

Money and Public Service: A Possible Blind Spot?

<http://www.ca-ilg.org/post/money-a-possible-blind-spot>

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Question: *Recent media accounts seem to paint an inaccurate picture of the vast majority of public servants. Whether it's taking bribes, accepting generous gifts, pension scandals, or being paid for sitting on bodies that don't do meaningful work, the picture portrays public officials on the take.*

In my experience, these are the exceptions rather than the rule. Some people (our local district attorney, for one) ascribe the cause as people who get into public service for corrupt reasons—end of story. But I actually am familiar with some of the individuals involved in the prosecutions and I am not sure that's always the explanation.

What's your take on what happens to good people who make bad (and self-interested) decisions? And how is it that they can defend their actions in the face of almost overwhelming evidence that what they did was a serious breach of their responsibilities as public officials?

Answer: There is an interesting book that offers some insights into your question: *Blind Spots: Why We Fail to Do What's Right and What to Do about It*. The authors present persuasive evidence, based on behavioral research, of humans' tendency to overestimate their commitment to ethical decision-making.

In part, this is because people overlook the ethical dimensions of decisions when the time comes to make a decision involving ethical issues.¹ Their recollections of their actions are then selective.²

Some Public Sector Examples

One possible example may be the recent criminal conviction of local officials in southern California for accepting stipends for sitting on various commissions that appeared to do little work.³ The elected officials were charged with misappropriating public funds⁴ when they collected stipends for meetings that didn't occur or only lasted a few minutes.

Author Credit: This resource is a service of the Institute for Local Government (ILG), whose mission is to promote good government at the local level. For more information and to access ILG's resources on public service ethics, visit www.ca-ilg.org/trust. ILG thanks former city manager Arne Croce for his insights on these topics.

The officials' defense attorneys have indicated that an appeal will occur.

People have also asked how the elected officials and staff in Bell could have thought it appropriate to pay themselves such generous salaries?⁵ Or, as in one case, feel it appropriate to sue for more money once the gig was up?⁶

Misuse of credit cards by elected officials⁷ and staff⁸ remains an ongoing topic in the news.

Sometimes, the lapses are even more serious. This includes when officials take money in exchange for official actions, which of course can lead to charges of bribery and/or extortion.

Apart from the whether the specific facts and laws mean that the above behavior constitutes a criminal offense, how could these officials and others think that they were doing the right thing when they walked so close to the line relating to criminal conduct?

The Importance of Thinking About What One Should Do Instead of What One Wants to Do

Applying the conclusions in *Blind Spots*, one answer may be that they never asked themselves or others whether enhancing their compensation in this way presented an ethical issue. Their thoughts were dominated by what they want to do.⁹ A focus on what one wants to do (in this case, have more money) can eclipse an analysis of what one should do.

“But I am Underpaid for All I Do for the Community”

One of the reasons that people don't ask what they should do (or, if they do ask, they answer in a self-serving fashion) is the human tendency to rationalize behaviors.

In the prosecution for accepting the stipend, one of the reported defenses was that the officials had put in many years of service to the community.¹⁰ Along similar lines, another elected official facing bribery charges was reported as making the perplexing observation that, if she had gotten paid for all the volunteer work she had done over the years, she would be rich and wouldn't be in court.¹¹

One sometimes hears public employees note that they could make more in the private sector.

To be sure, community and public service is indeed demanding. It can involve a fulltime commitment of time and many sacrifices. And often, one could indeed make more money in the private sector or if one were compensated for all the volunteer work one has done.

People can make an analytical wrong turn by using these facts to justify additional forms of compensation. This can take several forms, including stipends for seemingly nominal activities, use of public resources for personal benefit, capitalizing on their positions to promote business or financial interests, and accepting meals, entertainment or other forms of gifts.

One of the most troubling dynamics identified in *Blind Spots* is evidence suggesting that individuals feel a greater license to engage in questionable behavior after having engaged in worthy behaviors.¹² Given that public service is indeed a worthy behavior, it could be that public servants need to be particularly careful to avoid the trap of thinking that their worthy public service counterbalances any questionable benefits the official claims as a result of their public office.

“But It’s Not Illegal”

Another form of rationalization of an ethical lapse is that “it wasn’t against the law.” This seems to be a common response when the media asks officials to justify potentially questionable actions.

In fact, media reports of the preliminary hearing on charges against former Bell city manager quoted Robert Rizzo’s defense attorney as saying: “Everybody has agreed that it’s not a crime to be paid too much.”¹³ It’s not clear that everyone has indeed agreed to that position (particularly if transparency and other procedural requirements were not observed along the way), but defense counsel’s statement provides an insight into Rizzo’s thought process, which was that he didn’t think he was committing any crimes.

It is worth noting that judges and jurors sometimes are motivated in egregious cases to apply the law in such a way to achieve what they perceive as a just result. This can result in old laws (for example, the law about what constitutes misappropriation of public resources¹⁴) being applied in new ways. Thus, when one only focuses on what one knows to be illegal and, as a result, acts in what strikes the public as immoral, the law may change.

This is why it is easy, but unwise, to use the law as a sole source of reference on what to do. In fact, the statement of “I broke no laws” is tantamount to admitting that one didn’t analyze whether in fact one did the right thing. The law creates a floor for behavior—a standard below which conduct is subject to penalties, jail time and other sanctions. The law doesn’t define what the best course of action is in any given situation.

However, legal considerations can be a dominant element of the analysis of what public officials do. Because of this, the authors of *Blind Spots* determined that compliance systems actually can result in *more* unethical decision-making. This is because having the law as a reference can absolve people from engaging in a more values-based analysis.¹⁵

“Nobody Told Me”

A focus on the law contributes to another human tendency, which is to assign responsibility for transgressions to others. For example, attorneys in the southern California case argued that their clients should not be criminally responsible for their actions because city attorneys and city managers *never alerted them that the commission pay might be illegal*.¹⁶ If the officials were thinking about what’s right as opposed to what’s legal, others’ alleged failures become irrelevant.

While most public agency professionals pride themselves on speaking truth to power,¹⁷ their failure to do so does not absolve those who choose not to engage in their own analysis. Moreover, as the case of the Bell whistleblower indicates,¹⁸ staff members who do decide to do the right thing often risk their jobs to do so. The prevailing environment can sometimes be one where truth-telling is neither sought nor welcome. (For more about the legal protections for whistleblowers, see the April 2005 article in *Western City* available at <http://www.ca-ilg.org/document/whom-whistle-blows>).

That puts public agency professionals in the position of weighing what they want to do (keep their jobs) and what they should do (put a stop to improper behaviors that undermine public trust and confidence in local officials). The authors of *Blind Spots* note that it is common for people to not notice others’ unethical behavior when they have a vested interest in not seeing that behavior.¹⁹ They call this phenomenon “motivated blindness.”

In other situations, it appears that some agency professionals find themselves using their knowledge and skills to both secure their positions and curry personal favor with those who are in a position to reward and/or support them. The information reported in the press about Robert Rizzo’s actions in Bell seem to suggest this phenomenon.

Either represents the dynamic of putting one’s wants ahead of what should (or should not be) happening.

The Denial Dynamic

When confronted with wrongdoing, oftentimes the denial is quite emphatic. For example, one defendant facing—and subsequently convicted of--bribery charges said this in response to questions on whether she would go to trial:

Oh, yes, I've got to prove my innocence, I wouldn't put my life savings...if I didn't believe in my innocence. It's [the charges are] all a crock.²⁰

Her appeal of her conviction is pending and it’s of course possible that she was framed or the jury was wrong. But what if the jury was right?²¹

According to *Blind Spots*, it's not uncommon for people to have selective memories: remembering behaviors that support a self-image of being ethical while forgetting those that are inconsistent with that image.²² Other dynamics include re-defining definitions of what is ethical and what isn't, deflecting blame and rationalizing that "everyone does it."²³

What to Do

The authors of *Blind Spots* note that ethics codes and other forms of regulations are imperfect tools for achieving better behavior. In part, this is because such devices reflect only the "tip of the organization's 'ethical infrastructure.'"

Moreover, research suggests that sanctioning bad behavior can make the situation *worse* because the compliance system took the ethical element out of the analysis for most people.²⁴ In addition, psychologists have found that people's tendency to rebel against constraints on their freedoms cause people to try to outsmart the constraints.²⁵

Instead, the authors of *Blind Spots* argue that the task is to promote a decision-making framework that highlights the ethical dimensions of a decision or action.²⁶ For individuals, this involves more of a deliberate focus on and analysis what *should* happen in a given situation.²⁷ They also recommend thinking in advance about how one's "wants" may interfere with one's motivation to make the right decision and preparing oneself to exercise more discipline to make decisions that align more with one's values.²⁸

For agencies, the first task is to understand the processes that motivate individual employee's decisions. What pressures do employees feel and why? What challenges do they face? What types of decisions does the organization reward? What qualities enable an individual to advance within the organization?²⁹

Another indicator is what is talked about and what isn't.³⁰ This is a question to ponder for associations of local agencies and local agency officials. What signals do respected leaders within the field send about what's important? Where are these leaders and their associations silent? Do these organizations create opportunities for their members to understand blind spots and how to avoid them? Or, are there ways that these organizations may reinforce blind spots?

Tools for Deciding What's Right

The Institute for Local Government's publication *Understanding the Basics of Public Service Ethics: Promoting Personal and Organizational Ethics* offers thoughts on how to apply values-based decision-making principles to issues that arise in the context of public service and also explores the nature of an ethical dilemma.

The publication is available online at www.ca-ilg.org/ppoe. In addition, past "Everyday Ethics" columns that analyze the ethical and legal components of specific dilemmas public officials face are available at www.ca-ilg.org/everydayethics.

These are all questions those that care about the public's trust and confidence in local agency institutions are wise to ask.

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ILG is the nonprofit 501(c)(3) research and education affiliate of the League of California Cities and the California State Association of Counties. For more information and to access the Institute's resources on ethics visit www.ca-ilg.org/trust. If you would like to access this resource directly, go to www.ca-ilg.org/overview/everyday-ethics.

The Institute welcomes feedback on this resource:

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References and Resources

Note: Sections in the California Code are accessible at <http://leginfo.legislature.ca.gov/>. Fair Political Practices Commission regulations are accessible at www.fppc.ca.gov/index.php?id=52. A source for case law information is www.findlaw.com/cacases/ (requires registration).

¹ Max H. Bazerman and Ann E. Tenbrunsel, *Blind Spots: Why We Fail to Do What's Right and What to Do About It* (Princeton University Press: 2011), chapter 4 (a process they call "ethical fading").

² *Blind Spots*, at 73-76.

³ *Los Angeles Times*, 2 former Lynwood council members found guilty of corruption, July 31, 2012, available at <http://articles.latimes.com/2012/aug/01/local/la-me-lynwood-corruption-20120801>.

⁴ See Cal. Penal Code §424(a).

⁵ CBS Los Angeles, Lawyer: Robert Rizzo Was Victimized, Not City Of Bell, February 23, 2011 available at

<http://losangeles.cbslocal.com/2011/02/23/lawyer-robert-rizzo-was-victimized-not-city-of-bell/>

⁶ *Los Angeles Times*, Ousted Bell police chief sues for severance pay, August 02, 2012, available at <http://articles.latimes.com/2012/aug/02/local/la-me-bell-adams-20120803>. See also *Los Angeles Times*, In e-mails, Bell official discussed fat salaries, February 14, 2011, available at <http://articles.latimes.com/2011/feb/14/local/la-me-bell-emails-20110215>:

As Bell prepared to hire a police chief in 2009, the top candidate for the post exchanged e-mails with the city's No. 2 official: "I am looking forward to seeing you and taking all of Bell's money?!" Randy Adams wrote shortly before starting the job. "Okay ... just a share of it!!"

"LOL ... well you can take your share of the pie ... just like us!!!" responded Angela Spaccia, the city's assistant administrator. "We will all get fat together ... Bob has an expression he likes to use on occasion," she continued, referring to her boss and chief administrative officer, Robert Rizzo. "Pigs get Fat ... Hogs get slaughtered!!!! So as long as we're not Hogs ... All is well!" Excerpts from the e-mails were made public Monday by Los Angeles County prosecutors in court documents that accuse Rizzo and Spaccia of intentionally concealing the steps they took to pay themselves and other city officials exorbitant salaries.

⁷ *Los Angeles Times*, Court overturns former Compton Mayor Omar Bradley's conviction, August 03, 2012, available at <http://articles.latimes.com/2012/aug/03/local/la-me-0802-omar-bradley-20120803>.

⁸ CBS Sacramento, "One of Mayor[']s] . . . Top Aides Quits Amid Reports of Credit Card Abuse, available at <http://sacramento.cbslocal.com/2012/07/24/one-mayor-johnsons-top-aides-quits-amid-reports-of/>; *Los Angeles Times*, Former Costa Mesa police chief admits he abused city credit card June 18, 2012, available at <http://articles.latimes.com/2012/jun/18/local/la-me-costamesa-police-20120618>.

⁹ *Blind Spots*, at 67.

¹⁰ *Los Angeles Times*, 2 former Lynwood council members found guilty of corruption, July 31, 2012, available at <http://articles.latimes.com/2012/aug/01/local/la-me-lynwood-corruption-20120801>.

¹¹ *Pasadena Star News*, Former Temple City mayor . . . maintains her innocence before court appearance, 03/24/201, available at http://www.pasadenastarnews.com/ci_17692490 (also maintaining that the charges were a "crook"). (She was subsequently convicted by a jury for accepting a bribe and committing related offenses *Los Angeles Times*, . . . former Temple City mayor, sentenced to prison for bribery, perjury, June 23, 2011, available at <http://latimesblogs.latimes.com/lanow/2011/06/former-temple-city-mayor-sentenced-for-bribery-perjury-.html>. She has begun serving her four year sentence in prison while her attorneys pursue an appeal. *Pasadena Star News*, Errors alleged in ex-Temple City mayor . . . bribery trial July 30, 2012, available at http://www.pasadenastarnews.com/templecity/ci_21194051/errors-alleged-ex-temple-city-mayor-cath-wilsons .

¹² *Blind Spots*, at 114-17.

¹³ CBS Los Angeles, Lawyer: Robert Rizzo Was Victimized . . . , February 23, 2011 available at <http://losangeles.cbslocal.com/2011/02/23/lawyer-robert-rizzo-was-victimized-not-city-of-bell/> .

¹⁴ Cal. Penal Code § 424(a), which provides:

Each officer of this state, or of any county, city, town, or district of this state, and every other person charged with the receipt, safekeeping, transfer, or disbursement of public moneys, who either:

1. Without authority of law, appropriates the same, or any portion thereof, to his or her own use, or to the use of another; or,
2. Loans the same or any portion thereof; makes any profit out of, or uses the same for any purpose not authorized by law; or,
3. Knowingly keeps any false account, or makes any false entry or erasure in any account of or relating to the same; or,
4. Fraudulently alters, falsifies, conceals, destroys, or obliterates any account; or,
5. Willfully refuses or omits to pay over, on demand, any public moneys in his or her hands, upon the presentation of a draft, order, or warrant drawn upon these moneys by competent authority; or,
6. Willfully omits to transfer the same, when transfer is required by law; or,
7. Willfully omits or refuses to pay over to any officer or person authorized by law to receive the same, any money received by him or her under any duty imposed by law so to pay over the same;--

Is punishable by imprisonment in the state prison for two, three, or four years, and is disqualified from holding any office in this state.

¹⁵ *Blind Spots*, at 109-113.

¹⁶ *Los Angeles Times*, 2 former Lynwood council members found guilty of corruption, July 31, 2012, available at <http://articles.latimes.com/2012/aug/01/local/la-me-lynwood-corruption-20120801>.

¹⁷ See, for example, Aaron Wildavsky, *Speaking Truth to Power: The Art and Craft of Policy Analysis* (Little Brown: 1987); League of California Cities, City Attorneys Department, Ethical Principles for City Attorneys, Principle 1, Example 6 (“The city attorney should be willing to give unpopular legal advice that meets the law’s purpose and intent even when the advice is not sought but the legal problem is evident to the attorney.”) available at <http://www.cacities.org/UploadedFiles/LeagueInternet/d6/d60445e6-7918-459b-9780-00a714616297.pdf>.

¹⁸ *Los Angeles Times*, Sergeant who reported Bell corruption wins whistle-blower settlement, August 04, 2012, available at <http://articles.latimes.com/2012/aug/04/local/la-me-0804-bell-whistleblower-20120804>.

¹⁹ *Blind Spots*, at 81.

²⁰ *Pasadena Star News*, Former Temple City mayor . . . maintains her innocence before court appearance, 03/24/201, available at http://www.pasadenastarnews.com/ci_17692490 (also maintaining that the charges were a “crook”). (She was subsequently convicted by a jury for accepting a bribe and committing related offenses *Los Angeles Times*, . . . former Temple City mayor, sentenced to prison for bribery, perjury, June 23, 2011, available at <http://latimesblogs.latimes.com/lanow/2011/06/former-temple-city-mayor-sentenced-for-bribery-perjury-.html>. She has begun serving her four year sentence in prison while her attorneys pursue an appeal. *Pasadena Star News*, Errors alleged in ex-Temple City mayor . . . bribery trial July 30, 2012, available at http://www.pasadenastarnews.com/templecity/ci_21194051/errors-alleged-ex-temple-city-mayor-cath-wilsons

²¹ In another case in which local officials were convicted and sentenced to prison for misappropriation of public resources, one of the defendants reportedly responded that he had done “nothing wrong” when the sentencing judge asked the defendant if the defendant was sorry. See Ex-Lynwood councilmen get prison in misuse of city funds, *Los Angeles Times*, September 22, 1012, available at <http://www.latimes.com/news/local/la-me-0922-lynwood--20120922,0,4888573.story>.

²² *Blind Spots*, at 73-76.

²³ *Blind Spots*, at 72-73.

²⁴ *Blind Spots*, at 109-11.

²⁵ *Blind Spots*, at 112-113.

²⁶ *Blind Spots*, at 113.

²⁷ *Blind Spots*, at 153-54.

²⁸ *Blind Spots*, at 154-55.

²⁹ *Blind Spots*, at 160-61.

³⁰ *Blind Spots*, at 161-63.