

Enhancing Training Through Dialogue

By Phil Weitzman

"This rule is unfair!"
"Your agency doesn't do anything!"



Ah, the heckler—anyone who speaks in public regularly has encountered a few. As a full-time ethics law trainer for the New York City Conflicts of Interest Board, I must respond to comments like these from my training audiences nearly every day. While such seemingly disruptive statements can pose challenges, I've found that they

pose even greater opportunities for my audience to learn from me, and for me to learn from them. Embracing dialogue with an audience is the single most powerful technique for the topic of this essay: providing quality ethics training.

In many ethics jurisdictions, training can be an afterthought. Most ethics agencies, dealing with limited resources, must balance training needs with many other mandates, and few ethics agencies can afford to prioritize hiring full-time trainers. As a result, the special characteristics of ethics training receive relatively little attention. Yet, as a trainer for the New York City Conflicts of Interest Board, I've observed firsthand that the *way* ethics rules are communicated can profoundly impact the audience's understanding of and support for a regime of ethics laws. If we fail to consider our approach to training, we will lose crucial opportunities to truly embed the values of an ethics law within the public servants under our agency's jurisdiction.

As the ethics agency for the largest municipal workforce in the U.S., the NYC Conflicts of Interest Board has the relative luxury of maintaining a distinct Training Unit with a staff of four full-time professional trainers, including myself, who are tasked with conducting training for City employees of every rank and at every agency. Our experience indicates that many of the most useful techniques for ethics training leverage the unique *intermediary* role of the trainer in order to create *dialogue*. With the right approach, comments like those at the top of this page can provide a springboard for a truly engaging, informative training session.

What do I mean by an *intermediary* role? When we conduct a training, we have a specific mandate, distinct from the agency's other functions: to prevent violations by providing training *before* someone breaks the rules. Where advice and enforcement functions

involve *imposing* the agency's policies directly, a trainer *explains* the agency's policies to the audience. This separate role gives us freedom to impart a wider variety of perspectives during a training than if we were explaining the agency's enforcement process to a complaint respondent, or providing binding legal advice regarding a public servant's actual proposed activities. As trainers, we can become intermediaries by taking one step outside the circle of formal authority, to meet the audience halfway by drawing on the whole variety of perspectives they, and each of us, bring to bear in seeking to understand government ethics laws: employee, regulator, voter, taxpayer, recipient of government services, and so on.

Training-as-dialogue is particularly appropriate in educating public servants in ethics law, as opposed to criminal law. As Mark Davies, former Executive Director of the New York City Conflicts of Interest Board, has observed, ethics laws are primarily concerned with providing guidance to well-intentioned public servants with legitimate outside interests, rather than catching crooks. Where no one could reasonably debate the purpose or legitimacy of laws prohibiting bribery, embezzlement, or other egregious behavior, ethics laws intervene in morally contended areas where reasonable people often disagree.

Generally, complaints like those of our "hecklers" arise from a particular perspective. By acknowledging the commenter's concerns, while sharing different perspectives and new information, we can deepen the learning experience. Further, when we engage in a robust dialogue with our training audience, we can *demonstrate*, through our own open-mindedness, flexibility, and consideration, our fundamental message: that our agency interprets the ethics law wisely, judiciously, and fairly, balancing deeply held principles and practical concerns. Even better, by creating a comfortable atmosphere for dialogue *we* may learn important information from our training audiences.

What exactly does dialogue-based training mean in practice? The list below presents some principles and tactics for incorporating dialogue into an ethics training.

1. Set the Tone

Setting a friendly, open tone is key to creating an atmosphere conducive to dialogue in the training room. While public-speaking techniques such as project-

ing one's voice and incorporating humor are part of creating a friendly tone, the key ingredient lies not in specific techniques but in attitude: approaching training audiences from the default perspective of a fellow municipal employee, rather than that of an authority figure or regulator.

In my trainings, I try to avoid the scolding, "scared-straight" approach of emphasizing the grievous consequences of breaking the rules. Instead, I emphasize that I am conducting training because the Board wants to help well-intentioned public servants navigate the city's conflicts of interest system. While I do describe the agency's enforcement process in some detail, I emphasize that conflicts of interest questions come up for almost everyone, that the purpose of the training is to *prevent* accidental violations by teaching people when to contact my agency's Legal Advice unit, and that, even during the enforcement process, our Board has a sense of fairness and perspective, which includes, where appropriate, issuing warning letters rather than more severe penalties. My tone is based on the presumption that the vast majority of public servants are honest people with legitimate outside interests, rather than bad apples.

There are many ways to embed this approach within a training presentation. One of the best is simply to adjust pronouns: for example, an audience feels less threatened while being told what could happen to "someone" if "they" break the rules, than while being told what could happen to "you," even though the actual information is exactly the same. But again, the mindset of approaching an audience as peer coworkers is more important than any particular choice of words or other technique.

2. Acknowledge the Audience's Perspective

Once we create a tone of openness, our participants will begin to share their perspectives and questions. Quite often, this will be to agree with us, but the most challenging part of hearing from the audience is when they express criticism or disagreement.

As challenging as criticism may be, it provides a great springboard for discussion. Audience comments allow us to identify "sticking points"—issues an audience member becomes "stuck on" that prevent him or her from trusting or understanding the training content. The most important sticking points come when audience members begin to grapple with the mission and structure of an ethics law, and attempt to reconcile new information presented in the training with their own beliefs and knowledge.

But before we begin addressing sticking points with an audience, we must recognize a necessary first step: *acknowledging* the commenter's perspective. Again, the trainer's special *intermediary* role allows for

greater flexibility in this regard. Note that *acknowledging* does not have to mean *agreeing*; rather, it means recognizing that the audience member is bringing a legitimate perspective to the table. Phrases such as, "That's an interesting point. I often hear this concern from my training audience," "I see what you're saying," or "Great question—in fact the Board has considered that question and looked at this issue in [advisory opinion X]" can be very helpful in recognizing a perspective without expressing agreement. Even simply repeating the commenter's question back in one's own words before answering can do the trick. If we do not acknowledge the commenter's perspective, they are much more likely to become defensive when we attempt to foster dialogue around their comment. (Similarly, just as we need not agree with a comment in order to acknowledge it, we need not overtly disagree either when presenting contrary perspectives; instead, we can frame our responses as neutral presentations of a different perspective, with which an audience member should feel free to disagree.)

Second, when engaging in dialogue with an audience member, it is crucial to make every effort to address what the commenter is *actually trying to say*. Not every audience member is articulate in expressing his or her concerns, and, even assuming a perfectly articulated question, all of us are occasionally guilty of hearing only what we *expected to hear*. Being sensitive to the possible different meanings of a question, and clarifying with audience members before answering, is therefore important. For instance, an audience member who describes a particular scenario and then asks whether it is "legal" could be describing a completely hypothetical situation, something she read about in the newspaper, or something she believes is happening in her own workplace. Each possibility implies a certain style of answer—for example, if the audience member is describing a *specific situation*, the trainer should probably start by offering a disclaimer that whatever is said during a training does not constitute a definitive ruling on the legality of any real-life scenario. Miscommunications are an inevitable part of any training, but asking clarifying questions and being ready to change course when necessary helps ensure that audience members don't become increasingly frustrated at a long reply based on a misunderstanding of their question.

3. Share Alternatives

Now, with these provisos out of the way, let's look at a few examples of sticking points, calling back to our examples of heckles from the beginning of this article.

Statement A: "This rule is unfair!"

Given that conflicts-of-interest rules intervene in morally gray areas, audience members will often become upset at ethics rules that prohibit behaviors

they see as innocuous. In my trainings, for instance, I've been surprised to hear from supervisors offended that they cannot hire their highly qualified family members, and from subordinates who are actually chagrined that they cannot pick up their well-liked boss' dry cleaning as a personal favor. These audience members are not being cynical; instead, it is precisely their own integrity (only wanting to hire a qualified family member, only wanting to do favors for the boss as a gesture of genuine friendship) that makes it difficult for them to imagine how permitting these behaviors for all City employees would open the door to abuse.

In cases like these, I have been able to address audience members' concerns by broadening their perspective: asking them to imagine workplaces less functional than their own, where management might become compromised by nepotism, and subordinates might feel forced to spend their free time doing personal errands for their boss. I may also ask them to consider how they might feel as a taxpayer, rather than as a City employee, to see government officials hiring family members or asking subordinates to do errands for them. Finally, I might discuss different considerations in designing an ethics rule, pointing out how an easy-to-understand rule that simply prohibits a behavior has advantages over a more complicated rule that contains various exceptions but is consequently difficult to understand. Some audience members may still maintain that a particular rule is too strict, but, after discussion, they are generally able to acknowledge that these rules represent valid approaches to addressing real problems, rather than completely arbitrary restrictions of their freedom. Ultimately, comments from upset audience members thus become a great springboard for establishing key teaching concepts: that good intentions are not a valid defense when someone violates the Conflicts of Interest Law and that it is important for even well-meaning City employees to consider whether their actions could inadvertently create the *appearance* of impropriety.

Statement B: "Your agency doesn't do anything!"

This statement may seem like unproductive heckling, but it's worth unpacking. If we pause to reflect, our audiences' skepticism of our agencies' effectiveness should not be surprising. Despite the great work ethics agencies are doing at every level of government, public cynicism of government in our country is quite high. To name just one example, a 2014 Gallup poll found that a staggering 75% of respondents believed government corruption was widespread throughout the United States.¹ On an anecdotal level, the belief that moneyed interests wield outsize influence over government seems so common as to be unremarkable. To put it simply, as trainers we are representing government "ethics" agencies, and our training audiences are likely to believe, as most Americans do,

that government has a serious ethics problem. A good portion of our audiences therefore will assume that our agencies, whether through impotence or complicity, are a part of that problem.

While there is no need to begrudge a training audience its cynicism, that cynicism often leads to a misconception: that our agency is not just *unable to prevent political corruption in its entirety*, but *literally failing to enforce clear violations of existing statutes*. For instance, my own agency, the NYC Conflicts of Interest Board, has in fact shown independence by pursuing enforcement cases against high-ranking officials, yet as a trainer I frequently encounter the assumption that our Board overlooks misconduct by such officials.

However, if we foster dialogue around the belief that our agency "doesn't do anything," a potentially disruptive comment again becomes a springboard for great teaching moments. Audience members with a generalized belief that government is corrupt often fail to differentiate between all the very different sets of laws, regulations, and jurisdictions that apply to ethics concerns. They also tend to assume that behavior they believe is unethical also violates the law, where this may not always be the case. Helping them recognize these distinctions not only casts our agency in a better light, but allows us to focus on the specific design of the rules we need to teach.

For instance, when asked why she thinks our agency "does nothing," an audience member might point toward a seeming violation that has gone unpunished in a different jurisdiction, which provides an opportunity, for starters, to clarify our own agency's jurisdiction. Another audience member might point towards news coverage of elected officials "accepting money from an industry they also favor" and ask how our agency could allow such a thing, which can provide an opportunity to distinguish between the rules for personal gifts and the completely separate set of regulations for campaign finance. Yet another audience member might accuse our agency of overlooking the "cronyism" of a high-ranking official who hired a team of favored staff members; such a comment could allow for a discussion of the tradeoffs involved in an anti-favoritism regulation, which must balance preventing the most blatant forms of favoritism with allowing public officials to draw on their personal connections in order to attract good candidates and opportunities to their agency.

Again, each of these audience members is likely to incorrectly assume that my agency is simply *ignoring clear violations*. Discussing all of these points serves to refocus the audience's attention on the *specific rules* and the *way the rules operate*. For instance, New York City's Conflicts of Interest Law would prohibit a City employee from hiring a member of his or her imme-

diate family or a financial associate but would not prohibit the hiring of a friend or favored colleague. Consequently, in our audience member's example from above, the high-ranking official who hires a team of favored staff members likely is not violating the ethics *law* (although other regulations may play a role in some instances, and we are of course free to draw our own conclusions about this official's personal ethics). These discussions not only correct the false assumption that our agency is overlooking violations of the law, but also keep the audience interested in the details of the rules by addressing their real concerns throughout the teaching process.

Obviously, a certain amount of tact is required in this approach. First, it is important to reframe these discussions to avoid accidentally casting aspersions on actual public servants or appearing to confirm the existence of or comment on what may well be an ongoing investigation. I will generally start a discussion with an emphatic disclaimer that I am not familiar with, or cannot comment on, the details of the case the audience member brings up, but can discuss some general trends and issues relating to that *type* of situation, using public enforcement dispositions and other public information to illustrate my points. Second, all of our skill in "acknowledging without agreeing" will be necessary to make sure the audience member feels "heard" and not attacked when we present different perspectives—this is where the *intermediary* role of the trainer comes into play, allowing us to express some sympathy with the audience's views without endorsing them. And finally, to create a real discussion, we should be open to the audience member's perspective and avoid being too quick to redirect a discussion toward the teaching point we already want to make. Not every critique from the audience is based on misconceptions, and, if we listen with an open mind, we may even find ourselves agreeing with the audience member's view! The point is not to debate and justify every detail of our agency's conduct, or convince the audience that our jurisdiction has a perfect ethics law, but to stay focused on using the discussion to highlight the specific features of the rules, expand the audience's understanding of the many different concerns our jurisdiction's ethics law must balance, and correct clear misconceptions about our agency's role in our jurisdiction's anti-corruption efforts.

4. Tailor the Presentation to Common Questions and Concerns

Eventually, after consistently encouraging dialogue with training audiences, an instructor can proactively incorporate explanations for very common questions into the training itself, without waiting to be asked. In order to address some of the sticking points mentioned above, I have found it helpful to begin my presentation by introducing the concept that our

conflicts rules address the *appearance* as well as the *reality* of impropriety, even in cases where public servants may feel they are acting ethically. Similarly, I find it helpful to pre-emptively distinguish my jurisdiction's ethics law from criminal law and campaign finance law.

Just as fostering dialogue helps us tailor our presentation to address bigger picture issues with ethics laws, the approach is also very helpful for teaching the nuts-and-bolts of the rules. For example, in the New York City Conflicts of Interest Law there are completely separate legal concerns relating to gifts, depending on the identity of the giver. There is a \$50 limit on gifts to City employees from *companies doing business with the City*, but there is no limit on gifts *from one City employee to another* (with the important proviso that supervisors must still avoid misusing their positions by accepting gifts over minimal value from subordinates). After noticing that audiences frequently conflate the two categories, I've learned to pre-emptively emphasize this distinction between different kinds of givers under the law.

Similarly, the New York Conflicts of Interest Law has a surprisingly broad rule about outside employment: a waiver is required for a City employee to accept any position with *any* company that does *any* City business, even if that business is far removed from the City employee's own job responsibilities. Because the rule prompts many questions, I have learned to repeat the rule several times for emphasis to give my audience a chance to process the information. In these instances, dialogue simply provides useful feedback for refining our presentation.

5. Gather Valuable Information from the Audience

It is not just the audience who benefits from dialogue in the training room. In fact, allowing for audience participation can be a valuable source of informal feedback for the agency conducting or hosting a training. For instance, I have often done pre-training consultations with hosts who insist that gifts are not an issue in their workplace, only to find myself bombarded with audience questions about gifts situations when I conduct the training. In these situations, the atmosphere of dialogue I foster in the training room elicits valuable information about workplace concerns from employees who might never have thought to raise the issues on their own, giving the host agency the opportunity to refine its policies and guidance. Through my trainings, I have helped alert agency management to numerous internal compliance issues, from confusion about the proper way to complete outside-employment disclosure forms, to concerns around holiday gifts from private consultants who work side by side in the same office with City employees, to agency-wide policies that staff are still widely unaware of because of a breakdown in communication.

Given the opportunity, training audiences will frequently provide a valuable service by alerting the trainer to areas where they are unsure how to apply the rules, common ethics issues in their workplace, and all manner of other problems that may be slipping through the cracks. This information can be used to help improve not just the training, but the agency's internal messaging and written materials, and even ethics policies themselves. But without a comfortable atmosphere where their feedback is encouraged and acknowledged, the vast majority of audience members will sit through the training in silence instead of share their valuable perspectives.

Conclusion: We Don't Know What They Don't Know

Ultimately, the theme of dialogue-based training is that we must *know* our audience in order to be effective as trainers. And we can only know them by letting them speak, and listening thoughtfully to what they say.

All too often our training strategies are focused *only* on providing complete, accurate instructions to our audiences—in other words, treating them like computers. Members of our diverse municipal workforces, however, have a wide range of idiosyncratic backgrounds, assumptions, and concerns, and rely not just on accurate explication, but also on emphasis and context, in order to process unfamiliar information. If we want training audiences to truly *retain* what they learn, simply reeling off a list of the rules is not enough.

Because we rarely understand our audience's particular concerns and perspectives at the outset, allowing for dialogue is the best, and possibly the *only*, way for us to unearth these concerns in order to target our training effectively. Fortunately, when we act as trainers, our *intermediary* role gives us the flexibility to create such a dialogue. And in facilitating a dialogue,

we not only provide a superior learning experience, we *embody* our agency's principled yet dynamic stewardship of the ethics law, providing a powerful *demonstration* of our agency's core values.

I once conducted a training with an attorney colleague who confided afterwards that she felt discouraged by the very basic questions one audience member had asked. Although we had already taken care to highlight a particular distinction under the law (the distinction between coworker gifts and gifts from outside parties mentioned above), this attendee nevertheless asked a question that conflated the two categories. My colleague felt that the attendee's failure to initially grasp this distinction indicated that our training had failed. My reply was that those questions were what made the training a success. Even with the best of trainers, most audiences will have trouble retaining all of the new information they receive in a training. The audience member's question, however, meant that we had piqued his interest enough to prompt him to engage with the material and ask. And because he asked a question, we were able to provide a crucial clarification of the rules. In all likelihood, we only had the chance to do so because of an atmosphere of spirited dialogue in the training room.

And that mention of "spirited dialogue" brings me to a final secret benefit of structuring an ethics training as a dialogue: it's fun!

Endnote

1. 75% in U.S. See *Widespread Government Corruption*, GALLUP (Sept. 19, 2015), available at <http://www.gallup.com/poll/185759/widespread-government-corruption.aspx>.

Until his recent departure to coordinate training at another New York City agency, Phil Weitzman served as Senior Trainer for the New York City Conflicts of Interest Board for five years. The views expressed in this article do not necessarily represent those of the Conflicts of Interest Board.



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