

The Story of Dharma: The Three-Legged Ethics Dog

By Mark Davies

On June 26, the author served as co-facilitator of a work group on Anti-Corruption Policies, Institutions, and Mechanisms at Different Levels of Government at the United Nations Experts Group Meeting and Capacity-Development Workshop, Preventing Corruption in Public Administration: Citizen Engagement for Improved Transparency and Accountability. His remarks may serve as an introduction to conflicts of interest (ethics) laws for municipalities.¹

Let me begin with two caveats, as the lawyers call them, two reservations. First, the United States ranks 24th on Transparency International's 2011 Corruption Perceptions Index.² Now, when I want answers, I'm not sure I'd ask #24 anything. But that's just as well because, second, I don't know any answers. Yet, after almost 25 years in this conflicts of interest business, I do know, I think, a lot of questions.



So, if I may, let me ask you all four questions:

1. How many of you believe that a majority (over 50%) of your public officials are corrupt? Anybody?
2. How many of you believe that at least 10% of your public officials are corrupt? Anybody?
3. How many of you believe that less than 1% of your public officials are corrupt?

I've asked that last question to representatives from dozens of counties from around the world who have visited our agency (from the poorest countries to the richest, from the least developed to the most developed), and they all answer the same: the vast majority (over 99%) of their public servants are basically honest and want to do the right thing.

So, then, my fourth question is this: What are we—all of us—doing for the 99% of our officials who are honest?

I'm here today to speak for the 99%. For the honest public officials.

I understand how serious corruption is. One visitor to our agency said, "I have a hard time worrying about a government official taking a couple free tickets to a football game when I've got officials stuffing bribe money in their pockets." I get it. But what about the 99%? Who's looking out for them? Who's protecting them? Who's guiding them? Who's keeping them honest? That's what a conflicts of interest compliance system (as distinguished from an anti-corruption system) is all about. And that's what I'd like to talk about.

Unfortunately, most of my talks are really boring, so let me try something different today. Let me tell a story, or maybe it's a parable, about a little three-legged dog named Dharma, which in Sanskrit means teaching or right behavior. Now despite being born with only three legs and being kind of scruffy looking, Dharma can walk fine and even run a little. His breed is an ancient one, which barks loudly and bites hard. But he can play, too. Like many dogs he is loyal and helpful and tries to keep people out of trouble. Of course, he also likes to sniff around a lot. Down the street from Dharma is a factory, which is protected at night by a police dog, who is big and scary and mean and who will sniff out and attack anyone who breaks in.

That police dog is how I think of anti-corruption laws and agencies. Their job is to catch crooked public servants and put them in jail and stop bad officials from doing bad things, including making systemic changes.

But Dharma is different. Dharma is like a conflicts of interest law and agency, whose purpose is to promote both the reality and perception of integrity in government by preventing unethical conduct (conflicts of interest violations) before they occur. So conflicts of interest laws and agencies focus not on punishment but on prevention, not on catching crooks but on guiding honest public officials and keeping them honest. And by conflict of interest, I mean divided loyalty, that is, a conflict, usually (though not always) a financial conflict between one's private interest and public duties—like an official who has a second job with a company he also deals with in his government job.

Like Dharma's heritage, these laws go back millennia, at least to the Code of Hammurabi, over 3,800 years ago. And like Dharma, these conflicts of interest laws are not just about barking and biting and sniffing and playing. They're also about loyalty and integrity. Conflicts of interest codes are compliance-based. For example, they may say: "Government officials shall not accept a gift from anyone they are dealing with in their government job." But they rest on values, such as: "Government officials shall place the interest of the public before themselves." Just as Dharma's nature and personality (his loyalty and integrity) determine how and when and whom he barks at and bites and sniffs and plays with, so, too, the values of a country or

province or city or village determine what its conflicts of interest code provides.

Like Dharma, these laws rest on three legs. Now if Dharma lost another leg, that would be the end of him. Same thing for a conflicts of interest law. Take away any of its three legs, and it's finished.

The first leg is a simple, clear, and comprehensive conflicts of interest code. It probably addresses such issues as misuse of government office for private gain, misuse of government resources for private purposes, asking for or accepting gifts from anyone doing business with the government, taking tips (gratuities) for doing one's government job, disclosing or using confidential government information, or after leaving government service appearing before one's former government agency or working on a matter one had worked on for the government. I'm not talking about outright corruption here (like bribes and kickbacks and theft), but simple conflicts of interest (like taking those two free football tickets from someone you're dealing with in your government job).

The second leg is disclosure, especially disclosing and recusing (disqualifying) oneself when a conflict of interest arises: "My brother's company is bidding on this government contract, so I recuse myself." And annual disclosure of certain assets and liabilities, the purpose of which, like the purpose of the conflicts of interest law itself, is to prevent violations. So the annual disclosure form has to be tied directly to the conflicts of interest code—that is, the annual disclosure form must ask only questions that may reveal a violation of that code—because the form's purpose is not to catch crooks but to reveal potential conflicts of interest before they occur and thereby help avoid violations.

The third leg is effective administration by a *separate* and *independent* conflicts of interest agency—separate for a lot of reasons and independent because unless it's independent no one will believe it is acting in the interest of the public and not just in the interest of whoever controls it.

Now Dharma, you'll recall, can bark loudly, bite hard, sniff around, and play. Same thing with a conflicts of interest (or ethics) agency, which has those same four main functions:

1. Like Dharma, it barks loudly by giving quick and confidential advice on whether future conduct is legal under the conflicts of interest code.
2. Like Dharma, it sniffs around by making sure people file their disclosure forms and then by reviewing those forms for possible conflicts of interest.
3. Like Dharma, it can also play by providing training in the conflicts of interest law to every

public official. After all, officials can't obey a law they don't know about. And the best ethics training *is* fun.

4. But like Dharma, the conflicts of interest agency bites hard when it discovers a violation: by aggressively investigating it, by prosecuting it, and by imposing a fair but significant civil penalty, not merely disciplinary action but civil fines, debarment of vendors, disgorgement of ill-gotten gains, damages, and so forth. If a dog can't bite—if a conflicts of interest agency can't enforce the law—then it might as well have no teeth at all. In fact, you might as well just shoot it and put it out of its misery.

And like Dharma, most conflicts of interest agencies are pretty small and kind of scruffy looking. Few of them are fat. But you can't starve them either, or they can't do their job.

So an effective conflicts of interest law and a separate and independent conflicts of interest agency that rests on these three legs and that exercises these four duties speak to and for the 99% of our public officials who *are* honest. That law and agency promote both the reality and the perception of integrity in government by preventing conflicts of interest violations, by guiding honest public servants, by reassuring citizens, and by reinforcing the core values upon which the govern-

ment is founded. Even in a government perceived to be a desert of corruption, such a system can provide a small oasis of stability, integrity, efficiency, and hope.



Dharma, the three-legged conflicts of interest dog

Anyway, in the midst of all this anti-corruption, put-the-bad-guy in jail stuff—as important as that is—I hope you'll remember Dharma, the little three-legged conflicts of interest dog.

Endnotes

1. For an extended discussion of the issues raised in these remarks, see Mark Davies, A Practical Approach to Establishing and Maintaining A Values-Based Conflicts of Interest Compliance System, available at <http://unpan1.un.org/intradoc/groups/public/documents/un-dpadm/unpan049601.pdf>.
2. See <http://cpi.transparency.org/cpi2011/results/>.

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