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Mary Manguso and Andrea R. C. Helms

Wendy Redman, interviewer

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Wendy Redman asked Andrea Helms what ethics means and what it does not mean. Helms said ethics is a system of viewing behavior and it involves things like understanding what a conflict of interest in a public official is. So, when a public official approaches a situation where there is a conflict of interest he knows how to separate his private interest and his public interest which he is supposed to be advancing. It is a mechanism of values that people have. In order for there to be ethical behavior there has to be agreement upon what is acceptable and appropriate activity and what is not. Under certain circumstance where people don't share that kind of agreement you are going to have a problem.

Redman said the reason the question of ethics became so important this year was the attorney general of the state, Norm Gorsuch, when he came in he made it clear to the legislature that if they did not adopt a code of ethics for themselves during this session then he would see to it that the common law was applied in questions of conflicts of interest and potential unethical behavior. She asked Helms to explain what that means and is it possible for a statutory code of ethics to replace common law. Helms said if the legislature enacts the statutory code then that would be applied in all actions involving court. She wasn't sure it would be an effective code of ethics in governing behavior. The common laws are simply those principles that have grown up over centuries of practice and probably wouldn't be appropriate in many of the circumstances under which a legislator would be operating day to day. She thought Gorsuch was asking for two things. There is a code of behavior which stands between people who are doing similar things and it relates to the way in which they perform those tasks. There is a statutory code which regulates behavior which becomes the subject of interest in the legal system. That would be using one's office for private gain. Under those circumstances you could make that criminal and if charges were brought and evidence was secured then the person could be tried. She thinks that is the concern that Gorsuch had.

Redman asked if there was an inherent conflict between what we are discussing as ethics and the legislative process. Mary Manguso thought to some extent there is. People go into politics for certain reasons to protect what they have. Politicians are supposed to be responsive to existing power groups. There is a fine line between being responsive to existing power groups and being unethical. Where the line is drawn varies. She doesn't know if you can define it very precisely. Redman said it is very difficult to make black and white distinctions in matters of ethics and conflict of interest. Helms said the legislature is supposed to represent the varying groups within a society. She said there has to be some kind of agreement about what is ethical and what is unethical. That is very hard to get in a society that is organized politically. One man's justice is another man's corruption. It is hard to define what precisely what is unethical behavior. We don't know for a legislator whether he is being responsive to his constituents or when he is serving his personal interests.

Redman asked if there are any differences in a state like Alaska where we have a citizen legislature as opposed to a professional legislature when trying to apply a code of ethics. Helms said the whole point of a code of ethics is it describes behavior for a group of people doing something similar. It tends to be providing a service which they do all the time. Legislators are not only legislators. They are businessmen, real estate brokers, school teachers, and farmers. They have primary concerns which are very different. From their point of view when they are in the legislature they are torn between what they perceive as a broad general public interest which they are obligated to serve. She talked about the nature of a citizen legislature.

Redman said some of the legislation that has been introduced this year is attempting to deal with a code of ethics in extremely specific terms geared towards a professional legislature. She commented about the small population of Alaska compared to other states and the potential for conflict. Helms said you would have to have so many exceptions. There are so few companies that can bid on state projects and many of those have people who are interested in them in the legislature. Are they going to forbid those companies from competing in a bid process? It is not possible.

Redman asked Manguso whether these questions were dealt with in earlier legislatures. Manguso said they weren't. Concern about legislative ethics is a very new phenomenon. In part it is a response of legislators to increasing alienation and cynicism in the general public. They want to try to address that and legislative ethics is a way to do it. When the legislature first met in 1913 there was legislation to prohibiting attempts to bribe a state official or legislator, prohibiting accepting a bribe and requiring lobbyists to register. They didn't have conflict of interest legislation until the 1940s. Initially there were eight senators and 16 representatives. The primary force at that time was the salmon packers. They sent lobbyists primarily to make sure their taxes weren't increased every year. In 1937 there was a proposal to ask congress to incur bonded indebtedness up to two million dollars. It passed the House and then the salmon lobbyists got one of the senators so drunk he wasn't able to come in to vote and the legislation did not pass. With the 1949 legislature there got to be more interest about conflict of interest. One of the reasons for the capital move was this concern. If the legislators were in a more populated area then they could be watched. She thinks there wasn't a concern about legislative ethics because people didn't know how they behaved. Press coverage was very spotty so people didn't know. One way they dealt with the problem was to increase the size of the legislature. The concern with ethics is a very recent thing with legislative ethics.

Redman asked if it was possible for the House of Representatives and Senate to fully monitor themselves. The current legislation set up an ethics commission had initially included citizen members of the commission. The legislature voted to remove the citizen members. There is a committee for both the House and the Senate. Manguso didn't know if that would work. There are current investigations going on. Helms has her doubts given the composition of the legislature the last several years. She was concerned about a self-policing process becoming a fingering process.

Redman said a lot of focus on ethics has come from the public. Helm said it is symbolic behavior which is very popular in democracies. Manguso said these things go in cycles and once it is addressed people will lose interest.

Redman talked about accountability and the changes that could be put into place for legislative reform to make it more difficult to be unethical. She wondered if moving to a professional legislature would move politicians into a more ethical arena. Helms wasn't sure. She said professionalism has the effect of

separating the legislator from the public even more. She said the only solution is to impose one of two sets of requirements. They would have to be a man or woman without children, without property, without interest or goals in life and they would be put to death upon leaving the legislature. Another solution would be to divest themselves of all those interests while they are in the legislature and risk losing everything. She considered both of them undesirable. She said what we need to do is educate the public so it can clearly identify what the public interest is and demand accountability to the people they select. Redman said the public should demand openness. Mary Manguso said one of the suggestions made in the 1930s and 1940s was to establish a unicam legislature. There would be no conference committees. Everything would be quite open. Openness is what we have to have. Helms said we are still asking the question about whether it is possible to have ethical behavior. It is very hard to expect a legislative member to behave differently when he puts on his legislator cap than when he is a private citizen. To demand different codes of conduct is inconsistent and hard to achieve.

Redman said it is the public's responsibility to be educated and to monitor and be the judge of what is ethical and unethical behavior for a legislator. Manguso said they have to behave ethically and responsibly and be responsive. Helm said if the legislature creates a set of laws and a code of behavior and they don't use it then it will increase cynicism when it is perceived to be a sham. They should behave like their every waking moment is being observed.