

TRANSPARENCY IN GOVERNMENT – ASSURING INTEGRITY OF THE DECISION-MAKERS

Masaryk University
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ASSURING INTEGRITY OF DECISION-MAKERS

- We have discussed two major topics in these classes:
 - How are disputes resolved:
 - Litigation
 - Arbitration
 - Mediation
 - How can we assure transparency in the operations of government
 - Freedom of Information
 - Whistle-blower to expose corruption
 - Prosecutions for Bribery, even outside of the country
 - Anti-trust regulation to assure fairness in the marketplace

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- But, how can we assure that the decision-makers – the judges, arbitrators and mediators are being fair?
- How can we assure that the lawyers are acting properly?
- How can we assure that the public prosecutor is making decisions based only on the merits?
- These are among the most sensitive positions to assure the integrity of the system.

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- **A. Judges, Arbitrators and Mediators**
- **First Line of Defense: Rules of Conduct**
 - U.S. Judicial Rules of Conduct limit the activities of judges.
 - Cannot have outside employment (except teaching).
 - Cannot have business relationships with lawyers who have or will appear before them.
 - Cannot have conduct with one lawyer in a dispute without the other lawyer being present.

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- Second Line of Defense: Selection of Judges – inquiry into past practices to assure impartiality and character traits appropriate for judges.
 - Selection of judges is different in the Czech Republic.
- Third Line of Defense: Removal of Judges
 - In the U.S., while difficult, it is possible.

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- The story of U.S. Judge Alcee Hastings
 - Accused of taking \$150,000 bribe to award a low sentence to a criminal defendant.
 - FBI tried to arrest Hastings right after the bribe but he ran faster.



- But the bribe money was found in his home.

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- Hastings was tried for bribery
 - He won!
 - He was found not guilty because the person who bribed him refused to testify (and went to prison because of that).
 - But, he was “impeached” (obviněný) and removed as a judge.
 - That’s not the ending!

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- Like judges, arbitrators and mediators are subject to rules of conduct.
- Like judges, each arbitrator and mediator must promise to disclose any relationship with one of the lawyers in a case before him/her.
- Failing to do so can result in vacating (reversing) the ruling and award and starting over.
- An arbitrator or mediator who failed to disclose a conflict will likely get no further assignments.

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- **B. Integrity of Lawyers**
- Screening when lawyers are licensed
 - Bar Exam to test competence.
 - “Character and Fitness” to assure each candidate has demonstrated good character.
 - What about errors committed long ago?
 - Period of apprenticeship (in C. R. and E. U. generally).
 - Rules of Professional Conduct each lawyer promises to meet.
 - Ethics reviews by licensing commission (in US, the “Bar”) in case of complaints or questions.

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- Not this bar:



- But this one:



Reviews complaints of improper (unethical) conduct and may disbar the lawyer.

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■ C. Public Prosecutors

- Who does prosecutor serve?
 - The authority who appointed (and can terminated him)?



- The public, which depends upon his job being properly performed?
- How to assure that the prosecutor is applying the law impartially and not as a result of political pressure?
 - Election of prosecutors, with fixed term of office?
 - Public criticism of prosecutors' decision.

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- Censure before the bar, applicable to all lawyers?
- Should the Public Prosecutor be a career position?
 - Does that make it more likely the Prosecutor can be improperly influenced ?
- Should the position be elected or appointed?
 - Campaign contributions can provide opportunity for corruption.
 - Appointment promotes favoritism to the appointing authority.

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- ▣ Should “transparency” apply to non-governmental areas? For example:
- ▣ Labor Unions: these help to set the standards and pay for workers. Labor Unions must work with employers to negotiate agreements.
- ▣ Does that present an opportunity for corruption?
 - Should there be laws that require the election process of labor officials to be open and known to the public?
 - Is there a public concern wherever there are persons who are responsible to others?

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- ▣ Should transparency apply to companies that are owned by the public (or partly owned by the public) ?
- ▣ Should transparency apply to charities that serve the public with funds from private or public sources?
- ▣ Are there some organizations – private clubs, for example – where “transparency” is unnecessary ?

Assuring Integrity of Decision Makers

▣ **SUMMARY:**

■ Purposes of Transparency

- ▣ - Respect for the integrity of those who resolve disputes
- ▣ - Respect for those who make or apply laws
- ▣ - Builds confidence that the legal system we use to resolve disputes is fair to all.
- ▣ - Assures that those who make the decisions know they will be held to account for their actions, and in doing so assures that their actions will be proper.
- ▣ - Applies to all types of decision makers who have public responsibilities.