



“We must adopt a new double standard: holding public officials to a rigid code of behavior, while guaranteeing private citizens their constitutional liberties.”

ADVISE & DISSENT

OPINION

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HOW TO FIGHT CORRUPTION AND KEEP OUR FREEDOM

It began in Eden, when God sent the snake unto Eve. Fearing punishment and showing no predisposition to crime, this unsuspecting innocent initially resisted temptation. The snake pressed, finally inducing Adam and Eve to bite. Ordinarily, victimless crimes, such as possession of contraband, leave no complainants and are nearly impossible to detect.

But the Garden was wired . . .

So the Sovereign confronted Adam, who instantly cooperated—implicating his supplier and sacrificing his wife. And God accused Eve, who said in her defense: “The serpent beguiled me and I did eat.” Their entrapment defense failed and we are all condemned to die.

In Eden, God monitored everything. In Orwell’s 1984, the government monitored everything. But what does this have to do with us? 1984 has come and gone. There is no Big Brother, no thought police here. Discreetly smoking pot on the beach, we don’t worry that the kid approaching us selling ice cream is really an undercover patrol for the government. We trust that new “friends” and “chance acquaintances” are who they seem. Yes, we in the United States are smug about our free society. We’ve safely passed 1984.

Wrong. There are no tyrants here to destroy us by substituting naked power for law, but powerful cheats corrode our constitutional core, routinely sacrificing public good to private greed. Unless we believe that legal commands translate into facts of life, that public officials honestly enforce laws and carry out orders, we lose faith in our republic.

America’s promise has always been liberty: freedom to develop our talents, to become ourselves fully. We need honest but limited government, delicately suspended between absolutism and anarchy. Corrupt public officials pose a great danger—but so do zealous investigators using undercover techniques to rid us of that corruption. Our problem is how to escape becoming a corrupt society without becoming a controlled one. The answer, I believe, lies in the adoption of a new double standard: holding public officials to a rigid code of behavior by constantly testing them, while guaranteeing private citizens their traditional constitutional liberties.

An egregious example of government overreaching to tempt innocent private citizens into criminal acts occurred when not too long ago, the FBI’s Satan, Mel Weinberg, zeroed in on Bob Guccione, Editor and Publisher of this magazine, attempting to prove him corruptible and mob-connected. “On the eyes of my children, I am not connected with anybody; I am totally my own man,” insisted Guccione, when Weinberg attempted to involve him in a bribery conspiracy. But Satan would not be denied; he tried to “figure a way to knock him out of the box. We got to get something on him and hold it over his head, and then he’s got to dance to our

tune." Weinberg finally offered to pay the bribe himself if Guccione would only approve it.

Although he stood to lose millions, Guccione did not dance. He withstood it all and steadfastly said no. A U.S. Senate committee, calling Guccione's victimization "chilling" and "offensive," has urged legislation to make it entrapment *per se* whenever "federal law enforcement agents manipulate a defendant's personal, economic, or vocational situation to increase the likelihood of his committing that crime." Too little too late. Although, as the Senate report puts it, "Guccione was the victim of undue interference by Weinberg in his business associations, unjustified manipulation of his business prospects, and unreasonable targeting," an entrapment defense is obviously of no help to such honest citizens, who never go to trial.

However, it is a fact of life that public officials are constantly under pressure by those who would corrupt them. Government must therefore duplicate this pressure to determine whether its officials are deserving of the public trust.

The key to keeping government honest and citizens free is a new double standard. Many experts denounce double standards as violating "equal protection under law," but they are necessary to keep government straight. Avoiding tyranny and anarchy requires *special protection for private citizens acting privately*. That extra protection requires a double standard that promotes a vigorous attack on public corruption while maintaining privacy and trust.

Public officials are entrusted with public power. To help ensure that they uphold their oaths of office, let judges always assume that some agent of honest government monitors their use of public power. Let every legislator fear that each passing lure may contain a hook. As Jefferson said, "When a man assumes a public trust, he should consider himself as public property."

Critics of undercover tactics insist that politicians are particularly vulnerable to wrongful targeting, which can permanently damage their reputations. Therefore, they say, police should never institute "sting" operations without probable cause that a particular official is corrupt. This is completely wrong. Trained to think contingently and act cautiously—having reputations, positions, and fortunes to protect—public officials, when corrupt, are most difficult to detect, but easy to deter. And almost everyone agrees that without stings, little corruption will be exposed.

When public officials' behavior is frequently and randomly sampled, no politician need be tarnished by the publicity of an integrity "audit." Those who pass the test will have their careers enhanced. This randomly certified virtue is therapeutic to our society. Government testing and monitoring of

itself makes good government, but government testing and monitoring of private citizens in their private lives threatens a totalitarian destruction of our free society.

There are problems with a double standard. Public officials are also citizens with private lives. Government agents should not ordinarily test public officials to see if they will commit private crimes. A simple rule would forbid offering simulated criminal opportunities to officials acting privately—unless investigators have reasonable suspicion that their private weakness interferes with their public trust.

I learned recently of a coercive blending of private and public: A resistant witness was given an added incentive to testify when his wife and girlfriend were both subpoenaed to appear before the grand jury at the same time. He cooperated to avoid that confrontation. This tactic, however effective, is unfair, whether the witness is a private citizen or public official.

A ruthless president, or FBI director, misusing stings to accumulate dirt for blackmail, might gain control of the federal government slowly and silently—and we would discover, long after we could prevent it, that the nation had been locked into tyranny. The odds are long, but the stakes are high. Ultimately, a corrupt free-for-all is better than a totalitarian freedom-for-none.

We are at a critical point right now. The effectiveness and power of undercover tactics make them irresistible. They are wildly spreading throughout our society, perhaps beyond the point of no return. For example, undercover agents are now posing as out-of-town commercial hunters willing to pay local poachers for trophies of endangered animals—"Wildlife Agents Shift Tactics to Trap Poachers," proclaims one headline. This scam is the only technique that works when the victims, whose extinction would be truly a crime against nature, cannot complain. But to save our precious wildlife, we may sacrifice our own precious private freedoms.

We law-abiding citizens have a right to imagine ourselves committing crimes. We may lust in our hearts. When the government hooks into our otherwise unrealizable fantasies, it becomes the root of our evil. It punishes thought-crime.

So what's next? Police agents posing as accountants to infiltrate legitimate businesses? Spouses sending seductive undercover agents to test their mates' fidelity? Imagine Big Brother watching us as we take long lunch hours and pocket paper clips.

In order to trust each other privately, we must constantly suspect each other publicly; we must suspect both the corrupt and the corruption-fighters. To trust, we must doubt. For freedom, we require control. To attack hypocrisy we need a new double standard. O+