

ON DOING THE RIGHT THING

Our aim is to figure out which duty or obligation should take precedence over the others, assuming that one of them must rise to the top of the entangled heap. I argue in this brief commentary that ethical decision-making needs to include a number of components if it is to be meaningful. Ethical decision-making is a difficult, sometimes agonizingly prolonged process, not merely an event and involves a series of problem-solving steps.

By Frederic G. Reamer, Ph.D.

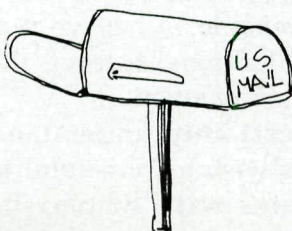
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A number of years ago, I worked in a maximum security penitentiary. One of my responsibilities was to facilitate a treatment group for inmates. All of the inmates in this group (usually about 10) were serving lengthy sentences for crimes such as murder, aggravated assault, rape, robbery, arson, and drug selling.

One afternoon, after our group's meeting had ended, I was walking through the prison yard when one of the group's members approached me. This was a fellow who was serving a 25-year sentence for second-degree murder. I would say that this inmate and I had a very good working relationship. He respected me and my role, I think, and I was able to behave respectfully toward him (the fact that this man had matured tremendously in prison certainly helped me to respect him). As I walked through the prison yard with this inmate, he furtively slipped an envelope in my hand and asked me to keep walking. I was a bit startled, of course. The inmate then told me that he needed to mail a letter to his dying brother and asked that I drop the envelope in a mailbox outside the prison's walls. The inmate commented that the prison policy prohibiting him from mailing such a letter, because it was addressed to a former inmate, was unjust. I could under-

stand the inmate's frustration (assuming what he told me was true), although I also understood why prison administrators wanted to prevent communication between inmates and former inmates. Clearly, the inmate was asking me to smuggle contraband outside the prison walls (which, by the way, is the direction opposite that in which contraband usually travels).

Given the circumstances, the timing, and the setting, I wasn't able to pause and ponder the situation at the moment. So as not to cause a scene and, frankly, to wiggle my way out of this awkward and immediate predicament, I simply nodded my head, slipped the envelope into my pants pocket, and kept on walking. Between the time of the incident and my departure for the day, I had forgotten about the letter. As I left the prison, I instinctively reached into my pants pocket to see what was taking up all that room and realized at that point that I had inadvertently walked out of the prison with contraband. "Now what do I do?" I thought. For a moment I considered dropping the letter in a mailbox, but ultimately decided not to. Three things occurred to me. First, what message would I be conveying to this inmate if I went along with his illegal scheme? Wouldn't I be reinforcing his



"criminal ways" and, at least indirectly, condoning the kind of behavior that landed him in prison in the first place? Second, wouldn't it be unethical to knowingly violate the prison policy that prohibits mailed communications of this sort? Was the policy so unjust that such "civil disobedience" was warranted? Finally, might I not get in some kind of trouble — perhaps even big trouble — if it became known that I smuggled the contraband outside the prison? Who would believe my defense that I had completely forgotten that the envelope was in my pocket, only to discover it after I had walked through the last prison gate? Was it really worth the risk?

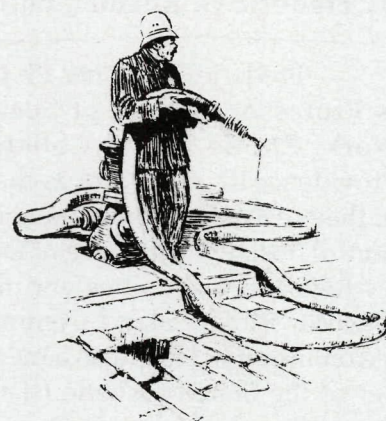
My memory of this incident flashed back to me as I read Annie Houston's account. Houston describes what all seasoned social workers have encountered at some point during their careers: circumstances that require a difficult ethical choice (some more difficult than others, to be sure). Houston's predicament is certainly unique in a number of ways — the unique constellation of individuals' personalities and idiosyncrasies, institutional features, organizational politics, racial and ethnic issues, and interpersonal intrigue — but it also shares some common traits. Houston's scenario contains an ethical dilemma's two key ingredients: (1) the emergence of specific professional duties and obligations. (in this scenario, empowering clients, respecting clients' rights to self-determination and confidentiality, complying with agency policy); and (2) some sort of clash between these various profes-

sional duties and obligations (Houston's wish to empower her clients and respect their right to self-determination and confidentiality collided with her presumed duty to comply with agency policy concerning inmate access to contraband and participation in prohibited activities).

To use the language of ethics, Houston's ethical dilemma, and for that matter every ethical dilemma, involves difficult choices between and among what the philosopher W. D. Ross calls *prima facie* obligations and duties (*prima facie* duties and obligations are those we are inclined to fulfill *ceteris paribus*, all things being equal). Our aim is to figure out which duty or obligation should take precedence over the others, assuming that one of them must rise to the top of the entangled heap (what Ross calls one's actual duty).

Fortunately, contemporary social workers, unlike their predecessors, have access to a wide range of conceptual tools to help them navigate ethical storms that appear during their careers, whether they pertain to work with individuals, families, couples, and groups (for example, conflicts between a client's right to confidentiality and a social worker's obligation to disclose confidential information to protect a third party from imminent harm, or between a vulnerable client's right to self-determination and the social worker's duty to protect the client from engaging in self-destructive activity); nonclinical issues such as how one ought to allocate scarce resources (what are called issues of distributive justice) or, as in this case,

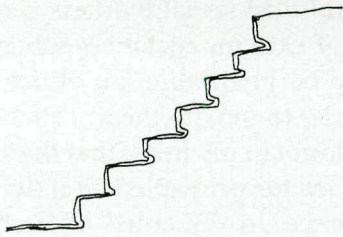
whether one must always obey a law or an agency regulation; or relationships among professional colleagues (for example, how to handle situations where a colleague has behaved unethically). Especially since the early 1980s, social workers and members of other helping professions have



produced a rich collection of writings on ethical dilemmas, the application of ethical theory, and ethical decision-making.

My principal claim here is that there is, indeed, a way to think systematically about ethical dilemmas of the sort faced by Houston. Ethical dilemmas warrant rigorous exploration in much the same way that clinical, community organizing, advocacy, and administrative dilemmas in practice warrant rigorous exploration. What seasoned social worker would be willing to tackle such complicated tasks without some systematic education about, study of, and deliberation concerning all important facets of the situation? It's unthinkable. I believe that ethical dilemmas deserve the same sort of attention.

I certainly understand Houston's wish to be helpful to the inmates with whom she



worked. That's normal, especially in an oppressive prison, although social workers would likely disagree among themselves about whether "looking the other way" as the women received contraband and engaged in prohibited activities was the wisest way to react. And it's admirable that Houston consulted the NASW Code of Ethics to see whether the document contained any useful guidance.

But I would argue that ethical decision-making needs to include a number of other components if it is to be meaningful. Ethical decision-making is a difficult, sometimes agonizingly prolonged process, not merely an event. Ethical decision-making involves a series of problem-solving steps, as do all other domains of social work practice.

Here are the steps I would take were I in Houston's shoes (this is a necessarily superficial overview; see Reamer, 1995, for a more complete discussion of this approach):

1. Identify the ethical issues, including the social work values and duties that conflict. As I mentioned above, the principal conflict in this case is between the social worker's obligation to empower clients and respect clients' rights to self-determination and confidentiality, on the one hand, and, on the other hand, the obligation to comply with agency

policy.

2. Identify the individuals, groups, and organizations who are likely to be affected by the ethical decision. Those most likely to be affected in this case are the inmates, prison administrators, the social worker herself, and the university. Inmates stand to gain if the social worker "looks the other way" when they receive contraband and engage in prohibited activities; they stand to lose if the social worker enforces prison regulations. (I suppose one could also argue that inmates ultimately would lose if their social worker implicitly or explicitly condones, and thereby reinforces, activity that violates rules or laws.) Prison administrators stand to gain if the social worker enforces its regulations (unless one argues that inmates who are denied their contraband and sexual activity will stir up trouble for the administrators); they stand to lose if the social worker or other staff deliberately undermine their authority and regulations. The social worker stands to gain if she believes that her primary obligation is to empower inmates; she stands to lose if she knowingly violates prison regulations, exposes herself to institutional discipline, and jeopardizes her own job (or, in this case, field placement) and career. The university stands to gain if Houston's actions do not lead to a strain in its relationship with the prison; the university stands to lose if prison officials discover Houston's deliberate violation of regulations and,

consequently, are critical of the university's teaching or supervision.

3. Tentatively identify all possible courses of action and the participants involved in each, along with the possible risks and benefits. Houston's overview of her dilemma suggests that there was a fairly stark choice between complying with the prison's regulations and "looking the other way." I wonder, however, whether there might be some middle ground. I would like to know, for example, whether Houston approached prison administrators to discuss her concerns or advocated for some sort of policy that would protect inmates who engaged in sexual contact. Having worked in prisons, I know how recalcitrant prison officials can be. But I've also been surprised on occasion with the effectiveness of assertive, yet diplomatic advocacy efforts. One of the greatest lessons I've learned over the years about ethical dilemmas is that the choice rarely involves a simple "either-or." Very often, there are many shades of gray between the white and black options. Skillful social workers can use their talent and acumen to identify options others may not have considered and facilitate meaningful discussion of them, manage conflict that emerges, and move participants in the direction of a reasonable resolution.

4. Thoroughly examine the reasons in favor of and opposed to each possible course of action, considering relevant ethical theories, principles, and guidelines; codes of ethics and legal principles; social work practice



theory and principles; and personal values. It's not clear to me to what extent Houston attempted to track down social work literature on ethical decision-making and ethical theory, for example. This case provides a prototypical example of the ways in which classical ethical theory might help one think through how a difficult case ought to be handled. The so-called deontological perspective in moral theory, for instance, suggests that people have a fundamental obligation to obey laws, regulations, and so forth. In this case, deontology, a perspective embraced by Immanuel Kant, would likely suggest that Houston's principal obligation was to obey and enforce prison policy. In contrast, the so-called teleological or consequentialist perspective, typically associated with John Stuart Mill and Jeremy Bentham, suggests that one's ethical duty is determined by the nature of the consequences. An act utilitarian, for example, would argue that Houston should have weighed all of the likely "pluses" and "minuses" associated with the possible courses of action and pursue the course of action that is likely to yield the greatest balance of pluses over minuses (the greatest net "gain"). A rule utilitarian, however, would argue that it would be shortsighted to engage in this sort of calculus only as it pertains to this immediate case. From this point of view, the lens needs to be broadened to include the potential long-term consequences resulting from reinforcing inmates' deception and rule violation, providing inmates with a role model who condones de-

ception and rule violation, and undermining institutional policy. Thus, from a rule utilitarian perspective, perhaps the social worker should not have violated the prison rules, whereas an act utilitarian perspective might have been used to justify breaking prison rules to empower the inmates.



Unfortunately, space does not permit full exploration of the relevance of these and other ethical theories, the NASW Code of Ethics, or social work practice theory and principles. Suffice it to say that these sources should be carefully considered because of their potential to help practitioners thoroughly examine the diverse ethical issues facing them.

5. Consult with colleagues and appropriate experts. Here too it's not clear to what extent Houston consulted with other prison staff, supervisors, attorneys, or ethics experts. Generally speaking, social workers should take time to locate thoughtful colleagues who may be able to offer valuable insight and opinions. Consultants won't necessarily provide unequivocal advice, but they may help to sort out various arguments and counter arguments, and they may help identify significant blind spots.

Certainly there is lots of room for legitimate debate about whether social workers should always obey the law, agency policies, and regulations. Although a strict deontological perspective suggests that laws, policies, and regulations should always be

obeyed, most social workers can think of extreme instances when it may be justifiable, on ethical grounds, to violate them. There is no doubt in my mind that there is a place for principled civil disobedience, in the spirit of such luminaries as Henry David Thoreau, Martin Luther King, Jr., and Mahatma Gandhi (Childress, 1971).

In general, however, I think it's a mistake for social workers to take matters into their own hands and violate laws, policies, and regulations when it merely seems expedient or convenient to do so. In my mind, deliberate violation of laws, policies, and regulations demands extraordinary circumstances — for example, where lives are at stake or clients' most basic needs are threatened — and remarkably compelling evidence that no reasonable alternative exists. As Campbell (1991: 178) notes, "the functional and symbolic purposes of law in our society entail that its violation by acts of civil disobedience should be a last resort. That is, all other reasonable alternatives to redress wrongs and grievances...should be exhausted before resort to civil disobedience is advocated." Moreover, social workers who decide to violate laws, policies, and regulations must be willing to challenge that which they deem to be unjust and be willing to accept whatever penalties or sanctions might come their way.

Whether Houston's circumstances and actions meet this test is not for me to decide alone, particularly since I know only what I read about them and was not directly involved in the situa-

tion. I must confess, however, that this sort of insurgent social work makes me nervous, because of its potential to undermine organizational stability and convey the wrong moral message to clients. Houston concedes that she "made a conscious choice to look the other way concerning the contraband trafficking, thus condoning and passively participating in the activity. The end seemed to justify the means and I occasionally used my position and presence to allow such contraband exchanges privately in counseling rooms." However, as Campbell (1991: 174) astutely asserts with respect to the complicated argument that the ends justify the means, "the fundamental, though not sufficient, criterion for the justification of civil disobedience is to justify the cause. . . . The ends do have to justify the means, but this does not entail that the ends themselves are immune from moral scrutiny." I would like to hear more about Houston's claim that the ends (permitting inmates to engage in prohibited activity and have access to contraband) are sufficiently compelling to justify the means (the deliberate violation of prison regulations).

This sort of ethical dilemma is hardly new, as illustrated by Sophocles' play *Antigone*. Antigone, the daughter of Oedipus, wanted to bury her brother, Polynice, who had been killed by their brother Eteocles. Creon, the king of Thebes, forbade the burial, however, because Polynice was a rebel. Antigone challenged what she believed was the king's unjust order by giving her brother a proper burial:

Creon: "Now tell me, in as few words as you can, did you know the order forbidding such an act?"

Antigone: "I knew it, naturally. It was plain enough."

Creon: "And yet you dared to contravene it"?

Antigone: "Yes. That order did not come from God. Justice, that dwells with the gods below, knows no such law. I did not think your edicts strong enough to overrule the unwritten unalterable laws of God and heaven, you being only a man." □

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