJ"), which has put together a thoughtful mission statement which seeks to capture, in a nutshell, a vision of the agency and its values and to convey to its employees how their individual efforts contribute to the agency's success or failure.¹⁹ For instance, DJJ's mission statement recognizes that²⁰

the law casts us in a dual role: to provide child custody and child care. As custodians, we must maintain controlled, structured settings for the safety and well-being of staff and children and for the protection of the community.

As child care workers, we must reach out to children and give of ourselves as they face the loneliness and uncertainty of detention.

¹⁹ The New York City Department of Juvenile Justice is one of five public sector agencies nationwide singled out for praise in a new film, Excellence in the Public Sector, produced by best-selling management author, Tom Peters. Information about the film is available from Enterprise Media, Inc. by calling (800) 423-6021 or by writing to 374 Congress Street, suite 508, Boston MA 02210.

²⁰ New York City Department of Juvenile Justice, Annual Report (1988) at 4.

In that process, we are obliged to develop the skills we need to execute our responsibilities well.

The mission statement goes on to articulate, in plain and simple terms, the specific values to which the agency is committed and concludes with an observation which, though almost obvious in its simplicity, cannot be repeated often enough:²¹

In our everyday roles, in our ordinary work, each of us represents the Department and strives to fulfill the public responsibility with which we are charged. Each of us has the responsibility to foster the values of this declaration and to infuse the details of our work with their meaning.

DJJ, of course, is not alone in its effort to articulate an overarching vision of the agency's mission and to explain how each employee's work contributes to it. Other City agencies, including the Law Department, the Department of Corrections, and the Police and Fire Departments, each try, in their own way, to convey to new employees a sense of the agency's special mandate and how their work contributes to its fulfillment.²²

Once an agency has clearly articulated its sense of purpose, its mission statement should become the springboard for developing an employee code of ethical conduct which not only

²¹ Id.

²² Even though those values are not always realized and tragic breaches of those values may occur, it is nonetheless essential that those values be publicly articulated and reinforced.

prohibits behavior which is detrimental to the achievement of the agency's goals but which affirmatively encourages ethical conduct. From this standpoint, it is crucial that each agency clearly delineate for employees the specific types of ethical dilemmas -- unique, perhaps to that agency -- that are likely to arise in the course of their work.

For too many agencies, the definition of correct ethical behavior on the part of its employees comes as an afterthought, if at all. One City agency, for instance, has run orientation sessions for new employees which sandwich the agency's policy on ethics between procedures for filling out time sheets and information on City blood drives. Some City agencies have developed documents styled "Codes of Conduct" which do little more than adjure City employees to maintain a neat personal appearance and to be courteous to fellow employees and the public. These "Codes of Conduct" demonstrate a striking failure to reflect upon the agency's special mandate and special goals and to tailor its code of conduct to those goals.

An agency Code of Ethics need not be a lengthy, cumbersome document. The New York State Division of Probation and Correctional Alternatives' Code of Ethics reads, in its entirety:

Code of Ethics for Probation Personnel

- * Carry out, to the best of my ability, my duties in accordance with all applicable laws, rules and regulations.
- * Strive to improve probation standards and practice through the acquisition of new knowledge.
- * Promote, through practice, the goals and standards of sound probation practice as adopted by state and local probation agencies.
- * Seek out and support constructive changes in probation goals and standards with the view toward improving probation services to the people of the State of New York.
- * Place my professional responsibility over my personal interests.
- * Treat with respect the findings, views and actions of colleagues and clients and use appropriate channels to express judgments on these matters.
- * Abide by the code of ethics prescribed by my employer.
- * Recognize and accept the responsibility to share ideas and knowledge with my colleagues.
- * Respect the rights of my clients and use information gained in professional relationships with discretion and in accordance with all applicable laws relating to confidentiality and disclosure of information.
- * Protect my clients and the community against unethical practices on the part of individuals or organizations engaged in probationary activities.

In subscribing to these tenets, I accept personal responsibility for upholding and promoting the professionalism of probation, in order to serve the ends of justice more effectively.

Other agencies aim for greater specificity. Some, for example, have identified specific types of outside employment which are inconsistent with the agency's mission and which might cause the public to call into question the independence of the employee's judgment. Others require prior approval of outside employment even when the outside job may not be a conflict of interest. Still others have chosen to go beyond the strictures of the various conflict of interest laws, which impose limits on the gifts public employees may accept, to adopt a flat ban on all gifts from those doing business with government.

There is no formula for developing an agency code of ethical conduct. What matters is that each agency identify the key issues of ethical importance to that agency. Rotely copying what other agencies have done, without carefully tailoring the code of ethics to the agency's own needs and purpose, is an exercise in futility.

C. Greater Emphasis Must Be Placed on Encouraging and Rewarding Ethical Conduct

1. Ethics Training Programs Are Needed To Help Employees Withstand Pressures To Condone Wrongful Practices

In the course of a typical work day, a public employee may face enormous pressure to cut ethical corners, and to turn a

blind eye to padded bills, requests for political favors and illegal conduct by their peers or their bosses. Yet with the exception of a handful of law enforcement-type agencies which have developed training materials designed to help recruits and new inspectors withstand the various pressures they will encounter "on the street,"²³ many New York City agencies surveyed by the Commission do not appear as of yet to have put together the kinds of training programs which would help their employees resist similar pressures.

The paucity of ethics training materials used in New York City stands in sharp contrast to the widespread availability of challenging and innovative training materials

²³ For example, the New York City Police Department, the New York City Buildings Department and the State Department of Taxation and Finance dwell at length on ethical issues in their training programs, using case studies and videotapes which simulate field conditions to familiarize their staff with the range of improprieties they are likely to encounter and to suggest ways to handle those kinds of situations. The Police Department, in particular, has gone to great lengths to develop materials based on hypothetical situations which dramatize the ethical dilemmas police officers face both on and off the job.

The New York City Department of Investigation's "Anti-Corruption Handbook for City Inspectors" tries to help inspectors recognize the offer of a bribe or an illegal gratuity and suggests appropriate ways to respond. However, the bulk of the Handbook consists of the verbatim text of various laws and legal opinions. Although it represents an important first step toward making the provisions of the law understandable to the average City inspector, it lacks a strong aspirational message aimed at encouraging inspectors to feel proud of their work on the City's behalf.

from a wide range of sources across the country.²⁴ The International City Management Association, for instance, has compiled a useful collection of ethics "tests" and case studies to help employees realize how many ethical decisions they face on a daily basis and allow them to develop their ability to think critically about ethical issues.²⁵ Typical questions in the ICMA materials ask public employees to consider how they would react if their boss asked them to lie to cover up his or her mistakes, what they would do if a politically connected job applicant called to ask for an interview after the deadline for job applications had passed, or how they would handle an offer from a vendor to fly them and their spouse to California at the vendor's expense for a special demonstration of new equipment which a local government agency was thinking of buying.²⁶

There is no simple "right" answer to many of the dilemmas public employees face. What the ICMA materials try to do, however, is to encourage public employees to think broadly

²⁴ A list of organizations offering ethics training materials which may be useful to agencies at both the state and local government levels is appended to this report.

²⁵ See The Ethics Factor: Leader's Guide. Materials produced by the International City Management Association may be obtained by calling (202) 289-4262 or by writing to the ICMA at 777 North Capitol Street, N.E., Washington DC 20002.

²⁶ See International City Management Association, The Ethics Factor: Leader's Guide, p. 31 ("An Ethics Test"), p.34 ("Case Study II: The Friendly Vendor") and p.38 ("Case Study VI: The Job Applicant").

about ethical issues they are likely to confront and to consider the entire range of options open to them.

Other ethics training materials are available from a wide variety of sources, a sampling of which are identified in the appendix to this report. Although different training materials pose different questions in different ways, the overall thrust is the same: to help public employees withstand the often tremendous pressures to depart from the standards of honesty, decency and impartiality the public rightfully expects them to uphold.

At the State level, the Governor's Office of Employee Relations ("OER") has put together training courses which cover similar ground. Drawing on case studies developed by the Rockefeller Institute of Government and Harvard's Kennedy School of Government, the courses seek to help management employees throughout state government cope, among other things, with situations where they have been directed to take action which conflicts with their personal and professional values. One such case study, Jose Santos' Dilemma: Administrative Ethics in the Hiring of a State Employee, explores in detail the plight of a state personnel administrator who is asked by his boss to circumvent the civil service laws to hire a poorly qualified candidate with political and personal ties to a friend of a

senior agency official.²⁷ It considers each of the courses of action open to him and analyzes their advantages and disadvantages.

The courses offered by the State OER are a far cry from the City Department of Personnel's blunt acknowledgement that it does not offer "any training or education programs" on ethical issues.²⁸ Yet, to be truly effective, the materials developed by OER need to be much more widely disseminated than they now are. Currently, only a handful of relatively senior managers who sign up for one of OER's courses are likely to be exposed to materials such as Jose Santos' Dilemma. OER needs to work jointly with the State Ethics Commission to make sure that training materials and case studies of the caliber of Jose Santos' Dilemma are part of a training program to which all State employees are periodically exposed over the course of their public employment.²⁹

²⁷ Worthley, John A., Jose Santos' Dilemma: Administrative Ethics in the Hiring of a State Employee (1988). For further information on other case studies in this series -- New York Case Studies in Public Management -- contact the Publications Department, Rockefeller Institute of Government, 411 State Street, Albany, NY 12203 or call (518) 472-1300.

²⁸ Letter from Judith A. Levitt to John D. Feerick dated January 17, 1989 (emphasis added).

²⁹ One State agency which stands out in its recognition that ethical concerns are a key management responsibility is the New York State Office of General Services. The materials which OGS provided to the Commission include a handbook entitled Ethics: To Do or Not to Do? containing short case studies which go to the heart of the ethical dilemmas routinely faced by state (continued...)

All too often, in the rush to ferret out and detect government corruption, the preventive role of ethics training workshops has been overlooked or ignored. The explosion of resources devoted to investigative agencies -- and to the hiring of investigators, investigating attorneys, auditors and the like -- contrasts sharply with the relative lack of attention and resources allocated to the ethics training function. If "an ounce of prevention is worth a pound of cure," surely the time has come for a more widespread and imaginative use of ethics training materials. Vivid case studies drawn from actual ethical dilemmas faced by individual agencies and their employees should be part of ethics training workshops to which all employees should be exposed throughout their public service careers.³⁰

²⁹(...continued)

buyers and purchasing agents. Their materials could profitably be used by any City or State agency with purchasing responsibilities.

³⁰ Ethics training workshops need not be an expensive proposition. The day-to-day experience of any agency offers a wealth of potential case study materials which can be incorporated into an ethics training program. The State's Division of the Budget, for instance, has prepared a short set of agency-specific "Ethics/Conflict of Interest Case Situations" which ask employees to consider how they would react to the following kinds of situations:

After a meeting at the Department of Environmental Conservation, the budget examiner learns that this agency has obtained final approval to hire summer interns. The examiner's daughter is currently enrolled at Paul Smith's College of Forestry and plans a career as a conservation officer. She has already submitted a resume to [the Department
(continued...)]

2. Agency Heads Need To Make Ethical Issues A Key Management Concern

Ethics is not an issue which deserves to be buried in the obscure depths of an employee handbook, never to be referred to again after the initial employee orientation session. Instead, in some of the best run agencies in the City and the State, ethical issues receive constant attention. For starters, senior agency officials lead by example -- their own actions set a tone which leaves no doubt that ethical conduct is valued and expected. Beyond that, ethical issues are the subject of discussion at staff meetings. Internal review committees or agency ethics officers make themselves available to counsel employees who come to them for confidential advice in handling ethical dilemmas. Some agencies make a point of briefing the entire staff when serious breaches of agency policies have occurred. Others circulate press clippings documenting the convictions of public officials for bribery and other forms of

³⁰(...continued)

of Environmental Conservation] personnel
office, hoping to land a summer job.

A budget examiner in the Education Unit has been working with the community college budgets for the past two years. The woman he plans to marry in three months just got hired as the Director of Fiscal Management at a local community college.

wrongdoing and routinely disseminate opinions of the agency's own conflict of interest panel.

A public employee's ethical obligations should be stressed from the moment a candidate applies for a job in the public sector. Thought needs to be given by the State Civil Service Commission and the City Department of Personnel to how questions which evaluate a prospective employee's sensitivity to ethical issues and ethical dilemmas could be incorporated into interviews and tests administered for hiring and promotion.³¹ Performance evaluations should include criteria which take into account the ways in which an employee has displayed -- or failed to display -- a special sensitivity to the public trust.

Each agency needs to develop a forum for publicizing and rewarding instances of good ethical behavior. In the effort to weed out corruption, the tendency has been to focus almost exclusively on instances of wrongdoing, to harp on the failures of a few. It is equally important to devise a means to honor and reward those who have set an example for others of honesty and integrity. Awards exist to honor firefighters and police officers who have risked their lives in the line of duty. An equally coveted award needs to be created to reward other public

³¹ A sample "ethics test" is included in the International City Management Association's publication, The Ethics Factor: Leaders Guide, pp. 31-32.

The importance of whistleblowers to the fight for good government cannot be overestimated. Our experience over the last two and a half years has confirmed what others have noted in the past:³³ employees who are aware of wrongdoing are the most important source of information about government misconduct. It is not simply that the cooperation of employees is essential to develop evidence about suspected abuses. It is also that, in many cases, the possibility of illegal or unethical government practices may never come to light at all unless a public employee takes the initiative to disclose the improprieties to the appropriate authorities. In several key instances, the willingness of state and local government employees to come forward with their stories pointed the way for this Commission's investigations.

At the same time, it is important not to lose sight of the fact that many public employees remain fearful of retribution if they speak up about what they know is wrong. Time and again, employees who, in the privacy of their offices, spoke candidly and insightfully to Commission staff members about problems in their agencies were unwilling to repeat that same testimony publicly. Others simply refused to talk to the Commission, or said little for fear of the consequences.

³³ Id.

It is an unfortunate fact of life that in New York City, the Department of Investigation, the agency charged with the protection of whistleblowers, is viewed with trepidation and fear by some City workers. Despite efforts to overcome it, the perception remains in some quarters that DOI does not have employees' best interests at heart. The Stuart Koslov case³⁴ and other high visibility whistleblower cases (in which DOI has been

³⁴ On December 28, 1983, Stuart Koslov, an employee of the New York City Housing Authority who had reported corruption, employee misconduct and gross mismanagement to his superiors at the Authority, was shot while standing outside his home in Brooklyn. Three weeks later, a colleague from the Housing Authority, Stanley Gardiner, was shot and found dead in his garage several hours after meeting with Housing Authority investigators.

Following the enactment of New York City's whistleblower law, Koslov filed a whistleblower complaint with DOI, alleging that as a result of his reporting corruption within the Housing Authority to senior management in April and August 1983, he was involuntarily transferred to a less desirable assignment; was shot by someone who had improperly received information about his reports of corruption; and was denied compensatory time to recuperate from his wounds because the Authority refused to recognize his injuries as job-related.

It took DOI from July 1985 to September 1989 to conclude that "Mr. Koslov's involuntary transfer was an adverse personnel action taken in retaliation for his reports of corruption . . ." Although DOI acknowledged that "the known facts compel one to suspect a link between the Koslov and Gardiner shootings and [their] reports of corruption," DOI found that "no proof of such a connection has been established" and that "at this point, there is no evidence to support Mr. Koslov's claim that his shooting was in retaliation for his having made reports of corruption . . ." See letter from Kevin Frawley, Commissioner of DOI, to Emanuel Popolizio, Chairman NYCHA, dated September 5, 1989.

Including the Koslov case, DOI substantiated whistleblowers' complaints of retaliation in three cases in 1989. See letter from Ron Davis, Executive Assistant to Kevin Frawley, to Alexandra Lowe, COGI Staff Counsel, dated January 10, 1990.

perceived as dragging its feet in its investigation of whistleblowers' complaints) have contributed to the cynicism and the fear.

Whether or not that fear is well founded, there is an urgent need to combat the perception that underlies it. Investigation of whistleblower complaints, reinstatement of whistleblowers who have been retaliated against, and punishment of those who have harassed, fired or demoted whistleblowers must be made a top City priority. A vehicle needs to be developed for publicizing appropriate instances where whistleblowers have been protected and where strong disciplinary measures has been taken against supervisors and managers who have sought to silence them.

It is also important that all City employees receive clear and simple explanations of their rights under the City's whistleblower law. While many agencies emphasize in their orientation materials an employee's duty to come forward to report wrongdoing, rarely do those same materials explain how employees can seek protection under the City whistleblower law if they find themselves harassed or threatened for "blowing the whistle."³⁵ A pamphlet explaining in plain English and Spanish

³⁵ A memorandum from former Mayor Edward I. Koch to all City employees dated May 2, 1984 explains, in general terms, what a whistleblower must do to invoke the protection of the City whistleblower law. Based on the materials supplied to this Commission, it does not appear that the May 2, 1984 memo was routinely disseminated to all employees hired after that date.

public employees' rights under the whistleblower law should be disseminated to all new employees and posted prominently on bulletin boards throughout City offices.

At the State level, the problems facing whistleblowers are even more intractable. The law itself fails to provide adequate protection to whistleblowers and is in urgent need of reform. Details of needed legislative changes are set forth in a separate Commission report on the weaknesses in the State whistleblower law.

At both the State and the City level, when whistleblowers are called to testify before investigative bodies or in court, there should be an ombudsman to whom they can turn for advice or counsel in the event that they do not feel comfortable being represented by counsel selected by the City or the State. In several different investigations we conducted around the State, situations arose where public employees -- represented by lawyers from a city or county law department -- expressed to the Commission staff their reluctance to provide information in the presence of the lawyer and asked to speak to the Commission privately, without counsel for the city or the county present. Because the presence of a government lawyer whom the employee has not selected may have a chilling effect on disclosures to investigative bodies and because of the conflict inherent when one lawyer is called upon to represent both a

public official whose conduct is under scrutiny and a public employee whose testimony may call that conduct into question, there is a need for independent counsel for whistleblowers who come forward to testify about official misconduct.

Finally, the present approach to whistleblowing needs rethinking. To date, the focus has been on protecting whistleblowers against retaliation. Obviously, that is essential. But merely reinstating a whistleblower to a job he or she wrongfully lost -- restoring, in other words, the status quo ante -- is not enough. Both the City and the State need to develop ways to reward whistleblowers for their initiative and courage when appropriate. Thought needs to be given to the enactment of a provision, similar to a law passed in South Carolina,³⁶ which would allow whistleblowers to share in the

³⁶ Whereas whistleblower laws in other states often threaten employees with a stick if they fail to report wrongdoing, South Carolina offers public employees a carrot. Section 8-27-20 of the Code of Laws of South Carolina provides in pertinent part:

If the employee's report, expose, or testimony results in the saving of any public money from the abuses described in this [statute], twenty-five percent of the estimated net savings resulting from the first year of implementation of the employee's report, expose or testimony, but not more than two thousand dollars, must be rewarded to the employee....

4 S.C. Code Ann. section 8-27-20 (Lawyers Co-op. Supp. 1989).

proceeds of any savings realized as a result of their revelations. In addition, the Chief Executive should consider creating a "Whistleblower of the Year" award which would publicly honor employees who had made an extraordinary contribution to public service by blowing the whistle on a particularly egregious problem.

ETHICS TRAINING RESOURCE LIST

AMERICAN SOCIETY FOR PUBLIC ADMINISTRATION (ASPA)

Dedicated to promoting excellence in public service, ASPA has developed a Code of Ethics and Implementation Guidelines for public administrators. In November 1989, ASPA sponsored a conference, Ethics in Government: An Intricate Web, which will serve as the basis of two forthcoming publications in the field of public service ethics. ASPA's newsletter, PA Times, periodically runs a column on ethics in government issues. For further information, call (202)393-7878 or write

David Shingler
Publications Director
American Society for Public Administration
1120 G St. NW, Suite 500
Washington, D.C. 20005

COUNCIL ON GOVERNMENT ETHICS LAWS (COGEL)

COGEL publishes a detailed directory of information on state ethics and other laws, known as the Campaign Finance, Ethics and Lobbying Law Blue Book. COGEL's annual conference highlights developments in the area of ethics in government. For further information, call (606)231-1939 or (606)252-2291, or write

Council on Government Ethics Laws (COGEL)
The Council of State Governments
Iron Works Pike, P. O. Box 11910
Lexington, Kentucky 40578-1910

THE ETHICS IN PUBLIC SERVICE NETWORK (ETHNET)

ETHNET's newsletter is a source of information about ethics training programs, curriculum materials, books, and resource persons. To join the network and receive their quarterly newsletter, call (202)994-3960 or (202)994-6295, or write

Bayard Catron
Department of Public Administration
George Washington University
302 Monroe Hall
2115 G Street
Washington, DC 20052

ETHICS RESOURCE CENTER, INC.

The Ethics Resource Center has developed ethics training materials and videos for use by the public and the private sector. For further information, call (202)333-3419 or write

Robert Beisenbach
Communications Director
Ethics Resource Center, Inc.
600 New Hampshire Ave., N.W.
Suite 400
Washington, D.C. 20037

HASTINGS CENTER

The Hastings Center publishes materials relating to the teaching of ethics in a wide variety of contexts. For further information, call (914)762-8500 or write

Publications Department
Hastings Center
Institute of Society, Ethics and the Life Sciences
255 Elm Road
Briarcliff Manor, N.Y. 10510

INTERNATIONAL CITY MANAGEMENT ASSOCIATION (ICMA)

The ICMA is a professional association of public sector managers serving cities, counties and local governments. The ICMA has developed extensive ethics training materials and case studies, including The Ethics Factor: Leader's Guide and The Ethics Factor: Handbook. For further information, call (202)289-4262 or write

William H. Hansell, Jr.
Executive Director
International City Management Association
777 North Capitol Street
Washington, D.C. 20002

JOSEPHSON INSTITUTE FOR THE ADVANCEMENT OF ETHICS, GOVERNMENT ETHICS CENTER

The Josephson Institute's magazine, Ethics, Easier Said Than Done, as well as its other publications such as Power, Politics and Ethics: Ethical Obligations and Opportunities of Government Service, explore the ethical dilemmas faced by public servants today. The Institute also runs workshops and training sessions designed to enhance public employees' moral reasoning skills and has sought to articulate a set of principles of public

service ethics, entitled Preserving the Public Trust: The Principles of Public Service Ethics. For further information, call (213)306-1868 or write

Michael Josephson, President
Josephson Institute for the Advancement of Ethics
310 Washington St., Suite 104
Marina del Rey, California 90292

NATIONAL LEAGUE OF CITIES

The National League of Cities hosts conferences and runs workshops and training sessions which address critical ethics issues. For further information, call (202)626-3120 or (202)626-3177, or write

Office of Membership Services
National League of Cities
1301 Pennsylvania Avenue NW, suite 600
Washington, D.C. 20004

UNITED STATES OFFICE OF GOVERNMENT ETHICS

The United States Office of Personnel Management, Office of Government Ethics, publishes a monthly newsletter, runs training courses, and has developed a training video Public Service, Public Trust? For further information, call (202)523-5757 or write

David H. Martin, Director
Office of Government Ethics
U.S. Office of Personnel Management
P.O. Box 14108
Washington, D.C. 20044

STATE ETHICS COMMISSIONS

The following state ethics commissions have developed ethics training materials which may be useful to state and local governments in New York:

Alabama State Ethics Commission

Melvin G. Cooper
Executive Director
817 South Court Street
Suite 2B Annex
Montgomery, Alabama 36104
(205)261-2997

Illinois Board of Ethics

John Larsen
Executive Director
State of Illinois Center
100 West Randolph Street
Suite 3-300
Chicago, Illinois 60601
(312)917-4100

Hawaii State Ethics Commission

Daniel J. Mollway
Executive Director
Pacific Tower, Suite 970
1001 Bishop Street
P.O. Box 616
Honolulu, Hawaii 96809
(808)548-6401

Massachusetts State Ethics Commission

Catherine S. Bromberg
Public Education Director
John W. McCormack State Office Building, Room 619
One Ashburton Place, Boston 02108
(617)727-0060

*New York State Commission on Government Integrity
Fordham University School of Law
140 West 62nd Street
New York, New York 10023
(212) 841-5698*