

AU Key FEDTalks Series
“Recognizing & Addressing Ethical
Issues in Decision-Making”
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James M. Eisenmann

Partner, Alden Law Group, PLLC

Adjunct Professor and Instructor, AU Key Executive Leadership Program &
School of Public Affairs



Our Path

- Identifying/recognizing ethical issues
- Resolving ethical issues/making decisions that involve ethical issues
- Creating a culture of ethical decision-making

Common ethical issues

- The clerk at the grocery store gave me too much change. Do I return it? Does it matter how much it is? What if it is \$10? Or 50 cents?
- In the mall parking lot, I side-swiped someone else's car. No one saw me do it. Do I leave a note?
- I'm playing golf and I commit a rules infraction that no one else notices. Do I report myself? Does it matter that I do not think I have benefitted from the infraction?
- Your co-worker claims to have received the covid vaccine. You know they are not and are using fake documentation. Do you report them?
- A train is barreling down the tracks. One track has 5 workers who do not notice the train and will surely be killed. But you can flip a switch and the train will switch to a different track saving the 5 workers. But by flipping that switch the train moves to a different track where a child is playing and who will be killed. There is no time to warn either the child or the workers. What do you do? ("The Trolley Problem")

Why do we care about recognizing ethical issues and making ethical decisions?

Ethical decisions:

- Engender trust and loyalty
- Root of future good decision-making
- Promote the greater good
- Promotes following rules and doing the right thing
- Demonstrate fairness and respect
- Consider others beyond yourself
- Empowers others to do the same
- How you are evaluated as a person and a leader

Ethics

A set of rules or code of conduct/behavior for an organization or profession

- Government ethics
- Scientific ethics
- Attorney ethics
- Medical ethics

Ethics

- The rules of conduct recognized in respect to a particular class of human actions or a particular group or culture.
- Baseline for understanding right and wrong for a particular group
- Rules or standards governing conduct by which we live our lives
- What society believes is right and wrong

Government Ethics

Merit System Principles

- 5 U.S.C. § 2301

Prohibited Personnel Practices

- 5 U.S.C. § 2302

Office of Government Ethics

- 5 C.F.R. Part 2635

“Public service is a public trust”

Each employee has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws and ethical principles above private gain. To ensure that every citizen can have complete confidence in the integrity of the Federal Government, each employee shall respect and adhere to the principles of ethical conduct ...

5 C.F.R. § 2635.101(a)

Why do you need to be able to recognize and address ethical issues?

- Ethical dilemmas lurking in nearly every difficult decision you face
- Must be able to recognize the ethical issue and have the decision-making experience and framework to make ethically-bound decisions
- Ethical decision making is based on core character behaviors and values – honesty, respect, responsibility, fairness

Ethical decision-making framework

1. Identify the ethical issue/dilemma
2. Identify the relevant facts/data
3. Identify possible options and consequences of each
4. Make a decision
5. Communicate/implement the decision

Step 1:
Identify the
ethical
issue/problem

- What ethical rules apply?
 - Government ethics
 - Procurement ethics
 - Financial ethics
- Is there a clear answer?
- Even if there is, there is still the question of “should” versus “can”

How to recognize ethical issues?

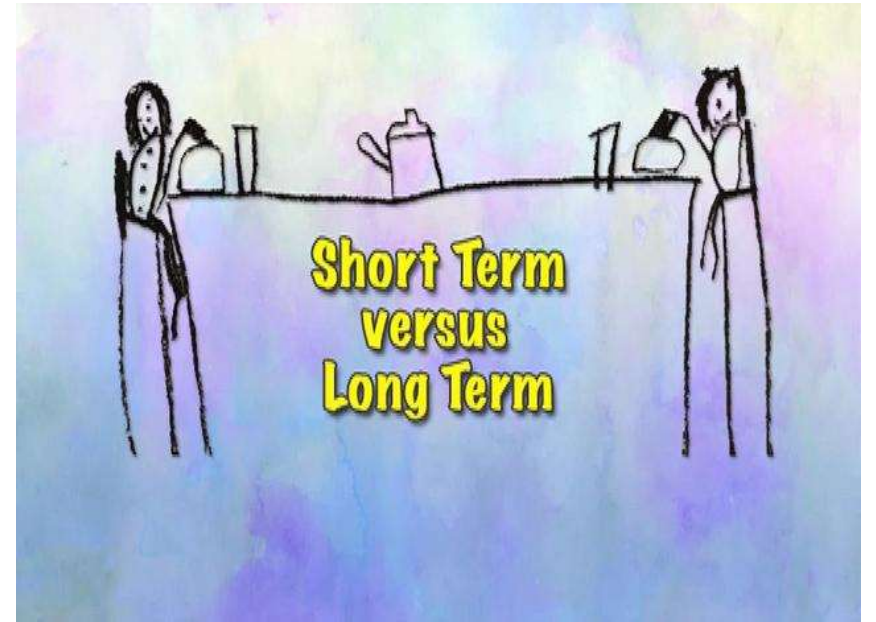
- Need to be attuned to ethics and moral questions
- Educate yourself about applicable ethical rules
- What are the principles behind the rules
- Intuition – the starting point.
- Ask – does something about this situation not feel right? Does it feel wrong?
- Is there an emotional uneasiness to the situation?
- If it is a difficult question or hard to figure out, then could be an ethics issue

Step 1: Identify the ethical issue/problem ...

- But most ethical issues are not about right vs. wrong
- *Right vs. Right*
- Clash of core values/principles
- Ethical dilemma
 - situation in which two moral principles conflict with one another.
 - conflict between alternatives where, no matter what a person does, some ethical principle will be compromised.

Clash of Core Values/Principles

- Truth vs. Loyalty
- Individual vs. Community
- Short Term vs. Long Term
- Justice vs. Mercy



Truth vs. Loyalty

Truth: The obligation to pass on information to others, especially when they have a right to know.

vs.

Loyalty: The obligation to be faithful in allegiance to another individual, group, institution, or state.

Adapted from “How Good People Make Tough Choices,” Rushworth M. Kidder

Individual vs. Community

Individual: The obligation to address the specific needs of an individual, often due to unique circumstances.

vs.

Community: The obligation to address the needs of a larger aggregate of individuals, often seeking to achieve the greatest good for the greatest number.

Adapted from “How Good People Make Tough Choices,” Rushworth M. Kidder

Short term
vs.
Long term

Short Term: The obligation to address immediate problems or needs, often without regard to longer term consequences.

vs.

Long Term: The obligation to make decisions that effectively address problems in the future. This may necessitate some form of immediate sacrifice.

Adapted from “How Good People Make Tough Choices,” Rushworth M. Kidder

Justice
vs.
Mercy

Justice: The obligation to impartially administer policy or law to determine rewards or punishment. In its distributive form, justice refers to a fair share of rewards, sacrifice, or punishment.

vs.

Mercy: The obligation to exhibit compassion in a way that forbears punishment.

Step 1: What is the nature of the issue/problem?

- Which core values are at play?
- Is it a crisis?
- Budgetary/Financial?
- Public health?
- Who are the parties involved?
 - Public?
 - Employees?
 - Other stakeholders?

Washington DC Metro – March 15, 2016

- What happened on that day?
- What precipitated that action?
- What is the nature of the ethical issue?
- What are its dimensions?
- What core values were at play?

Step 2: Identify
the relevant
facts/information

- Gather information
- Different sources
- Reports
- Stakeholders
- Employee groups
- Peers

Step 3: Identify possible options

- Identify possible consequences of each option
- Option could be to do nothing - - at this point
- Consult with different groups/stakeholders/trusted advisor
- Consider what are the ethical values you are upholding
- Practice explaining/announcing your decision before actually deciding

Typical methods of resolving ethical issues

Utilitarianism – Greatest good for greatest number of people

- Does not mean there is no harm
- Looks at consequences
- Focus on future effects of possible actions
- Involves some compromise
- Most common approach

Typical
methods at
resolving
ethical issues
...

Duty-based (deontological) – Decisions made based on one's duties or obligations

- Obligations as human beings to others (e.g., not hurt others, care for children, etc.)
- Consequences do not drive the analysis
- Obeying universal moral law
- Goal is to do the right thing
- Focus on rules regardless of the possible outcome

Typical methods at resolving ethical issues

...

Virtue – Concerned with character traits

- Asks - what kind of person should you be and what your actions say about your character
- Accounts for all aspects of the human experience and the whole person
- This assumes that we acquire virtue through practice. By practicing being honest, just, generous, etc., a person develops an honorable and moral character. According to Aristotle, by honing virtuous habits, people will likely make the right choice when faced with ethical challenges.

Step 4: Make a decision/act

- But ...
- Before discussing making the decision or addressing the ethical issue, let's talk a bit about how it is that good people make bad or unethical decisions

Ethical decision- making

Why do we make decisions that are unethical?

- Always predict we will be ethical in future, hypothetical situations
- Key is decision time and after
- Decision time – we say there were no ethical issues; or we do not see the ethical dimensions; or pressures from other sources influence our decision
- After the fact – we say we in fact behaved ethically. *Post hoc* justification

Watch out if you hear these phrases or explanations ...

- It's for a good cause (ends/means)
- I had to do this thing/it was necessary, therefore it is ethical
- It was a business decision
- It's just doing my job
- I did it for you
- Fighting fire with fire
- Everyone else does it
- Others do it all the time
- It's ok if I don't personally gain
- I can still be objective

[Adapted from UC San Diego Ethics Program](#)

Other rationalizations to be aware of ...

- My action is in everyone's best interests.
- No one will find out what I've done.
- The organization/boss will condone my action and protect me.

Saul W. Gellerman, "Why 'Good' Managers Make Bad Ethical Choices," *Harvard Business Review on Corporate Ethics* (Boston: Harvard Business School Press, 2003), 59.

Some last points about decision-making

- Overestimate the cost of doing the right thing and underestimate the cost of failing to do so
- Our decision making is influenced by biases or desires (ingrained values)
 - If I stand to benefit personally or professionally from my decision, I will be biased
 - If I want something badly, then my decision-making will be flawed
 - Motivated by my desire

Why we
ignore ethical
lapses in
others

Motivated blindness

- Do not see ethical failings in others if that would harm the observer
- Organizational loyalty
- Incentives (*e.g.*, \$\$\$)

Why we
ignore ethical
lapses in
others

Erosion of ethical standards

- Less likely to perceive unethical behavior if it occurs over time
- Moving the ethical line

Why we
ignore ethical
lapses in
others

Value outcomes over
process/outcome bias

- Judging the ethicality of actions based on whether harm follows rather than the ethicality of the choice itself
- Only noticing unethical actions if harm results
- And if the harm is to a real or identifiable victim

Ok, *now* we can make
the decision ...

Step 4: Make a decision/act

- Decision may be to do nothing
- Decision may be to change something drastically
- Decision may be how to handle a crisis

Step 4: Make a decision/act

- Other factors to consider:
- When must a decision be made?
- Who must make the decision?
- You?
- Someone else?

Step 5:
Communicate &
implement the
decision

How will you explain your decision to those negatively affected?

How will you explain to your boss?

How will you explain to Congress?

How will you explain to the IG?

How will you explain to the press?

Step 5:
Communicate &
implement ...

- How will this decision be implemented?
- Who will be involved?

Creating A Culture of Ethical Decision Making and Behavior

- Educate staff about ethical rules
- Encourage discussion of ethical issues
- Develop and nurture your reputation for following rules and making ethical decisions
- Ethics training

Thank you!

James M. Eisenmann

Jeisenmann@aldenlg.com

 @jimeisenmann

www.aldenlg.com



Resources/Citations

- “How Good People Make Tough Choices,” Rushworth Kidder
- “Practitioner’s Guide to Ethical Decision-Making,” American Counseling Association, Holly Forester-Miller, Ph.D. and Thomas E. Davis, Ph.D.
- “A Framework for Making Ethical Decisions,” Brown University, Sheila Bonde and Paul Firenze, May 2013.
- Don Zauderer, Zuaderer & Associates, LLC Workbook, 2017
- “Blind Spots,” Max H. Bazerman and Ann E. Tenbrunsel.
- University of Texas, McCombs School of Business, [Ethics Unwrapped](#).
- UC San Diego, <https://blink.ucsd.edu/finance/accountability/ethics-awareness.html#Obstacles>
- Saul W. Gellerman, “Why ‘Good’ Managers Make Bad Ethical Choices,” *Harvard Business Review on Corporate Ethics* (Boston: Harvard Business School Press, 2003), 59.