

Taking a Positive Approach to Government Ethics Training Using a Structured Character Development Program

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I. Introduction

“Let me know when the jail sentence starts.”

KellyAnne Conway spoke these words in May 2019, responding to allegations of violating the Hatch Act.¹ Her statement represents all that is wrong with the current approach to government ethics. Contemptuous and cynical, these words exemplify “floor ethics”—complying with minimum standards of conduct with avoiding discipline as the primary goal. This approach to ethics motivates employees to skirt the line in maintaining compliance. Here, Ms. Conway implicitly admitted that she was willing to engage in Hatch Act violations up to the point where she would face criminal penalties.

In my past career as a federal employee, I have endorsed the floor-ethics approach myself. As an active-duty Army officer I served as an ethics counselor for the U.S. Military Academy at West Point. In that role, a primary duty was to conduct annual ethics training for both military and civilian employees. Like my predecessors, I based my training on a slide deck that explained the many ethical proscriptions and sanctions, including federal criminal penalties. After going through the various do’s and don’ts, I would inform the audience that my office was available to answer questions and provide legal opinions. The only aspirational aspect of the training was a reminder that public service is a public trust and we were to view our conduct with that concept in mind.²

As an ethics counselor I also rendered legal opinions on acceptance of gifts, use of military property, attendance at conferences, and other conduct covered under the Joint

¹ Brett Samuels, *Kellyanne Conway dismisses Hatch Act violation: "Let me know when the jail sentence starts,"* THE HILL, <https://thehill.com/homenews/administration/445914-kellyanne-conway-dismisses-hatch-act-violation-let-me-know-when-the> (May 19, 2019, 10:08 a.m. E.D.T.); Hatch Act, 5 U.S.C. §§ 7321-7326.

² “Public Service is a Public Trust” is the first of fourteen principles in the federal employee Code of Ethics. E.O. 12674; see, e.g., <https://www.energy.gov/hc/services/benefits/new-employee-orientation/ethics-fourteen-principles-ethical-conduct-federal>.

Ethics Regulation. The general sentiment in my office was to take a “get to yes” approach to these reviews. A “no” opinion would be sent back with a request to look more closely or creatively at the rules and the outermost boundaries of acceptable conduct.

Now, I do not believe that this approach was wrong *per se*. As a lawyer in the Army Judge Advocate General’s (JAG) Corps, my job was to fully advise commanders of all the legal options and their consequences, and their job was to make the final decision. Knowing the boundaries of acceptable behavior and the penalties for violation allows decision makers to proceed with full information. Nonetheless, during my time at West Point I realized that the approach to ethics training for Department of Defense employees versus Army cadets couldn’t be more different. As an ethics counselor, I educated employees on regulations, discipline, and penalties. As a volunteer instructor for the cadet military ethics program, I engaged students in discussing how their personal beliefs and experiences aligned with the professional values of an Army officer. For cadets, we focused on aspirational behavior and not mere compliance.

After leaving West Point, I tucked these observations away for several years as I transitioned to different assignments and eventually back to civilian life. However, my post-Army career has led me once again to consider the role of character and leadership in cultivating ethical conduct.³ In this essay, I suggest a new concept of federal government ethics training.⁴ Rather than maintaining a floor-ethics approach, I offer a different perspective that borrows from the positive ethics movement in psychology education. In positive ethics, the rules are not the floor, but rather the jumping-off point in pursuit of ethical excellence. My approach is modeled after the West Point ethics program, which progressively develops in cadets the behaviors and virtues that produce

³ From 2016 to 2019 I served as State Bar of Arizona Ethics Counsel, providing confidential advice and teaching ethics seminars to lawyers. During that time, I was concurrently studying ethics and leadership as part of an MBA program. Once more, I found myself in conflicting roles. As ethics counsel, my advice to lawyers focused on rule compliance rather than aspirational behavior. But in my leadership classes, I studied how transformational leaders inspire their followers to achieve excellence and not simply meet the standard. And now, as someone who teaches ethics to law students, I grapple with the tension between focusing on compliance with rules and law, while concurrently encouraging students to develop an aspirational professional identity.

⁴ To keep this paper manageable, I limit my scope to federal government agency ethics programs although my proposal could be adapted to state and local government ethics training.

“leaders of character.” My proposal is structured as a leadership development program, recognizing that the ethical culture of an organization is shaped by the attitudes and behaviors of its leaders.⁵

This essay starts with a brief overview of federal government ethics training requirements. Next, I explain the positive ethics movement in psychology and how it has re-conceptualized the approach to teaching ethics to psychology students. I then discuss the West Point character development program in content and format. Finally, I synthesize these topics into my proposal for a government ethics leadership program. I explain the benefits of such an approach and address barriers to adoption as well.

⁵ See, e.g., James M. Lager, *Overcoming Cultures of Compliance to Reduce Corruption and Achieve Ethics in Government*, 41 MCGEORGE L. REV. 63, 76-80 (2009) (noting that “[l]eaders are perhaps best positioned to influence an organization’s culture and act as role models for subordinates about appropriate organizational behaviors.”).