

# SORTING RIGHT FROM WRONG

BY PEGGY KERNS

**A**laska's code of ethics states the obvious: "High moral and ethical standards among public servants in the legislative branch of government are essential to assure the trust, respect, and confidence of the people of these states."

But it goes on to make a point that might not be so evident: "No code of conduct, however comprehensive, can anticipate all situations in which violations may occur. Laws and regulations regarding ethical responsibilities cannot legislate morality, eradicate corruption, or eliminate bad judgment."

Alaska couldn't have said it better. Laws have their place, but ethics cannot be legislated.

We all try to be ethical people. If we are public servants, we have an enormous responsibility to operate with high ethical standards. It starts with obeying ethics laws and rules. Legislatures put into law the do's and don'ts, and following them ensures that public officials act legally. These laws do not make a lawmaker ethical, however. Ethics are much more than that.

## IT'S NOT ALWAYS CLEAR

Ethics are the standard of what is right and wrong, and they are based on our values. Being ethical requires making a moral judgment, and that's not always easy. Ethical behavior takes courage and has to be practiced. Public officials feel added pressures. The ethical choices we make often occur in the public arena, often under the media's lens.

Most of us don't think a lot about ethics as we go through our daily lives. We may display our ethical core in many ways, but we usually don't talk about it. Every once in a while, however, we face a decision that has us stop and ask: What should I do? If there is a law to guide us, it's easy—follow it. If instincts tell you it's a clear choice between right and wrong, follow your instincts. Although you may occasionally be tempted, these right-versus-wrong dilemmas are usually solved quickly.

But the choice isn't always so clear, and there aren't always rules to follow. Do I vote to put more money into education or health care?

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**BEING ETHICAL  
GOES BEYOND  
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Do I remain loyal to a colleague, even if I think he's wrong? Do I keep my word to vote for a bill, even if I change my mind? In these examples, there may be no clear distinction between right and wrong. Whatever decision we make is an ethical one, based on our core values.

#### MAKING CHOICES

Ethical dilemmas involve choices among competing values. At various times, we may rank these values differently, based on the circumstances. We love our families, but may neglect them during the long hours of legislative work. Ethical dilemmas present a choice between "right-versus-right." When faced with an ethical dilemma, here are some steps to help you navigate it.

### 1

**Follow the law.** Sounds obvious, but too many public officials get into trouble for not following the law. This is the stuff from which headlines are made, and fuels even more skepticism among a distrustful public.

### 2

**Be aware you have an ethical dilemma.** Learn to recognize when a moral issue is at question. This step is important, because it requires us to think about the matter and not brush it off.

### 3

**Decide whose dilemma it is.** Sometimes the answer is obvious. It's yours. There may be a situation when it's not your dilemma, but someone else's. Because we rank our ethical values differently, what might be a dilemma for one person may not be for another.

### 4

**Gather the facts.** What do you know and not know? Who will be affected? Even if your decision is controversial, you help shape the debate by saying, "These are the facts as I know them."

### 5

**Identify competing ethical values.** It helps you understand your dilemma. Weigh one value against the other. Either choice may be ethical.

Do I vote for a bill that gives a short-term gain for my district or vote for one that hurts my district, but provides a long-term gain for the state?

### 6

**Analyze your options.** Is there a third choice—a compromise position that holds true to your ethical principles? Choose a decision-making model that fits your ethical values and helps you solve your dilemma. The option may change, depending on the dilemma. Some include:

◆ **Common-sense:** What do your instincts tell you? What do you feel in the pit of your stomach?

◆ **Ends-based:** What is the greatest good for the greatest number? Which decision will produce the most good and do the least harm? The principle of utilitarianism judges the decision by the effect it will have, by the consequences of the act.

◆ **Rule-based:** What single principle or rule should everyone follow? Based on the teachings of Immanuel Kant, this option does not consider consequences, only the ethical principle behind the decision. In other words, do the right thing, no matter the result.

◆ **Care-based:** What would I want if I stood in the other person's shoes? Called the "rule of reciprocity," this option has a long history stemming from various religions and philosophers.

◆ **Fairness or justice:** Which choice treats people equally or proportionately and fairly? Consider the stakeholders—individuals or groups that have a stake in the decision.

### 7

**Make the decision.** You don't have to do this alone. Seek counsel from a trusted adviser. Consult your peers, legislative leaders, family or friends—people you respect.

### 8

**Act.** This may seem obvious, but it's sometimes too easy to let circumstances and other people's actions make the decision for you. Consider the consequences of your action or inaction and be prepared to justify it.

### 9

**Reflect.** This final step may be the most important. If you had it to do over again, would you make the same decision? What would you do differently? What were the responses to your decision? Reflection will help prepare you for the inevitable tough choices that will present themselves again.



# Proceed With Caution

Social media tools can pose ethical problems for lawmakers.

BY JUDY NADLER

**T**he casual and lightning-fast nature of social media makes it an easy and inexpensive tool for public officials.

Despite the many advantages these new technologies bring, there also are thorny ethical considerations, such as blurring the lines between personal and public information and privacy. How can new communications technologies be used effectively but ethically to engage citizens? Consider these two hypothetical cases, based on real experiences.

## Facebook

When Shirley ran for the legislature, her campaign advisers set up a website, Facebook and Twitter accounts, and a blog. The cost of creating and maintaining her web presence was borne by her campaign. The content was devoted to policy statements, endorsements, media clips, a calendar of personal appearances, and photos and videos with the public.

Her greatest exposure came through Facebook. By the end of the campaign, her Facebook page had thousands of “friends” and hundreds of postings about her campaign.

Shirley shut down the campaign website but decided to keep the popular Facebook account, and began to post legislative messages and constituent polls. The task of maintaining her Facebook page was assigned to a staff member, who worked on it during regular office hours. A “push” was organized to add key lobbyists, government contractors and others as “friends.”

Several ethical issues arose after the election.

- ◆ Can a government official use Facebook as a way to discuss public issues?
- ◆ If so, can an official limit access to such a Facebook page in any way?
- ◆ Do all members of the public have a right to see what is on a publicly maintained Facebook page? What about a completely personal one?

- ◆ Can an officeholder “unfriend” certain individuals or remove selected posts on a publicly maintained Facebook page?
- ◆ If a Facebook page is completely personal, must the official confine all comments to personal rather than public matters?

## Blogs

Lance was an assemblyman representing a high-technology district and was an early adopter of social media. His primary means of communicating with his constituents was his blog. A Twitter account was mostly for fun, and he used it to chat about his family and to share banter with many of his friends and followers.

As chair of the Assembly Budget Committee, Lance found himself in the middle of a fierce lobbying effort from employee unions, social service agencies, and the state school system, among others. In his daily blog posts, he tried to explain the complexity of the issues, discuss the difficult choices facing the state, and encourage input from the public through the comment feature of the blog.

His attempts at civil discourse were shattered when an increasing number of anonymous comments were very critical of his position on the issues, and often misquoted or misrepresented his proposals or voting record. At one point, the negative comments outweighed the positive two to one—and several were nothing more than personal attacks.

The social media experts he consulted suggested a system requiring stricter guidelines—registration requiring a valid name and email address—but he was concerned the extra steps would dissuade the legitimate dialogue he was seeking. A good friend offered to monitor the blog comments and remove all that disagreed with the assemblyman’s positions.

This experience, too, raised ethical issues.

- ◆ What ethical guidelines should Lance use in maintaining his blog?
- ◆ Is the use of social media itself an obstacle for constituents who do not have access to technology?
- ◆ Does the anonymity of the comments and tone suggest he should eliminate the blog, or are these posts part of the “rough-and-tumble” world of a legislator?
- ◆ What problems might be solved if his friend monitored the

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blog and made it more positive? What problems might be created?

◆ Does the public have a right to see all blog and Twitter postings by a legislator?

### General Principles

Access is a fundamental ethical principle in government. New media can improve access to and from citizens by expanding the number and variety of channels of communication, but these same media can simultaneously restrict access or favor certain constituencies. The medium will change over time, so we should develop principles that can guide us on whatever platform develops in the future. Open access is an ethical starting point.

The Facebook page in the first example opens the potential for restricting or favoring access for particular groups. If the site is restricted to “friends” only, then it could run afoul of principles of open government. This is particularly of concern if the site is maintained with public funds. It can also be improper if it is promoted only to a narrow group of interests before the legislature.

Access to a purely personal Facebook page can probably be restricted to a few real friends, but the officeholder needs to be very cautious that the “friends” and the talk on that page are indeed personal and not political.

A second critical ethical principle is the public’s right to know. An officeholder’s blog or Facebook site are particularly vulnerable to the extreme rhetoric often seen at public meetings and rallies, only with greater anonymity and distance.

Any officeholder would be wise to establish both a registration process to tone down the most extreme rhetoric and a set of clear guidelines about the kind of inflammatory language that is banned from the site. The credibility of the site as a vehicle for public dialogue would suffer if all critical comments about the office holder were excised. The public’s right to know probably requires that a determined reporter or citizen be permitted to view even the most vile, profane and racist comments if they wish to do so—perhaps by visiting the legislator’s office in person.

A third principle is the obligation to choose one’s own words prudently. The immediate nature of social media places a special obligation on the officeholder to use them with caution. Great damage can be done to others, often inadvertently, by a comment posted with little thought and based on early and possibly erroneous information.

Old-fashioned vetting and review by a legislator’s staff may be missing if the officeholder tweets or blogs directly. And an officeholder’s “tweet” is much more likely to be passed on or quoted in other media.





# STAFF:

## Ethics in the Virtual World

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BY NATALIE O'DONNELL WOOD

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**B**e it via Facebook profiles, Twitter accounts, blogs or even texting, legislative staff seem to agree that social media, while important outreach and networking tools, can be confusing and tough to monitor, and can raise more questions than answers.

Staff members discussed the ethical challenges they've encountered as state legislatures move rapidly into the area of social media with NCSL's Center for Ethics in Government at the Legislative Summit in August. A few common concerns and questions emerged from the discussion.

### **Public vs. Private**

The first concern is the difficulty in discerning what kinds of communication are "public" when social media are thrown into the mix. If a caucus staffer tweets from the chamber floor about a partisan strategy prior to a vote, should that information become part of the public record? What if legislators are relaying tweets, believing they are private?

When statements are made using social media they cannot be retracted. They are, essentially, public. Facebook status updates or blog postings can be deleted, but once you say it, you can't take it back.

It also can be difficult to know whether someone is using social media for a personal or public purpose. If a legislative employee uses a Facebook page mainly for personal reasons, yet lists the legislature as his employer, should that affect how people look at statements he makes on the page? Should the "friends" he has be scrutinized? Or should he steer clear of any reference to the legislature? If a legislature tries to limit what an employee says on Facebook, might that be a violation of free speech?

From an ethical standpoint, perhaps responsibility for things said on these media belongs with the person saying them. "A good purpose does not make it a legislative purpose," said one participant. And, even though it's legal, it may not be ethical or, at the very least, prudent.

### **Lack of Control**

A second concern voiced by staff centered on the ability, or inability, of the legislature to control the use of social media.

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There was a shared feeling that the institution can control only certain aspects of virtual conversations. If a legislator or staff member is using a state-owned laptop or smartphone, should the legislature have oversight on how they are used? Or should personal communications on state-owned equipment remain private, with legislators and staff being “custodians of their own records,” so to speak.

Rules and guidelines can help, staff said, but legislatures should craft policies only on what they can control—official state legislative websites or caucus blogs, for example. Action beyond this scope could lead to trouble.

Although social media can be valuable tools for outreach and communication for public officials, some staffers believe social media don’t belong under a legislature’s purview since they don’t “belong” to the legislature.


### Too Fast?

A third difficulty expressed was the tension between social media’s fast-paced nature and the deliberation that public speaking and constituent communication, even virtually, requires.

Tweeting in real time can give an issue an air of authenticity, when, in fact, the tweet was just an interpretation of the issue. Problems can occur in situations where reporters use tweets as facts.

In the interest of immediacy, common sense is often overlooked when using social media. Staffers agreed there is a general lack of thought as to how these sites affect the way people interact. People can be anonymous or even falsely represent themselves. You can never know for sure who you are actually communicating with. And there’s no way to know who all will eventually receive and read your messages. Ethically speaking, staff participants in the discussion agreed with one staffer’s closing thought: What matters is not the medium, but the content. “Take the technology out of it—it is behavior and language that matter.”

When it comes to making ethical decisions in the context of social media, those serving and working in state legislatures still should conduct themselves in ways that maintain the public’s confidence, uphold the institution, and demonstrate sound judgment.

In less than 140 characters, this may be a message worth tweeting. 

#### SL ONLINE

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