Routledge
Taylor & Francis Group

Journal of Public Affairs Education

ISSN: (Print) (Online) Journal homepage: https://www.tandfonline.com/loi/upae20

Case law as raw material for teaching ethics in public administration

Charles Szypszak

To cite this article: Charles Szypszak (2021): Case law as raw material for teaching ethics in public administration, Journal of Public Affairs Education, DOI: 10.1080/15236803.2021.1935193

To link to this article: https://doi.org/10.1080/15236803.2021.1935193

Published online: 21 Jun 2021.

JOURNAL OF PUBLIC AFFAIRS EDUCATION
https://doi.org/10.1080/15236803.2021.1935193

Case law as raw material for teaching ethics in public administration

Charles Szypszak

University of North Carolina at Chapel Hill

ABSTRACT

This article argues that law cases are rich raw material for analytical ethics education in public administration. While scholars acknowledge that law can play some role in teaching ethics, they have aimed outside the law for ways to engage students in developing a sense of ethical responsibility. Law cases are a readily available resource to achieve this aim. Court decisions describe how parties and judges interpret the rules and ethical considerations as applied in practice, often with differing perspectives. This article describes a pedagogical approach that will engage students in critical analysis of the cases. It gives examples that have been used effectively in teaching ethics to public administration students, and illustrates how analysis of law cases can lead students to insights about public ethics challenges. This article also describes resources commonly available to university faculty for identifying and collecting suitable raw legal material.

KEYWORDS

Ethics education; law and public administration; teaching methodology

"The law is the witness and external deposit of our moral life."

—Justice Oliver Wendell Holmes, Jr. (1897)

Public administration scholars have long stressed the interrelatedness of law and public administration. They also have stressed the importance of teaching ethics in public administration, as illustrated by public administration program accreditation requirements to include ethics coverage and this symposium issue. The scholarship has not highlighted the way in which law cases are rich material for studying ethics in public administration in more ways than familiarizing students with rules that will govern them in their profession.

Public administration students should be familiar with the basic nature of ethics laws that govern the choices they will make in practice. To leave aside study of these laws is to miss an opportunity for students to be better prepared for what they may encounter in practice. But the potential for public administration scholars and students to look to the law when studying ethics goes beyond learning about rules. Court decisions in particular are material ripe for encouraging students to think more broadly and deeply about ethics in public administration. The judges' opinions describe circumstances that resulted in actual trouble for public officials. The judges analyze the rules and their intent and apply this interpretation to particular facts. Judges often have differing perspectives for student consideration, expressed in

CONTACT Charles Szypszak szypszak@sog.unc.edu School of Government, University of North Carolina at Chapel Hill, Chapel Hill, NC 27599-3330.

concurring or dissenting opinions or in earlier trial or appellate decisions during the litigation. Studying these cases grounds ethics study in the real world, a goal that can be otherwise elusive in academics.

This article describes the centrality of law to any consideration of ethics in public administration, and explains how the evolving law's raw material can be used to engage students in considering the ethics issues that are most likely to arise in their practice. It describes the basic features of a pedagogical approach that will engage students in critical analysis of the cases, to lead them beyond assumptions and contradictions. It gives examples of cases that have been used effectively in teaching ethics to public administration students, and illustrates how analysis of them can lead students to insights about public ethics challenges. Finally, the article describes the reference professionals and searchable databases commonly available to higher education faculty for identifying and collecting suitable primary law material for ethics study.

Law and ethics in public administration

Public administration scholars have long stressed the interrelatedness of law and public administration (Cooper, 1997; Rohr, 1986; Y. S. Lee & Rosenbloom, 2005). In the United States constitutional system, laws express expectations about right and wrong. The American Society for Professional Administration's Code of Ethics (2013) includes law as among the most important considerations, stating as a principle that public administrators should "respect and support government constitutions and laws, while seeking to improve laws and policies to promote the public good" (Ethics Principle 2). Public administrators make the decisions that underlie the law's legitimacy, and we depend on them to strive to reform the laws to mirror our ethical expectations (Szypszak, 2011).

Some public administration scholars have argued for greater attention to the law when teaching ethics in public administration. Ethical prohibitions in the law are aspirational professional manifestations of acceptable behavior (King et al., 2019; Plant, 1998). Other scholars have argued that professional administration needs more rules, including a more binding ethics code similar to that to which lawyers are subject, with monetary fines and threats of removal from the profession (Martinez, 1998).

There seems to be general agreement that legal mandates by themselves do not always reflect our view of ethical professional behavior in practice. As one public administration author said, codes "sometimes show a confusion of professional, legal, and moral reasoning" (Plant, 1998, p. 174). Some scholars react to a perceived disconnect between codes and behavior by urging teachers to cultivate a higher personal ethical standard in public service (Bowman & West, 2014; Martinez, 1998; Perego, 2010). The legal community also recognizes that not all behavior can be controlled through formal rules. As the American Bar Association's Model Rules of Professional Conduct (2020) acknowledge, "The Rules do not, however, exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules" (Scope and Preamble n. 16).

Some have questioned whether relying on legislative mandates does more harm than good. Morgan and Reynolds (1997) argue that ethics laws not only are largely ineffective in modifying unethical tendencies, but that such laws can be used as weapons by the unethical

in a way that further undermines the public's confidence in government. They trace the proliferation of ethics laws that demand the appearance of propriety while conspicuous unethical behavior becomes increasingly blatant and confidence in public leaders declines. They also show how unintuitive or obscure ethics regulations have been used to discredit political opponents whose good intentions are not seriously in doubt. The authors summarized that "focus on appearances was intended, or at least professed, to promote honest government . . . . The public's suspicion that the rules and regulations are mostly for show, and that the reality of influence peddling, vote buying, and ruthless corporate behavior continues underneath a patina of ethical stringency, is, in fact, largely correct. The rules promote (at best) an appearance of propriety, not its reality" (p. 5). The authors urge a refocus on cultivating virtues rather than appearances, by, among other things, being honest about substance and motive, and considering the realities of underlying behavior rather than technical compliance with the rules.

While there should be little disagreement about the insufficiency of law as a complete embodiment of ethics, some scholars take a questionable leap to suggest law and ethics should be thought of separately. For example, Bowman and West (2014) suggest such a dichotomy when they say, "Where law is silent, ethics should speak . . . . Law is external, mandatory, and objective, whereas ethics is internal, voluntary, and subjective" (p. 46). Perego (2010), who logically points out that building trust in public administration requires a standard of conduct that is more than mere compliance with legal mandates, poses a question the answer to which requires a choice: "Ethics versus the law . . . which is better?" (p. 3). Positing law as different than or even opposed to ethics makes it too easy to dismiss the law as not worth the worry. This threatens to leave students rudderless and the teacher unable to know if the time spent has achieved any notable outcome. As D. S. Lee and Paddock (1992) said, "That is, after a student has received ethics instruction, how will teachers know that the student has learned and will behave according to professional standards?" (p. 488).

Posing ethical scenarios is a commonly recommended approach for engaging students in thinking about personal ethical decision making (Kennedy & Malatesta, 2010; Menzel, 1998; Rizzo, 1998; Winston, 2000). Menzel found that master of public administration graduates were most likely to say that their ethics education was helpful when it used case studies and decision-making scenarios (p. 16). Fictionalized scenarios are attractive because they can be filled with culturally relevant details to capture students' natural curiosity. Rizzo, for example, argued for incorporating novels, plays, and films into cases for ethics analysis. An alternative is to analyze interesting cases in which questionable actions by real public officials have become the subject of judicial scrutiny, especially cases that consider the evident motives of those officials. This is a kind of "reality check," fundamentally different than talking about rules in the abstract. Analysis of cases involving public officials' actions should cause students to consider what decisions they would make in similar situations. Such self-reflection can move students past the kind of cynicism about law that surrounds them (Szypszak, 2011). They not only learn about what the laws actually are. They also think about what they should be. Rather than seeing the law as a trap for the unwary, they may develop a sense of personal responsibility for reforming it so it will be a legitimate expression of ethical conduct to be expected in public service.

There are ample public administration ethics cases that are not a product of the imagination, which can illustrate the kinds of problems that arise in the field, show the potential

consequences for officials, their organizations, and the public's faith in government, and spur active thinking about right and wrong. Of course, ethics issues regularly arise in practice without their becoming the subject of published court decisions. But appellate decisions and the circumstances from which they arose are instructive because they involve instances in which careful scrutiny was paid to the boundaries of ethical conduct. Being aware of ethics laws and how they apply in their basic form is a matter of important but straightforward knowledge. Considering how they apply in more equivocal circumstances requires an analysis that gets students thinking about what should be deemed ethical.

Case analysis with an engaged dialogue teaching method

The study of law cases is a subject often associated with challenging classroom exchanges called the "Socratic Method" (Areeda, 1996; Szypszak, 2011). Law professors typically engage individual students in a series of questions and answers, with each question building on the previous questions and answers, in a manner understood as preparing law students for the spontaneous analytical skills encountered in practice. Effective teacher-led and student-centered dialogue can be effective beyond the law classroom because it encourages learning that deepens and broadens knowledge and develops decision-making abilities (Szypszak, 2015). It also can be a way to counter being receptive only to points of view with which we already agree, a tendency known as "confirmation bias" (Oswald & Grosjeanan, 2004). Even as far back as 1830, Stendhal portrayed this way of thinking in the classic psychological novel of deception *The Red and the Black* (1830/2002). Describing the thoughts of a marquis contemplating what to do about an employee who violated his trust, Stendhal wrote, "At such times, the appeal of a plan of conduct was not that it was backed by good arguments—rather, the arguments were good in his eyes only so far as they supported the favored plan" (p. 459). Or, as Harper Lee put it in *To Kill a Mockingbird* (1960) in the words of the judge warning courtroom spectators at a murder trial with racial animus, "People generally see what they look for and hear what they listen for" (p. 185). Confirmation bias can disable us from the important skill of being self-critical about our perspectives and motives. Higher levels of education do not lessen this tendency or increase self-awareness of it (Oswald & Grosjeanan). Teachers should be especially mindful of it in themselves, given their privilege of position authority and their responsibility to safeguard students' development of independent thinking.

Many who have been law students associate the Socratic Method with teachers aggressively putting students on the spot with unpredictable questions, a frustrating "guess what I'm thinking" experience that feels much like hazing (Szypszak, 2015). An important feature of the approach to Socratic Method proposed in this article is that the teacher does not aim most questions in search of an answer that the teacher already has in mind (Szypszak, 2019). Instead, the teacher has a *learning objective* in mind, and aims questions at causing students to think actively and deeply along a path that they uncover *themselves*. Dialogs of this sort can be effective at engaging students in the two highest levels of learning according to the well-known "Bloom's Taxonomy," which Bloom (1956) calls synthesizing and evaluating. In a well-led dialogue, students synthesize knowledge by analyzing perspectives that arise from a case, and continually reevaluate their tentative analytical conclusions about the best rule and to what circumstances it should and should not apply.

For purposes of studying ethics in public administration, analytical dialogues based on cases should aim to explore competing ways of looking at an ethical issue, what underlies each, and their relative strengths and weaknesses. Students should be willing to "think out loud" in a good faith effort to be responsive and analytical. Teachers use supportive commentary and follow-on questions to help students clarify their thinking. The following is a basic sequence that can be used to lead an analytical dialogue about a law case:

- The teacher introduces the case and explains how it fits into the overall ethics discussion in the course. This may include a summary of an ethics issue and why this case is a good example for study of that issue.
- A student summarizes the story presented in the case including what happened that raised an ethics issue, which other students actively follow and to which they supplement as needed. With follow-on questions, the teacher draws attention to particularly important facts or unknown facts.
- The teacher adds context with additional information, perspectives, and other context drawn from deeper and broader knowledge. This state of the exchange is an opportunity to engage the students in the real-life story from the case in a way that illuminates the key issues.
- Students are engaged in an analysis of the parties' arguments as the judges explain and analyze them, including the ways in which opinions differ. Students are especially encouraged to look at an issue from a perspective other than that with which they evidently already agree.
- With further questions, students are led to put the case in a larger context, including how well the rule applies to possible variations on the facts.
- Students may be invited to reflect on whether the case outcome comports with their and the public's expectations, and whether they can envision a different rule that would better advance ethics in public administration.

To facilitate student involvement, teachers can ask some questions that are aimed broadly at the group and that result in responses considered in the aggregate. For example, a teacher can ask about what dynamics resulted in an ethical issue raised in a case. Several students are likely to contribute different factors or ideas, such as personal issues that the individual deemed as outweighing a normative ethical posture in official duties, a loyalty to another that unexpectedly arose as a conflict, or a jaded sense of the rules in the sense that "everyone does it." Other questions should cause them to consider coherence or contradiction. Such questions might include "do you think the court would reach the same conclusion if . . . .?", or "do you think this interpretation will result in the ethical behavior that the law is aiming to encourage?" Use of analogies and hypothetical variations can be effective in this process because they enable students to make comparisons that identify important differences in circumstances, and from these variations they can develop a tentative framework (Gick & Holyoak, 1980). Students learn from identifying similarities in other situations to which the same rule should apply, as well as differences that cause analogies to break down.

Those who are new to using analytical dialogue in their teaching have a tendency to ask mostly questions that look for single correct answers. When one student does not answer as hoped, the teacher moves on to other students until someone says what is desired. This kind of fill-in-the-blank approach stifles the students' thought process. Effective analytical dialogue involves staying with a particular student through a series of questions and answers

that incorporate previous questions and answers. This keeps a responding student's thought process at the center of the exchange. It also offers an opportunity to the other students to compare responses to their own thought process. This is especially so if the teacher's further questions set the appropriate tone of curiosity and shared learning.

While maintaining a safe environment for critical thinking and expression, the teacher's feedback should include re-direction when answers are unresponsive or analytically flawed. Good faith errors and confusion in reasoning are to be expected. As Dostoevsky said in the great novel of moral dilemmas *Crime and Punishment* (1866/1956), in the words of the murderer's friend who explained why he analyzes so much, "Through error you come to the truth! … You never reach any truth without making fourteen mistakes and very likely a hundred and fourteen" (p. 182). When teachers strive to make discussions interesting, challenging, informative, and understandable, they should be able to redirect distracting attempts at flippancy or sarcasm in a way that the rest of the class appreciates. Earnest students can see the difference between feedback that is critical yet supportive, and feedback that is unfair, unhelpful, or mean-spirited.

Careful assignment of material for study before class is vital for analytical dialogue to be a successful learning experience. Teachers should assign only as much material as they can realistically expect students to be able to absorb and employ in discussions. Teachers who completed analytical dialogue method workshops that the author has led at several universities report that student preparation is indispensable for success. Without such preparation, teachers must turn to extended lecturing about the case and often have to reframe discussions and lasso unfounded opinions. The teacher should be explicit about this expectation of preparation in the beginning of the course and reinforce it throughout. A key to getting students to meet this expectation is assigning manageable and interesting material and discussing it during class in a way that lets the students feel their focused and relevant study effort was well spent.

The teacher's preparation is also vital for successful analytical dialogue. Deep and broad knowledge is needed because the teacher does not know in advance exactly where the students' answers might lead. Other material upon which the teacher can draw includes familiarity with statutes and significant cases cited in the opinions undergoing analysis, and earlier published trial or appellate court opinions in the litigation's progression that might offer alternative perspectives. This preparation also enables the teacher to identify lines of questioning that may not be obvious just in the case being studied.

Case material

The most promising study material for analytical reflection about ethical issues involves considering more than one perspective about right and wrong and weighing the consequences of choosing to act on those perspectives. By their nature, appellate court opinions will have differing perspectives, as these courts issue opinions only when parties have developed competing arguments about application of the law to the facts of a particular case. Legal issues often involve disagreements even within the appellate panel of judges, expressed in concurring opinions with analysis that differs from the majority's but reach the same result, and dissenting opinions that differ in both analysis and desired result.

There is value in learning about the laws that elected representatives have enacted to govern actions in public administration. But the analytical dialogue can take students into more fundamental and far-reaching ethical considerations. Students should consider whether the laws should be different, and whether any law will result in more ethical decisions in circumstances similar to those in the case. Accordingly, an effective dialogue is not confined to learning the law in issue or the court's application of it to the facts. The exchange may include discussion of how we can distinguish right from wrong in the case. This may include invoking the major ethical approaches that characterize ethics study in public administration. Svara (2007) summarized the approaches as drawing upon three philosophical traditions. The virtuous approach looks to core societal values and relies upon intuitive thinking about what is right or wrong. The deontological or principled approach bases moral obligations on settled societal values. The utilitarian approach focuses on producing positive outcomes. As Svara noted, organizations tend to blend these approaches in developing their ethical guidelines (p. 66). In case analysis, students can be called upon to use these lenses. For instance, discussions could involve questions such as:

- Did the public official seem to be acting in a way the official reasonably considered to be ethical, or was the official caught doing something the official sought to conceal—and why does this matter (the virtuous approach)?
- Do the ethical considerations regarding the public official's actions depend on the level of government and community in which the official was acting (the principled approach)?
- What behaviors do the ethics laws being applied in the case tend to promote, both intentionally and unintentionally, and how might the law be reformed to produce more positive ethical outcomes (the utilitarian approach)?

These types of questions invoking philosophical approaches naturally flow from the suggested questions given below for illustrative cases.

The U.S. appellate judicial system provides ample reported cases involving charges of unethical conduct in public administration. One way to identify these cases is to note both a party's role as a public official and a charge of a dishonesty crime such as fraud, bribery, embezzlement, perjury, or conspiracy, or a statute involving conflicts of interest prohibitions or financial disclosure requirements. The following are examples of cases with these characteristics and some important ethics issues they raise.

In McDonnell v. United States (2016), the U.S. Supreme Court vacated former Virginia Governor Robert McDonnell's conviction for "honest services fraud" in connection with a constituent's endeavor to get regulatory approval of a nutritional supplement claimed to treat autoimmune diseases. After the product's promoter was unable to generate interest at Virginia's public universities to perform research studies, he turned to the governor for help. The governor arranged meetings between the promoter and government officials, including at the governor's mansion, and the governor contacted other officials to encourage interest in the product. The federal prosecutor alleged an impermissible connection between the governor's use of influence in behalf of the promoter and the acceptance by the governor and his wife of 175,000 USD in loans, money, trips, and other benefits.

To convict under the statute, the prosecutor had to point to an "official act" that the governor performed for what he received from the promoter. The statute defines an "official act" as "any decision or action on any question, matter, cause, suit, proceeding or

controversy" pending before a public official. The Supreme Court unanimously said that to convict the governor's efforts had to have resulted in agreement on a pending matter, not just meetings. The Court said, "There is no doubt that this case is distasteful; it may be worse than that. But our concern is not with tawdry tales of Ferraris, Rolexes, and ball gowns. It is instead with the broader legal implications of the Government's boundless interpretation of the federal bribery statute" (p. 2375). The Court overturned the conviction and federal prosecutors decided not to re-try the case.

McDonnell illustrates various perspectives from which students can be encouraged to consider the important ethical issue of permissible connections between a public official's receipt of benefits from a constituent and the official's pursuit of that constituent's interests in exerting influence on other officials. Although the Supreme Court justices were unanimous in their decision, the earlier court of appeals decision in the case interpreted the statute more deferentially and saw the legislature as appropriately prohibiting the governor's lobbying for someone who gave gifts, loans, and other favors to him. The Fourth Circuit panel deemed the connection between the governor's receipt of gifts and favors and his efforts to influence state university researchers as sufficient to sustain the jury's guilty verdict under the statute (*United States v. McDonnell*, 792 F.3d at pp. 516–519). The Supreme Court's opinion expressed a different view, emphasizing what the Court saw as a realistic expectation that elected officials are not prohibited from advancing the causes of constituents who are supportive of them, as long as another official is the one actually making the decision. Among other possible perspectives is a concern about the federal legislation that was used to prosecute the governor, the ambiguity of which may be a tool for political purposes. At the time of the prosecution the governor was a rising figure within the Republican Party; the federal prosecutor was appointed by Democratic Party leadership.

The following are among the possible dialogue avenues for exploring such competing perspectives about exercising influence in behalf of constituents from whom personal benefits are received:

- Does allowing the wide latitude shown in *McDonnell* give the rich, powerful, and ambitious an undemocratic advantage to influence government decision makers?
- Is there a way to reconcile the need to enable public officials to act appropriately in behalf of constituents with discouraging the kind of "tawdry" behavior that the Supreme Court suggests occurred in the case?
- Should the latitude allowed to public officials purportedly engaging in a good faith acts in behalf of a constituent vary depending on the nature of the cause being pursued, such as if it is to pursue social causes rather than commercial interests?
- Does the Supreme Court's interpretation of permissible receipt of gifts and favors from a constituent reflect public expectations?
- Should the latitude allowed to public officials to act in behalf of constituents depend on whether the official is in federal, state, or local government?

A second case example illustrates issues that are common in local government but with which most students are less likely to be familiar than those that arise in national politics. Van Itallie v. Franklin Lakes (1956) is a New Jersey Supreme Court case that can illuminate basic conflict issues in local government. A taxpayer who objected to a borough council's vote to allow a development argued that two council members who voted for it had prohibited personal connections to its success. One council member had a relative

associated with companies that promoted the development. This council member fully disclosed the interests at the hearing before voting. The other council member had an elderly relative with an interest in land that could benefit from increased property value as a result of the development. The court found the alleged conflicts to be insufficient to warrant overturning the vote. The court explained that local governments could not function if the public expected local officials, many of whom are volunteers, to have no connection to matters they consider. The court also noted, however, that there was a point at which a connection could be disqualifying. While the challenge to the council's vote in the case was ultimately unsuccessful, the litigation illustrates how vulnerable local officials can be to claims of impropriety, and the potential costs and delay that result from challenges even when the courts will find insufficient grounds to overturn an action.

The following are some starting points for questions that can generate discussion aimed at a realistic view of expectations about local government disinterestedness:

- What kinds of personal interests in matters under consideration are worrisome for local officials, and what kinds are not?
- Should the conflict considerations be different for big cities than for small towns?
- Does encouraging local officials to disclose all personal connections to matters under consideration truly increase confidence in the officials' fairness?
- Does it matter at what time those who challenge government decisions raise their objections?
- Is the New Jersey Supreme Court's concern about having strict conflicts rules in local government as much a concern today as it was decades earlier when the case was decided?

The third example is a case involving the increasingly common ethics issue of public employees speaking out when they see something they consider to be wrong in their organizations. The law governing speech restrictions in public employment involves three sometimes competing considerations: the need for supervisors to protect against distractions that interfere with work and thwart implementation of legitimate polices; public employees' rights as citizens to speak out about matters of public concern; and the public's interest in having public employees disclose wrongdoing within their organizations. In Garcetti v. Ceballos (2006), Ceballos, who was a deputy in a prosecutor's office, learned information that caused him to conclude there were inaccuracies in an affidavit used to obtain a search warrant. He notified his supervisors and gave them a memorandum about his findings. The supervisors chose to leave the matter of the application for a search warrant to the court to decide. After a hearing, at which Ceballos testified about his concerns as a witness called by the defense, the court rejected the challenge to the warrant. Ceballos claimed that afterward he was subjected to retaliatory actions including reassignment to a lesser position. He sued alleging the employer's actions violated his free speech rights. The Court disagreed. A majority of the justices held that Ceballos had no claim of a violation of free speech rights based on work that was done as part of his official duties, which included writing the affidavit.

The justices all agreed that public employees have protected rights to participate in public debate. Justice David Souter disagreed with the majority about the preeminence of the public employer's discretion to restrict employees from publicly sharing expressions made pursuant to official responsibilities. He thought the better rule was to give more weight to the importance of employee speech and to protect that interest "unless the statements are

too damaging to the government's capacity to conduct public business to be justified by any individual or public benefit thought to flow from the statement" (p. 428).

The following are a few examples of starting questions on which analytical lines of questions and answers can be built:

- Should the employee's speech protection depend on the nature of the office's responsibilities?
- Should the employee's speech protection depend on the extent to which the employee's statements are factually accurate?
- If the employee's speech is not part of routine official duties, as the Court said was the case in *Garcetti*, how should public officials weigh the need to manage an office against the public benefit of protecting the speech?
- If you were in the supervisor's position, how would you handle the matter if you heard the employee's report about the search warrant and still thought there was a case against the defendant based on the sum of evidence?
- Does empowering public employees with free speech rights about their work create a perverse incentive for government leaders to share less information with their employees?

The following are several briefer examples of cases that offer the opportunity to engage students in analysis of important public administration ethics issues. This list is intended to identify a few examples that might be useful and to illustrate the variety of issues that can be drawn from reported cases.

Officials who manage public funds are accountable in ways different than those who manage in the private sector. Even slight indiscretions can have severe consequences. In People v. Howard (2008), an Illinois mayor was charged with several crimes for using the city's credit card to play video poker. The trial court dismissed charges for misappropriation of funds because the mayor regularly paid the credit card bills out of his own money. The state supreme court upheld his conviction on other charges of official misconduct based on violating the state constitution by using the city's credit for private purposes. The supreme court expressed some sympathy for the mayor, indicating that the broadness of the misconduct statute could be used as a tool for an overzealous prosecutor, and the court recommended that the legislature revisit the statute. The court's suggestions highlight that public ethics laws are a matter of public policy choices, and that legislative acts that may seem aimed at conduct of a particular concern can have a reach beyond what was intended.

Many of the ethical complications that arise in public administration involve the reality that those who serve in government have concerns about loss of employment due to shifting political winds. In Hazel Park v. Potter (1988), someone who served as city manager in Michigan for thirteen years expected to lose his favorable relationship with the city council in an upcoming election. The city charter required ninety days' notice prior to termination unless the termination was for just cause. The outgoing city council, appreciating the manager's service, gave him a two-year contract. The new council not only refused to honor the extension, but also fired the manager immediately because they said entering into a contract to try to bind the new council was malfeasance. The former manager sued for wrongful termination. The court held that one city council could not bind another. It agreed with the former manager, however, that he was entitled to the ninety days' notice because entering into the contract was not bad enough to be just cause for termination. The case

shows some of the surprising difficulties that can arise in the relationships between public managers and the elected officials who hire them.

Public administration careers typically involve a sequence of positions in government, often including movement between appointed and elected offices. This mobility raises issues about loyalty to the responsibilities of one position while pursuing another. In Clements v. Fashing (1982), Texas public officials challenged state constitutional provisions that restricted someone in one public office from being a candidate for another. The law also prohibited someone with more than one year remaining on a term from declaring candidacy for another office. The U.S. Supreme Court found the state's interest in maintaining the integrity of its public offices to be sufficient to warrant these kinds of limitations on candidacy. Not all of the justices agreed. Justice Brennan dissented, concluding that the restrictions were overbroad and an unacceptable limitation on free speech. He saw them as more likely discouraging officeholders from running for office than encouraging them to serve properly in their current positions (pp. 980–983). The justices' differing perspectives are a good framework for those about to embark on a public administration career to consider the tension between the responsibilities of a current position and long-term career ambitions.

Senior public sector employees are sometimes subject to a "cooling-off period" that prohibits them from private sector work on matters pending before their former agencies. Such restrictions aim at the dangers of a so-called "revolving door" at which regulators might naturally favor the interests of the regulated over those of the general public. In United States v. Coleman (1986), a former Internal Revenue Service agent of twenty-three years, who upon retirement started a tax and financial consultancy, accompanied his clients to meetings with his former agency. He was charged with violating federal ethics laws, including a provision that prohibits a federal employee, within two years of leaving employment, from personally appearing before the agency in behalf of a client. The former agent argued that the statute only prohibited him from speaking as a professional advocate at his client's meetings, which he did not do. At some meetings, he said nothing. The court of appeals approved of the trial court's more sweeping interpretation of the prohibition, holding that it can be violated when a former agent accompanies a client to a meeting, regardless of whether the agent speaks as an advocate. The court noted that Congress expressed intent that the law "be applied to prevent even the appearance of impropriety" (p. 480). This case offers an opportunity to consider whether forbidding appearances at official meetings truly encourages more ethical behavior, or whether it creates incentives for former public officials to stay behind the scenes when they want to use their experience in behalf of clients.

Many public administration program students plan to work in non-governmental organizations that interact with government programs. Although in such capacities they may not be directly subject to ethics laws that apply to the public officials with whom they deal, they can suffer the consequences of involvement with activities in which officials violate those laws. In United States v. Carbo (2009), a federal court of appeals reviewed the conviction of a maintenance contractor who secured local government work. An administrator, worried that he would need a new source of income after a new mayor took office, bought a truck to rent to the contractors with whom he had made connections. This violated state law that required the administrator to disclose this outside income. The defendant contractor was charged with aiding and abetting fraud. He challenged his

conviction on the ground that he was not aware of the ethics laws being violated. The appellate court held that the government did not need to prove that the defendant specifically knew about the laws. The court said that the contractor could be convicted if the jury concluded that he knew the public administrator's actions were inappropriate and connected to a governmental role. The case shows the far reach of conflicts and disclosure laws and the complex ways in which public officials—and those who deal with them—can become embroiled in charges of illegal conduct.

Public administration students are likely to be aware of the entertainment and travel benefits that public officials might enjoy. What they might not have much considered is how those benefits at public expense can be justified, or the limits of that justification. In North Carolina ex rel. Horne v. Chafi (1983), North Carolina taxpayers sued city and county officials for spending public funds for a reception to honor state officials. The local officials spent approximately 8,000 USD on a hall rental, food and refreshments, entertainment, a chartered bus, and other miscellaneous expenses. They defended it as properly aimed at promoting legislative goals including state funding for local health and education programs. The appellate court summarily dismissed the taxpayer's complaints, saying local government officials may properly use money to solicit state support for local interests. The court also said, "The alleged extravagance of the reception does not convert the public purpose to a private one. [The taxpayer's] remedy is to air his opinion at the ballot box" (p. 284). Whether such spending may be allowable under the law need not be the end of considering the extent to which the public interest is served by it.

Ethics perspectives are formed within particular social and legal cultures. Transnational and international human rights cases can involve issues that cross social and legal cultures and encourage a broad ethical perspective. In Vasiliauskas v. Lithuania (2015), the European Court of Human Rights overturned the conviction of a formerLithuanian citizen who as a member of the Soviet Ministry of State Security took part in killing Lithuanian partisans. In the Lithuanian courts he was convicted for genocide. With a most narrow nine-to-eight majority of judges from across nations, the European court overturned the conviction. They concluded that at the time of the events in question, the crime of genocide did not involve the killing of the members of a political group such as how the partisans were characterized in the litigation. The majority said that for it to be genocide at the time it had to involve the killing of a national, ethnic, racial, or religious group. The sole Lithuania judge angrily chastised the majority for what he saw as an overly legalistic rationale, and for failing to see what was obvious in Lithuania—that the partisans were not only a political group but also a national one, because they were fighting for the survival of an occupied nation. American students who study the case tend to react to the international court oversight as something from which their own legal system could benefit, as a counter to what they see as nationalist exceptionalism. The Lithuanian judge's objection shows the difficulty of making ethical assessments without being part of the culture in which those actions occurred.

Resources for finding ethics cases

Familiarity with how lawyers dissect cases can be helpful for leading discussions about court opinions, and there are resources about how to approach such analysis (Kerr, 2007; Morgan, 1952). But public administration teachers who do not have a law degree or legal experience

need not steer away from the law for ethics discussions. Law school teachers and other academics who teach law are not required to be a member of the bar. Law professors themselves tend to have little or no practical experience advising clients about ethical matters (Newton, 2010). In general, legislatures and courts require bar admission for representing someone else in a judicial or administrative proceeding, preparing instruments or documents that affect legal rights, or advising someone of legal rights and responsibilities (Denckla, 1999). None of these restricted activities occur when a public administration teacher leads students in analysis of a case about ethics. With respect to leading case discussions, a Wisconsin Supreme Court rule, for example, says that someone is not practicing law by "[t]eaching about the law or providing information about the law including the legal rights or responsibilities of persons under the law, in a manner that is not directed at providing specific legal advice to a specific individual in the context of a specific matter" (Wisconsin Superior Court Rule 23.02(2)(w), 2020).

To identify appropriate cases for analytical discussion, the focus should be on ethics issues that have resulted in disagreement. This can be apparent in published commentary about a case. While such reports can be useful for identifying cases of interest, the short and often sensationalized summaries typically do not give a good sense of the analytical complexity of the issues, or the extent to which judges disagreed in their analysis. The full case needs to be read to get this fuller understanding.

Court opinions tend to be longer and denser than what a student can reasonably be expected to read memorably for a class discussion. This is especially true for students who do not have any law study background, because court opinions address procedural and other matters that need not be understood for a public administration ethics analysis. The author's experience is that a public administration student can fairly be expected to read and sufficiently absorb an excerpt of five to eight pages, single-spaced. A good way to create an excerpt is to begin with the full opinion, including concurrences and dissents, and use a process of elimination. Some material can readily be extracted, such as procedural matters and discussion of legal issues that the court is addressing but that will not be relevant to the intended analysis. Including an excerpt from a concurring or dissenting opinion can provide an excellent contrast in perspective and analysis. When there are several such differing opinions among judges, not all of their opinions need be included.

To identify and collect suitable cases from which to make excerpts for study, law school libraries are valuable resources for faculty members at universities that have them. These libraries typically have a reference desk that can lead faculty members and students to useful resources in print collections and legal databases. Those who are staffing the desk answer questions in person and may also do so by phone or Internet chat. Although law reference librarians will have a law degree as part of their job qualifications, state law practice and library rules prohibit law reference librarians from giving legal advice about client matters. The librarians typically are conscious of these limitations and are able to give advice about the use of legal materials without straying into giving legal advice based on an interpretation of those materials. Most law librarians likely would welcome working with a faculty member to find materials that are to be used in a class. Law school libraries also have websites with research guides, known commonly as "LibGuides," with descriptions of collections pertaining to particular subjects.

Similar resources are freely available from other trustworthy public sources. For instance, the federal government provides access to primary legal information via the

govinfo.gov website (formerly "FDsys"), which is managed by the Government Publishing Office. Additionally, the Law Library of Congress—loc.gov/law—gives full access to many searchable databases and other legal resources, with a particular focus on federal legislative resources. Legal information experts at this institution work to give research support, including a remote "ask a librarian" service. These experts are typically happy to assist researchers with search strategies and downloading help. State libraries have some collections and database access and may have a reference desk. Some state supreme court libraries restrict their collections and reference services to courts and members of the bar, while others allow open access and maintain a reference staff to answer questions from the public. The best approach for those wanting to conduct free legal research through these types of institutions is to check the official websites for scope notes and also call or e-mail to inquire about what services are available to the general public. If collections are restricted to courts or members of the bar, institutional staff may know of alternate locations for their primary materials. Most often, these would be state administrative offices of the courts, other public law institutions, and public law school libraries.

Faculty likely have direct access to resources made available at their universities for finding cases, statutes, and analytical articles without needing to involve a librarian or other legal research expert. The two major competitors in proprietary legal databases are Westlaw (a Thomson Reuters resource) and LexisNexis. They have extensive collections of searchable cases from courts at all levels. These subscription services, which in full scope are extremely expensive for lawyers in private practice, are made available to universities in scaled down versions, but still offer access to subject and term searches of case law databases as well as secondary material such as legal encyclopedias, practitioner materials, and law journals.

Westlaw and Lexis databases enable searches of all published cases by looking for particular terms used in those cases or by selecting from subject identifications created by "intellectual indexers," who are experts who categorize primary law according to main topics. Searches can be refined by selecting cases in jurisdictions of special interest. Researchers can also use citators to verify the currency and authority of case law. By entering the citation for a case already known on a topic of interest, researchers can find other cases that have applied the subject to fact variations in other cases, including in particular jurisdictions of interest. Two of the most commonly used citators are—as of this this publication—LexisNexis's Shepard's Citations and Westlaw's KeyCite. Proprietary databases also have artificial intelligence with predictive research tools that suggest possible terms of interest in the search box.

Universities typically have other databases with law collections, such as HeinOnline, which has collections of case law, legislation, international material, historical legal materials, and law journals. Both print and electronic publishers of federal and state statutes have tools that identify cases that discuss particular statutory provisions, including annotated statutes that have summaries of topically organized relevant cases following the text of the statute.

There also are freely available databases on the Internet. Federal and state courts post recent opinions and often have databases of older cases. These databases are not as easy to use as the proprietary databases because they have limited text search capability. But they often have lists of the cases with brief mention of the topics considered in them. Google Scholar has an extensive database of state and federal cases, including cases decided in the U.S. Supreme

Court, federal district and courts of appeals, and state appellate and supreme courts. Google Scholar also has scholarly law articles. The main search page for Google Scholar has a case law radio button and a box for search terms, as well as facets that allow particular court selections. Specialty law databases, often accessible through universities, also have cases and case material. For example, Cornell Law School's Legal Information Institute has federal and state primary law. "LII" provides full-text U.S. Supreme Court cases with case analysis, as well as material introducing legal topics. The site Justia has open-access case databases and law subject guides. A joint project between the LII, Justia, and Chicago-Kent College of Law maintains the site Oyez, which has both Supreme Court cases and multi-media pertaining to those cases, including recordings of oral arguments before the Court. Listening to oral arguments is a great way to learn about the complexity of issues in the cases.

Conclusion

Public administration students are surrounded by a culture of cynicism and negation. They are regularly exposed to cries of outrage against the highest levels of governmental and political hierarchies, and they hear stories about public employees whose actions belie any notion that they are guided by an accepted code of ethical conduct. Those who teach ethics in public administration with the purpose that they should—to cultivate the students' sense that there is a right and wrong and that just, effective, and efficient government depends on them making the right choices—face a serious credibility challenge. Credibility is gained when the referents for the ethics discussion are real, with attention to actual rules that are invoked in the field, and examples of how those rules have been interpreted as applied to individuals who have been accused of having strayed from following them. Case law is abundant and accessible as raw material for this study, and ready to be employed in engaging analytical dialogue in the public administration curriculum.

Notes on contributor

Charles Szypszak is Albert Coates Distinguished Professor of public law and government at the School of Government of the University of North Carolina at Chapel Hill. He provides counsel to state, national, and international institutions, organizations, and public officials on real property registration and conveyance laws. In the School's master of public administration program, he teaches the introduction to law course and an elective on military leadership and public service, and he teaches an introduction to legal thinking course in the University's undergraduate curriculum. He also teaches internationally, including in Poland and Lithuania, twice on a Fulbright award. He has led teaching pedagogy courses and workshops to doctoral students and faculty at several universities internationally. He has been awarded the University's Sitterson Freshman Teaching Award and the School's Coates Teaching Excellence Award. Prior to joining the faculty in 2005, he was a director of a general practice firm in New Hampshire, where he provided counsel and advocacy for real estate and business matters. He was an adjunct professor of law at Franklin Pierce Law Center, a law clerk for Circuit Judge Hugh Bownes on the U.S. Court of Appeals for the First Circuit, and a captain in the U.S. Marine Corps. He earned a B.A. from the University of Southern California, an M.A. from San Diego State University, and a J.D. from the University of Virginia School of Law. His publications include the textbook *Understanding Law for Public Administration*, several books on law and leadership, and numerous journal articles on pedagogy, real property law, and other law subjects.

ORCID

Charles Szypszak http://orcid.org/0000-0002-0059-9282

References

American Bar Association. (2020). Model rules of professional conduct.
American Society for Public Administration. (2013). Code of ethics.
Areeda, P. (1996). The Socratic method. *Harvard Law Review*, *109*(5), 911–922.
Bloom, B. S. (1956). *Taxonomy of educational objectives (cognitive domain)*. Longman.
Bowman, J. S., & West, J. P. (2014). *Public service ethics: Individual and institutional responsibilities*. CQ Press.
Clements v. Fashing, 457 U.S. 957 (1982).
Cooper, P. J. (1997). Public law as a set of tools for management. In P. J. Cooper & C. A. Newland (Eds.), *Handbook of public law and administration* (pp. 104–120). Jossey-Bass.
Denckla, D. A. (1999). Nonlawyers and the unauthorized practice of law: An overview of the legal and ethical parameters. *Fordham Law Review*, *67*(5), 2581–2599. https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=3544&context=fl
Dostoevsky, F. (1956). *Crime and punishment* (C. Garnett, Trans.). Random House. (Original work published 1866).
Garcetti v. Ceballos, 547 U.S. 410 (2006).
Gick, M. L., & Holyoak, K. J. (1980). Analogical problem solving. *Cognitive Psychology*, *12*(3), 306–355. https://doi.org/10.1016/0010-0285(80)90013-4
Hazel Park v. Potter, 426 N.W.2d 789 (Mich. App. 1988).
Holmes, Jr., O. W. (1897). The path of the law. *Harvard Law Review*, *10*(8), 457–478. https://doi.org/10.2307/132202
Kennedy, S. S., & Malatesta, D. (2010). Safeguarding the public trust: Can administrative ethics be taught? *Journal of Public Affairs Education*, *16*(2), 161–180. https://doi.org/10.1080/152368032010.12001592
Kerr, O. (2007). How to read a legal opinion: A guide for new law students. *Green Bag 2d*, *11*(1), 51–63. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1160925
King, S. M., Agyapong, E., & Roberts, G. (2019). ASPA code of ethics as a framework for teaching ethics in public affairs and administration: A conceptual content analysis of MPA ethics course syllabi. *Journal of Public Affairs Education*. https://doi.org/10.1080/15236803.2019.1640560
Lee, D. S., & Paddock, S. C. (1992). Improving the effectiveness of teaching public administration ethics. *Public Productivity & Management Review*, *15*(4), 487–500. https://doi.org/10.2307/3380634
Lee, H. (1960). *To kill a mockingbird*. Lippincott.
Lee, Y. S., & Rosenbloom, D. H. (2005). *A reasonable public servant: Constitutional foundations of administrative conduct in the United States*. M.E. Sharpe.
Martinez, J. M. (1998). Law versus ethics: Reconciling two concepts of public service ethics. *Administration & Society*, *29*(6), 690–722. https://doi.org/10.1177/009539979802900609
McDonnell v. United States, 579 U.S. (2016), 136 S. Ct. 2355 (2016), *vacating and remanding* 792 F.3d 478 (4th Cir. 2015).
Menzel, D. C. (1998). To act ethically: The what, why, and how of ethics pedagogy. *Journal of Public Affairs Education*, *4*(1), 11–28. https://doi.org/10.1080/15236803.1998.12022003
Morgan, M. (1952). The case method. *Journal of Legal Education*, *4*(4), 379–391.
Morgan, P. W., & Reynolds, G. H. (1997). *The appearance of impropriety: How the ethics wars have undermined American government, business, and society*. Free Press.
Newton, B. E. (2010). Preaching what they don't practice: Why law faculties' preoccupation with impractical scholarship and devaluation of practical competencies obstruct reform in the legal academy. *South Carolina Law Review*, *62*(1), 105–131.
North Carolina ex rel. Horne v. Chafin, 302 S.E.2d 281 (N.C. App. 1983).

Oswald, M. E., & Grosjeanan, S. (2004). Confirmation bias. In R. F. Pohl (Ed.), *Cognitive illusions: A handbook on fallacies and biases in thinking, judgement and memory* (pp. 79–96). Psychology Press.

People v. Howard, 888 N.E.2d 85 (Ill. 2008).

Perego, M. (2010, May). Ethics versus the law . . . which is better? *Public Management*, 2–3.

Plant, J. (1998). Using codes of ethics in teaching public administration. In J. S. Bowman & D. C. Menzel (Eds.), *Teaching ethics and values in public administration programs: Innovations, strategies, and issues* (pp. 161–178). State University of New York Press.

Rizzo, A.-M. (1998). Inventing narratives in ethical reasoning in an administrative ethics course. *Journal of Public Affairs Education*, *4*(1), 1–10. https://doi.org/10.1080/15236803.1998.12022002

Rohr, J. A. (1986). *To run a constitution: The legitimacy of the administrative state*. University Press of Kansas.

Stendhal. (2002). *The red and the black* (R. Gard, Trans.). Penguin Books. (Original work published 1830).

Svara, J. H. (2007). *The ethics primer for public administrators in government and nonprofit organizations*. Jones and Bartlett.

Szypszak, C. (2011). Teaching law in public affairs education: Synthesizing political theory, decision making, and responsibility. *Journal of Public Affairs Education*, *17*(4), 483–499. https://doi.org/10.1080/15236803.2011.12001658

Szypszak, C. (2015). Socratic Method for the right reasons and in the right way: Lessons from teaching legal analysis beyond the American law school. *Journal of Political Science Education*, *11*(3), 358–369. https://doi.org/10.1080/15512169.2015.1047106

Szypszak, C. (2019). A framework for effective teacher-led and student-centered analytical dialogue. *The National Teaching and Learning Forum*, *28*(3), 4–5. https://doi.org/10.1002/ntlf.30193

United States v. Carbo, 572 F.3d 112 (3rd Cir. 2009).

United States v. Coleman, 805 F.2d 474 (3rd Cir. 1986).

Van Itallie v. Franklin Lakes, 146 A.2d 111 (N.J. 1956).

Visiliauskas v. Lithuania, No. 35343/05, European Court of Human Rights (Grand Chamber) (2015).

Winston, K. (2000). Teaching ethics by the case method. *Journal of Policy Analysis and Management*, *19*(1), 153–160. https://doi.org/10.1002/(SICI)1520-6688(200024)19:1<153::AID-PAM13>3.0.CO;2-S

Wisconsin Supreme Court Rule 23.02(2)(w) (2020).