

## Chapter 9

# MORAL DISTRESS AND MORAL COURAGE

When doing the right thing comes at a great and painful cost, trying to decide what to do can leave us feeling alone, afraid, or helpless. We might have thought through an ethical dilemma and found what we think is the right path. And yet ... that path may be closed off. Doing the right thing may be blocked by clinic policy, the hospital director, our employment contract, the insurance company, the budget, our packed schedule, or some other barrier.

We hate—or at least feel uncomfortable with—the idea that we are about to take part in something we know is wrong or to stand aside and let it happen. But to do what is right scares us into moral cowardice. We feel frozen, powerless. Doing what we think is the right thing might cost us our job, our license, our reputation, our income, our long-awaited promotion. We may also worry that doing the right thing might have no effect at all. No matter what we do, we cannot stop something that is deeply wrong—our only choice is to take part reluctantly, to witness the inevitable, or to dismiss what is wrong.

The aim of this chapter is to underscore a threat to ethical behavior that differs from so many others we face in our work. The vast majority of therapists devote themselves to the ethical path and always strive to do the right thing. But we're all human and we all fall short at least some of the time. Fatigue, carelessness, misperceptions and biases, misinformation, misjudgments, fallacies, pride, and impatience are only some of the hazards that trip up all of us at one time or another, causing us to overlook or turn away from the most ethical response. You can probably name several barriers off the top of your head without pausing too long to think about it.

All those hazards can cloud our ethical vision, causing us to miss what is most ethical. Additionally, barriers to an ethical path are external pressures convincing us that we cannot set foot on that path. Consider these examples:

As you show up at the clinic where you've provided outpatient therapy for the past 6 years, the chief administrative officer summons you to her office and informs you that due to a critical financial situation, the CEO and Board of Directors have ordered an emergency restructuring, effective immediately. You are to report now to their satellite clinic across town to assume new duties. Your current patients—some of whom are struggling with thoughts of suicide, some of whom you've diagnosed as suffering from Borderline Personality Disorder, and some of whom struggle with difficulties trusting a therapist—will be assigned to other therapists in the clinic. You will not be able to see them before they meet their new therapists, will no longer have access to their charts, and will no longer be allowed to communicate with them while they form working relationships with their new therapists.

You state as diplomatically as possible your concerns about not only ethical but also clinical problems with that approach. However, the CEO cuts you off, tells you that she and the CEO have thought through this plan carefully, that the extraordinary financial pressures call for extraordinary steps to keep the organization afloat, and that if you are unable to accept the new position as it has been laid out for you, she will unfortunately and with great sadness and reluctance, need to act immediately to hire your replacement. In an extremely tight job market, you need this job to support yourself and your family, especially since you're a single parent of three young children.



You are the graduate student representative on the admissions committee for a small clinical psychology department. As the folders pass from person to person you notice an outstanding candidate who indicates, in her biographical sketch, that she is a devout Muslim. When the folder reaches the hypersensitive, opinionated, and dictatorial—and that's on his good days—chair of the clinical program, he tosses it aside and says, "Not while I'm chair of the program! I don't want to see our building blown up because someone didn't like her grades. So officially let's just write down in our notes that her academic interests are not a good match for our program." One of the other faculty members chuckles and nods their head; the others laugh.

You remain silent, burying your face in one of the other folders as if you're reading intently, hoping nobody will pay any attention to you, realizing that to speak up within the context of this faculty would doom your prospects of success in the program. You also realize that if you let anyone outside the room know what just happened and there is any sort of complaint, publicity, or controversy, every faculty member will know that you were the leak.

Yet you believe what happened is deeply wrong—a violation of ethics, justice, fairness, legal standards, and the clinical program's own stated policies. You believe the right thing to do is to speak up, and yet ... you hesitate, not wanting to face what will happen to you if you do. You ask yourself if you would find it easier to do the right thing if rather than Muslim applicants who were banned from the program in practice, though not in formal policies or public statements of inclusion and openness, it had been LGBT applicants, Black applicants, Latinx applicants, Jewish applicants, applicants who were older than 50, applicants with physical disabilities, applicants whose biographies described their activities in extreme right wing causes, or applicants whose biographies described their activities in extreme left wing causes.



After taking out a large loan to support yourself during a 6-month dry spell of unemployment, you finally find a new job. You begin your first day of work at a well-regarded managed care system. Your supervisor explains that you'll be doing intakes in the mental health department. You'll be evaluating everyone showing up to ask for psychological services. Although the company touts their comprehensive mental health services, the supervisor tells you that you are to place everyone you can on a waiting list and warns you to be sure to write in your notes that your psychological evaluation showed no urgent needs for professional care. All others, he says, are to be assigned to one of the large therapy groups meeting every other week. For those, he directs you to write that your psychological evaluation showed that group therapy was most appropriate for a patient with this particular set of clinical needs.

When you gently but firmly raise concerns about why this approach is wrong on so many levels, he says, "Look, just between you and me—and don't quote me on this or I'll deny I ever said it—I know what you're talking about. But this company has been in business a long time and this is their business model. They quickly 'reorganize' any time they want to get rid of someone who is not on-board with the way they want things handled. If you fail even once to do what I'm telling you today, you'll get a terrible weekly evaluation in your file, though it'll list other reasons for why you're not a good employee. If you fail to do it a second time, you'll be gone within a few days."

Those three examples represent what is often called "moral distress." Andrew Jameton, professor in the University of Nebraska College of Public Health, pioneered the use of this term in his classic book on nursing ethics, defining it as what happens "when one knows the right thing to do, but institutional constraints make it nearly impossible to pursue the right course of action" (1984, p. 6). He distinguished it from other ethical quandaries:

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The experience of moral distress can be distinguished from the experience of moral dilemmas. In moral distress, a nurse knows the morally right course of action to take, but institutional structure and conflicts with other co-workers create obstacles. A nurse who fails to act in the face of obstacles also may have reactive distress in addition to the initial distress. Both kinds of distress pose dilemmas about individual and collective moral responsibility (1992, p. 542; see also Jameton, 1984).

Much of the early work on moral distress in clinical work focused on nursing. The American Association of Critical-Care Nurses' Position Statement on Moral Distress (2012; see also Rittenmeyer & Huffman, 2009), summarized some major themes of over a quarter-century of research in this area and their implications:

Moral distress is a key issue affecting the workplace environment. Research demonstrates that moral distress is a significant cause of emotional suffering among nurses and contributes to loss of nurses from the workforce. Further, it threatens the quality of patient care. In recognition of these harmful effects, the provision of education and tools to address and manage moral distress in the work environment is imperative and will lead to essential improvements in patient care and outcomes.

When an organization inflicts moral distress on its members, the cause may go beyond the constraints created by one or a few individuals (e.g., a CEO, a supervisor). The organization's goals and values may create an ethical culture that clashes with some clinicians' deepest professional and personal values. Humphries and Woods (2015) wrote: "Moral distress is inevitable in an ethical climate where the organization's main priorities are perceived by nursing staff to be budget and patient throughput, rather than patient safety and care" (p. 265).

Although much of the research on moral distress has focused on organizational settings, therapists who are in independent practice may encounter it in other forms. Källemark et al. (2004) noted that "moral distress does not occur only as a consequence of institutional constraints ... [but also other constraints such as] legal regulations" (p. 1075).

The neutral clinical language that typically describes moral distress may drain it of impact as our eyes glide over it on the page. Fourie (2015), for example, writes that "moral distress should be understood as a specific psychological response to morally challenging situations such as those of moral constraint or moral conflict, or both." Shay, in contrast, uses the term "moral injury" when describing what can happen to combat soldiers who are ordered to do something they believe is morally wrong. He writes of the "the soul wound inflicted by doing something that violates one's own ethics, ideals, or attachments" (Shay, 2012, p. 57; see also, 2002). Similarly, Litz et al. describe the pervasive harm we can

suffer when we fail to do the right thing in important situations: “Potentially morally injurious events, such as perpetrating, failing to prevent, or bearing witness to acts that transgress deeply held moral beliefs and expectations may be deleterious in the long-term, emotionally, psychologically, behaviorally, spiritually, and socially (what we label as *moral injury*)” (2009, p. 695).

The deep moral distress that occurs when external forces push heavily against our will to do the right thing finds its way into many settings, including the healthcare worker frontline of the COVID-19 pandemic (Borges et al., 2020; Kröger); oncology and hematology (Lazzarin et al., 2012); pediatrics (Sauerland et al., 2015); intensive care (Hamric & Blackhall, 2007; Kok et al., 2020); health system management (Mitton et al., 2011); academic medicine (Ganske, 2010; Roberts, 2020); health promotion (Sunderland et al., 2014); community research: (Sunderland et al., 2010); and end-of-life care (Thurn & Anneser, 2020).

If you experience moral distress, you are far from alone, as the works cited in the prior paragraph suggest. “Moral distress is a common experience for clinicians, regardless of profession” (Whitehead et al., 2014, p. 117; see also Källemark et al., 2004). Studies chart its occurrence among psychologists (see, for example, Austin et al., 2005) and psychiatrists (see, for example, Austin et al., 2008).

Moral distress also occurs among clinical supervisees. Willingham (2017), for example, found that “supervisees who experienced moral distress often had poor supervision experiences. These included supervisors not listening to the supervisee’s way of conceptualizing, not discussing techniques or skills, discouraging the supervisee from giving clients optimal care, and encouraging supervisees to engage in behavior that they considered unethical” (p. 110; see also Nuttgens & Chang, 2013).

What factors are associated with moral distress among healthcare professionals? Lamiani, Borghi, and Argentero’s review of 17 studies found that “moral distress correlated with organizational environment (poor ethical climate and collaboration), professional attitudes (low work satisfaction and engagement), and psychological characteristics (low psychological empowerment and autonomy)” (2017, p. 51).

How do psychologists respond to moral distress? A study conducted by Austin et al. (2005) found six major ways of handling the experience:

1. remaining silent
2. taking a stand
3. acting in secret
4. sustaining the self by focusing on work with patients
5. reaching out to colleagues for support
6. leaving

The field can respond to moral distress by discussing it in graduate school, internships, continuing education courses, and professional conferences so that

clinicians and clinicians in training learn about the phenomenon and its causes and can recognize it in themselves and others. We can develop supportive networks to help those experiencing moral distress to connect and consult with each other and seek additional sources of help. We can work to strengthen the ethics of organizations that inflict moral distress on their members, the focus of another chapter in this book.

But responding ethically and effectively to moral distress when we confront it in our individual lives will always require moral courage. We conclude this chapter with a striking profile in courage: A psychologist who took on a massive organization to protect his patients and was fired before ultimately prevailing. "The Psychologist as Whistle Blower: A Case Study" tells in careful and vivid detail the story of an individual's long and hard struggle to do the right thing, and the roles that the Veterans Administration, professional associations, the Civil Service Commission, and others played. We appreciate the American Psychological Association, which holds the copyright to this article, for generously granting us permission to reprint much of the article here.

The following excerpts, as they appeared over almost four decades ago, show us all what true courage can look like—and does—in the face of moral distress and overwhelming odds.

### **\*THE PSYCHOLOGIST AS WHISTLE BLOWER: A CASE STUDY**

Although whistle blowing is an issue of wide social relevance, it has particular significance for psychologists, and other professionals, who are salaried employees. Because they occupy two statuses simultaneously, professional and bureaucrat, the opportunities for conflict between the demands of their conscience and those of their organization are greatly increased in comparison to other employees. The separation between employer and client may force a choice between loyalty to the organization and loyalty to professional ethics, a situation not faced by the traditional self-employed professional. The resolution of such conflicts may require the psychologist either to acquiesce in professionally unconscionable practices or to expose the practices publicly. Thus, whistle blowing, for psychologists, may not only be a matter of personal conscience but a professional responsibility as well ....

It is also a matter of high personal risk. Intense economic and organizational pressures appear to have successfully stifled much internal dissent and to have maintained whistle blowing as a rare and personally costly response (Committee

\* Source: Adapted from Simon, G. C. (1978). The psychologist as whistle blower: A case study. *Professional Psychology*, 9(2), 322-340. Copyright 1978 by the American Psychological Association (APA). Adapted with permission.

on Scientific Freedom and Responsibility, 1975; Nader, Petkas, & Blackwell, 1972; Peters & Branch, 1972). As a result, both the public and the profession stand to suffer. Clients and the community at large may be subjected to unnecessary danger or expense while psychology's ability to function as an independent, autonomous profession is attenuated. Psychologists, therefore, have an important stake in what happens to their colleagues who become whistle blowers. Accordingly, it is important to document publicly cases, such as the one described below, in which psychologists allege that they have received punitive treatment for following the dictates of their professional conscience. Documentation of such cases may contribute to a climate of opinion and an awareness of needed social or professional changes that will reduce the likelihood that institutional power will be abused in the future.

## BACKGROUND

In February 1971, a serious earthquake struck Southern California. Although there were relatively few deaths, there was extensive property damage. Especially hard hit were several Veterans Administration (VA) hospitals. As a result of the damage, the VA launched a general survey of structural stability of other hospitals in the area. Among those surveyed were Brentwood Hospital, Wadsworth Hospital, and the Extended Care Hospital, three administratively separate facilities sharing the grounds of the National Military Home in west Los Angeles adjacent to the campus of the University of California (UCLA). Although these three hospitals had come through the earthquake unscathed, the VA announced nearly 1 year later that engineering tests indicated that a number of buildings might be unsafe in the event of another major earthquake. Therefore, these buildings were ordered closed.

Building 156, which housed the Adult Restoration Program at the Extended Care Hospital, was one of the buildings ordered closed. Donald Spiegel, a PhD psychologist who was chief of the program, received the news on January 14, 1972, a Friday. Over the weekend, unbeknown to Spiegel, paperwork was completed allowing the majority of the patients in the program to be discharged from the hospital. When he returned to work, Spiegel was asked by George Gillick, the physician who was Chief of Staff, to begin "evacuating" his patients into the community immediately. Gillick, who had been considering phasing out the restoration program even before the engineering test results were in, wanted the patients moved out quickly. However, because most of his patients were older single men without social or family ties to the community, satisfactory places for them to live outside of the hospital were not readily available. Nevertheless, on Wednesday, January 19, Gillick informed Spiegel that he was dissatisfied with the latter's "lack of progress" and instructed him to discharge all the remaining patients within 1 week.

Spiegel was to discharge 5 patients that day, 10 the next day, 15 the day after that, and so on, so that before the end of the 7th day all 120 remaining patients would be out of the hospital. Spiegel, however, did not believe that he could meet these daily quotas without seriously jeopardizing the lives and well-being of his patients, particularly the elderly ones. Accordingly, 2 days later, on January 21, he asked Gillick during a staff meeting to reconsider the quota system. Gillick responded by summarily removing Spiegel from his position as Chief of the Adult Restoration Program and ordering him to report to the head of the psychology service for new duties. Later the same day he appointed Edward O'Neil, a physician, as the new chief. In the meantime, someone informed a television reporter of what had happened, and that night Spiegel was shown on television criticizing the VA's hasty patient evacuation as he cleaned out his desk.

Having reported to the psychology service, Spiegel spent the next 5 days waiting for a new assignment. Finally, on January 26, he was detailed to the "women's cottage" to counsel women who were about to be discharged or transferred to a VA facility in Virginia. Again, it seemed to Spiegel that patients were being moved out of the hospital precipitously. Elderly women with serious medical problems who had lived at the hospital for many years were being uprooted suddenly. Convinced that the hospital's methods could lead to the deaths of some of these patients, Spiegel tried to have the procedures modified. When neither the hospital director nor chief of staff responded to his appeals, Spiegel appeared at a January 28 press conference arranged by the California State Psychological Association. Although agreeing that unsafe building conditions made it necessary to move the patients, Spiegel insisted that the "chaotic" manner in which their relocation was being carried out was as life threatening as another earthquake. He added, according to an article that appeared in the *Los Angeles Times* (Nelson, 1972) that psychologists were "concerned about a system which permits the imposition of administrative fiat on professional personnel for taking a stand against orders which would clearly damage patients or be detrimental to their welfare" (p. 1). Additional publicity was generated by patients who picketed the hospital in opposition to the relocations and Spiegel's removal from the restoration program.

O'Neil, meanwhile, continued evacuating Building 156. In contrast to Spiegel, he was given no quotas to meet, and (perhaps as a result of the publicity given Spiegel's charges) he was allowed to transfer some of the patients to other buildings on the hospital's grounds, an option not made available to Spiegel. By the beginning of March, the issue had become moot. All of the residents of Building 156 had been relocated and Spiegel, now attached to the psychology service, was at work on other projects. In addition, the final touches were being put on the administrative consolidation of Wadsworth Hospital and Extended Care Hospital into the Wadsworth Hospital Center that had

been occasioned by the decision to close some of the buildings and relocate the patients.

Then on March 8, 1972, 7 weeks after Spiegel had been relieved of his position with the restoration program, a teletype message arrived from the VA central office in Washington, B.C., ordering Spiegel to transfer to the VA hospital in Temple, Texas. The order indicated that the resettlement of many former Wadsworth Hospital Center patients to this installation required a reallocation of professional personnel "for the good of the service."

Spiegel, however, interpreted his transfer order as retaliation for his efforts to protect his patients. Since he had considerable seniority as an 18-year employee of the V A, any legitimate need for additional personnel at this facility, he reasoned, could have been accomplished by transferring any one of several other Wadsworth psychologists with less seniority. Moreover, transferring to Temple, Texas, a much less desirable location, would have caused a profound disruption in his personal and professional life. Consequently, he decided to fight the order. Seeking assistance in every available quarter, he contacted a number of groups including the California State Psychological Association, the American Psychological Association (APA), and the American Federation of Government Employees (AFGE), which filed a grievance in his behalf.

The VA responded to his protests by offering him a second choice. He was told that he could go to the Outpatient Clinic in downtown Los Angeles instead of transferring to Texas. Spiegel, who had spent the immediately preceding 13 years in a Research Psychologist position at Brentwood Hospital, discovered that his clinic responsibilities would involve providing full-time clinical services. In addition, he would be unable to continue working on a research project funded jointly by the VA and the National Institute of Mental Health of which he was the principal investigator. Accordingly, on March 22 he turned down the VA's second offer. The VA then promptly reinstated its original demand that he move to Temple, Texas, by May 1. Spiegel reiterated his unwillingness to relocate there, and so May 1 came and went and Spiegel remained in Los Angeles. As a result, on May 19 he was informed by John J. Cox, Director of the VA's Southern California District, that he would be "separated" from the VA as of June 2, 1972.

The AFGE immediately filed an appeal to Cox's directive with the Civil Service Commission (CSC) charging that Spiegel's job rights had been violated. The CSC agreed to hold a hearing on Spiegel's appeal, but it was not until nearly 6 months later, on November 14, that the hearing was held. It lasted for 2 days. Testimony was taken from Spiegel, Gillick, Cox, and others, including Cecil Peck, PhD, the VA's head psychologist. Then 5 months later the CSC's San Francisco Regional Office ... ruled that the "arbitrary selection of the appellant for reassignment to the VA Hospital at Temple was improper" and overturned Spiegel's removal.

The VA appealed the decision of the regional office to the CSC's court of last resort, the Board of Appeals and Review. Unlike the regional office, the board did not deal with the question of whether the VA had violated certain procedural rules (e.g., seniority) in attempting to transfer Spiegel away from the Wadsworth Hospital Center. Instead, the board ... in effect ruled that a federal agency has the authority to take whatever actions "as may be administratively desirable" as long as the action is "for the good of the service." It decided, therefore, that Spiegel's transfer "was not unreasonable, arbitrary or capricious, but was effected for such cause as will promote the efficiency of the service" and overturned the decision of the regional office ....

Convinced of the merits of his case, Spiegel and the AFGE refused to accept the board decision. Accordingly, they decided to pursue the issue in the federal courts. After numerous delays, AFGE attorneys filed suit against the VA in the US Court of Claims in October 1974. Brought into the case for the first time, the Justice Department and the VA's own General Counsel's office advised that the VA should enter into negotiations with Spiegel's representatives. The VA agreed and action on the suit was postponed during the interim.

Finally, in February 1975, the VA agreed to an out-of-court settlement that reinstated Spiegel with full back pay and, in effect, acknowledged that it had acted wrongly in trying to transfer him. On March 2, 1975, nearly 3 full years after he refused to accept what he regarded as a punitive transfer, Spiegel returned to Brentwood Hospital.

### **BUREAUCRATIC-PROFESSIONAL CONFLICT**

Spiegel's battle with the VA is an engrossing story, but it is more than simply another tale of David and Goliath. It illustrates the need for further attention to a number of important issues that should be of concern to psychologists, individually and collectively. For instance, what are the ethical obligations of a psychologist whose employer and clients are locked in a conflict? What assistance—moral, political, or financial—is available to psychologists caught in a conflict of this sort? And how can psychologists maintain their *professional* standing when they abandon the traditional model of independent practice and become salaried employees?

It is important to realize, then, that the dispute between Spiegel and his VA superiors is fundamentally a conflict bureaucratic and professional values, especially the definition of authority. One of the distinguishing features of a bureaucracy is the hierarchical distribution of power and authority according to which subordinates are expected to follow the directives of their organizational superiors. A profession, on the other hand, is organized in a manner that emphasizes the autonomy of each individual member to act according to the dictates of his or her professional judgment.

Consequently, when a professional is a salaried member of a bureaucracy, there is a necessary tension between the authority of the organization and the professional's own judgment (Blau & Scott, 1962). This tension may be kept in check by defining separate spheres of influence. Thus, professionals may accept the authority of the organization in, say, operational issues, such as the scheduling of client assignment. In return, the organization recognizes the right of professionals to decide, for instance, the type of treatment or service that is to be administered (cf. Abrahamson, 1967; Scott, 1969). In other words, although professionals may be subordinate to one another in organizational matters as a consequence of their different bureaucratic ranks, all are equal when it comes to matters of professional practice (e.g., patient care).

In refusing to move his patients out of the hospital as rapidly as the hospital director wished, Spiegel was asserting his professional autonomy and responsibility. In removing him as restoration program chief and later ordering him to another installation, the VA was attempting to reassert its authority and ensure future conformity to its policies. However, because of legal assistance from the AFGE and the accessibility of the federal courts, the VA's effort failed. This case is worthy, therefore, not merely because professional judgment and organizational policy differed but because the professional prevailed in his refusal to comply with orders that violated his professional integrity. The implications of this conflict may be better appreciated by examining the issues and the responses of the key parties more closely.

### THE TRANSFER

Why was Spiegel ordered to Temple, Texas? According to the VA, there was an urgent need for another psychologist at Temple, since the Texas facility was in the process of receiving 102 patients from the Wadsworth Hospital Center and was already suffering from a vacant psychologist position. The agency's legal representative at Spiegel's CSC hearing maintained that "patient care was the primary and moving (sic) reason for the transfer of Dr. Spiegel to Temple" .... Spiegel did not contest the need for another psychologist at Temple, but he did not agree that he should be the one or that he was the most qualified. The VA, on the other hand, not only maintained that Spiegel was highly qualified for the post but that he was virtually without peers. Cecil Peck, who had accepted responsibility for selecting Spiegel to go to Texas, was asked by Spiegel's AFGE representative, George Boss, why he had chosen Spiegel and not someone else:

Boss: If there was such an urgent need for the specialized qualifications of a Research Psychologist, are you, in effect stating that there are no other Research Psychologists qualified to fill the job at Temple, Texas?

Peck: The position is open, and I'm not aware of any psychologists with the qualifications of Dr. Spiegel to fill that position.

Boss: Am I to understand that Dr. Spiegel is the only individual psychologist in the Veteran's Administration that's qualified to do this job in Temple, Texas?

Peck: That's what I have indicated; that Dr. Spiegel had qualifications that could optimally fit this situation ....

Cox ..., VA's Southern California District director, in his letter of appeal to the CSC Board of Appeals and Review chairman, provided 15 citations from the transcript of the CSC hearing that he indicated testified to Spiegel's "extraordinary combinations of skills."

Since Peck maintained that patient needs at Temple required the immediate attention of a well-qualified psychologist, Boss was puzzled that Peck had not assigned another psychologist to Temple after Spiegel was fired:

Then, in turn, would you explain why you have not selected another individual to fill the job in Temple, Texas? Peck: For the simple reason we are not aware of anyone with these qualifications to go there ....

In other words, Spiegel was ordered to Texas because he alone had the requisite qualifications to meet the needs of the Temple patients, and since, by definition, his talents were unique, there was no other VA psychologist that Peck could send to Temple. Spiegel and Boss found this reasoning "curious."

In his argument before the CSC hearing examiner, Boss pointed out several other curious aspects that appeared to contradict the VA's claim that patient care was "the moving reason" for Spiegel's transfer. First of all, following his refusal to go to Texas, Peck had offered Spiegel the alternative of moving to the Outpatient Clinic in downtown Los Angeles. If the Temple patients truly required Spiegel's talents, and his alone, why was he offered a transfer to the Los Angeles clinic? The reason, according to Cox, was that the Los Angeles clinic also needed Spiegel's "unique and specialized qualifications" and that the VA central office felt a "sense of compassion" for the personal disruption transfer would cause Spiegel and his wife, a professor of psychology at San Fernando Valley State College .... Second, Peck's involvement in the transfer was highly unusual. VA administrators testified that transfers are typically initiated by the local administrative authorities, not the central office. In this case, however, the central office intervened directly and without consulting the administration of Wadsworth Hospital Center or the chief psychologist at either Temple or the Los Angeles Outpatient Clinic. Third, Boss pointed out that Spiegel could have been transferred back to Brentwood Hospital, his original station, but this alternative was rejected by the VA. Finally, Boss argued that the transfer of Elizabeth Hecht, a Wadsworth psychologist who had "volunteered" to go to Temple in order to avoid losing her job through a reduction in force, alleviated the need to send Spiegel

there. (Later the AFGE would claim that the VA was attempting to transfer Spiegel to a supervisory position that was already "encumbered" by Hecht and another psychologist at Temple, a state of affairs definitely in violation of CSC regulations.)

If the VA's explanations for Spiegel's transfer were specious, what were the real reasons? According to Spiegel, it was a mixture of inter-professional rivalry and bureaucratic spleen. Spiegel was appointed Chief of the Adult Restoration Program by a social worker serving as hospital director in an acting capacity, who died shortly after making the appointment. About the same time, Gillick was appointed chief of staff. According to Spiegel, Gillick, a physician, was unhappy with the idea of a non-MD heading the restoration program (Spiegel's predecessor and successor were physicians), and therefore, he refused to approve Spiegel's position description and subsequently ousted him as restoration chief. His transfer, Spiegel charged, was in retaliation for his criticism of the hospital's administration and the unfavorable publicity that followed his removal. Spiegel felt that the VA was more interested in removing him from Extended Care Hospital (later Wadsworth Hospital Center) and in punishing him for his public dissent than it was in meeting its personnel requirements.

Spiegel's charge that his public criticism of the VA was related to his transfer order was flatly denied by VA officials. Peck has testified that the news stories did not influence his judgment in proposing Spiegel's transfer. He and other VA officials acknowledged that they were aware of the media reports relating Spiegel's criticism, but they insisted that they maintained a detached attitude toward these reports, as indicated by this exchange between Cox and Boss:

Boss: What was the substance of your discussion with the VACO [VA central office] concerning that article in the paper?

Cox: If I recall correctly, I believe in my discussion with officials in Washington it was to the effect that with all the trauma that we were going through out here in transferring our patients to various parts of the country, we didn't need further articles of this type to disrupt our patients any further.

Boss: Then your discussion was critical of the information furnished by Dr. Spiegel to the press?

Cox: I wouldn't call it critical. I would say it was *informative* ....

In addition to questioning the cogency of the VA's explanations for his transfer, Spiegel also challenged the procedural legitimacy of the actions taken against him. He claimed that his removal as head of the restoration program constituted a "reduction in rank" since he no longer reported directly to the chief of staff. And as this change was accomplished without the usual elements of due process that are called for by CSC regulations, he argued that it should be

considered invalid. For similar reasons, he maintained that his transfer to Texas violated both "reduction-in-rank" (since again he would be one level further down the organizational chain of command) and "reduction-in-force" regulations—the latter because he had been given no opportunity to exercise his right to "bump" someone of lower seniority. Therefore, since the VA had acted improperly, he argued, these adverse actions should be nullified.

### LEGAL MANEUVERS

The formal discussions of these points are not only arcane and exceedingly technical, they have a distinctly Alice-in-Wonderland quality. For instance, the VA argued that Spiegel's rank was not reduced because he had never "really" been restoration chief. The VA's position was that even though: (a) Extended Care Hospital distributed a memo announcing Spiegel's appointment as Chief of the Adult Restoration Program; (b) the hospital director signed an organizational chart which showed that Spiegel reported directly to the chief of staff (Gillick); and (c) Spiegel in fact functioned as restoration chief for approximately 6 months, Spiegel's supervisor (Gillick) had never signed his official position description. Since CSC regulations require all government employees to have an approved position description relevant to their duties, the VA claimed that Spiegel had never legally been restoration chief. Therefore, they argued, they could not have improperly reduced his rank since he had never truly held the chiefs position.

Furthermore, the fact that Gillick did not issue a personnel action (Form 50) when he removed Spiegel was cited as additional evidence that Spiegel had never occupied a rank higher than "psychologist." (Spiegel, of course, felt that this omission merely represented an additional violation of his job rights.) According to the federal suit filed by the AFGE ..., this line of reasoning would be tantamount to arguing that a municipality could never prosecute someone for driving without a license because driving is legally defined as "an action which requires the issuance of a driver's license."

Spiegel's lawyers, however, were not unwilling to turn this tortured logic to the benefit of their client. Thus, they argued that if it were true that Spiegel had never truly been chief at Extended Care Hospital because he did not have a duly signed position description for his duties there, it must also be true that his transfer from his original position ("research psychologist") at Brentwood had never been consummated. Therefore, the VA's termination order was procedurally defective since it fired him from a position that he had never held (i.e., "psychologist" at Extended Care Hospital).

An even more bizarre twist developed over the grievance that had been lodged in Spiegel's behalf by the AFGE shortly after Gillick removed him as restoration chief. The grievance was filed by William McPeak, an AFGE

official, in a letter to Jaffrey, Director of Wadsworth Hospital Center. Unfortunately, a few days after writing Jaffrey, McPeak died. Jaffrey then decided not to follow up on the grievance on the grounds that the VA did not "know" who now exercised Spiegel's power of attorney. Later, after the period for filing a grievance had passed and in response to the union's insistence that something be done about Spiegel's grievance, Jaffrey wrote a letter to the (deceased) McPeak citing his demise as the reason for the hospital's failure to act on the grievance. This state of affairs led the CSC San Francisco Regional Office ... to rule "the fact that the appellant's representative died within a few days after writing the letter does not absolve the agency of their responsibility to take some positive and affirmative action on this grievance."

Like its answer to Spiegel's charges that he had been improperly reduced in rank, the VA's response to the charge that it had violated his rights under reduction-in-force regulations was based on a highly technical interpretation of the facts. VA officials acknowledged that a reorganization was underway at the time that Spiegel was ordered to Texas. They also acknowledged that "general" notices were sent in February 1972 to over 700 employees announcing that there would be a reduction in the number of staff needed at Wadsworth, and that several psychologists (not including Spiegel and others with high seniority) received these notices. In addition, they acknowledged that the personnel officer had indicated "unofficially" in the employee's newsletter that there were eight "surplus" psychologists.

Following these announcements, one psychologist applied for retirement, two resigned, and six (including Elizabeth Hecht, who went to Temple, and two who went to Brentwood) transferred to other stations. As a result of these individual moves, the VA claimed that the problem of "surplus" psychologists was solved without resort to the issuance of individual reduction-in-force notices. And since individual notices had never been issued, the VA argued that a reduction in force did not formally exist in the Psychology Service by the time that the central office transmitted its order for Spiegel to transfer to Texas.

The CSC Board of Appeals and Review, which has come under attack for adopting a reflexively "pro-management" position (cf. Vaughn, 1975), accepted all of the VA's contentions. Overruling the regional office, the board decided that the VA had not violated CSC reduction-in-force procedures in ordering Spiegel to move to Texas or to leave the service, and it agreed with the VA that Spiegel had not suffered a reduction in rank. Accordingly, it refused to order the VA to reinstate Spiegel.

At this point Spiegel and the AFGE went into federal court. They repeated their claims that the VA's actions toward Spiegel were punitive and in violation of CSC regulations. They also charged that the CSC board's decision represented "an improper, arbitrary and capricious interpretation of the Federal Personnel Manual in violation of the ... US Constitution" .... Shortly thereafter the VA contacted Spiegel's representatives to seek an out-of-court

settlement. No official explanation of this decision has been offered; however, VA officials (who have asked not to be identified) have indicated that the reason for this change in position was the agency's belated realization that the actions taken against Spiegel had been improper, and they didn't think that their case would stand up in court.

Although Spiegel has now won his job back, the basic issues remain unresolved. There have been no changes in policies governing professional roles in the VA or administrative discretion in ordering transfers. As a result, according to Dale Tresidder ..., Director of the VA Evaluation and Systems Service in Washington, "It could happen all over again."

### THE PROFESSION'S RESPONSE

Spiegel's abrupt dismissal as Chief of the Adult Restoration Program came at a time when the public was just becoming aware of [California's] plan to close down the state's mental hospitals. Only 2 days before, the California State Employees Association had released a 17-page report charging that thousands of people had been dumped out of state hospitals into unequipped "board and care" homes or hotels for transients (Endicott, 1972). According to Karl Pottharst ..., President of the California State Psychological Association (CSPA) at the time, the CSPA Board of Directors were concerned about the apparent breakdown in mental health care. They had, for example, decided to join a lobbying effort at the state capitol to halt further hospital closings. Pottharst, however, felt that more was required. He wanted "to find some way to bring to public attention the barely visible plight of mental patients" who were being precipitously pushed out of state hospitals .... Despite assurance of CSPA moral support, efforts to encourage some of the psychologists in the state system to speak out publicly were unsuccessful because the latter were afraid that they would be transferred or lose their jobs if they did. Consequently, upon learning of Spiegel's ouster, Pottharst immediately contacted him and asked him to appear at a news conference called by CSPA and to describe the plight of his patients.

According to Pottharst, another problem in addition to job insecurity that impeded the mobilization of the state-employed psychologists was the lack of clearly defined ethical principles and precedents. Neither the *Ethical Standards of Psychologists* (APA, 1972a) nor the *Guidelines for Conditions of Employment for Psychologists* (APA, 1972b) seemed to provide clear direction to psychologists torn between loyalty to their clients and loyalty to their employer. Accordingly, Pottharst ... wrote to Richard Brooks, then Chairman of the CPA Committee on Ethics and Professional Responsibility, to charge the committee "with the task of defining a professionally responsible and ethical position with regard to the issues raised in this situation (i.e., patient

dumping) in time for reporting to the CSPA Board of Directors at its June meeting." The committee, however, did not carry out this mandate.

Pottharst wrote a number of other letters during this period concerning Spiegel. Included among these was a letter to S. Don Schultz, then Chairman of the APA Board of Professional Affairs asking that the board direct its Committee on Academic Freedom and Conditions of Employment (CAFCOE) to investigate what had happened to Spiegel. Schultz ... wrote back that it would be best if Spiegel himself filed a complaint with CAFCOE and requested an investigation. He also suggested that Pottharst formally request the Task Force on Standards for Providers of Psychological Services to review the situation. However, he expressed doubt that either unit would be able to take action prior to the board's next meeting, 2 months away. This turned out to be the case. Although Schultz did inform the board of his correspondence with Pottharst, it took no action.

Spiegel, meanwhile, had acted upon Schultz's advice and had filed a complaint with CAFCOE, which by this time included the issue of his transfer in addition to his removal as restoration chief. Although F. Nowell Jones, Chairman of CAFCOE, called him several times shortly after he submitted his complaint, Spiegel soon began to doubt the wisdom of having requested APA's intervention. Overall, APA seemed unresponsive and ineffectual, and its procedures for handling his grievance seemed slow and cumbersome. Finally, fearing the CAFCOE's investigators might lack the experience or skill to get at the truth or would interfere in some way with the defense being prepared by his lawyers, Spiegel decided to disengage himself from the committee. Consequently, when APA Central Office staff wrote requesting information and indicated that his case would be considered closed unless this information was received, he did not respond. Inexplicably, he failed to give his reason and APA, for its part, did not inquire into it. The committee ... simply voted to close the case.

## **THE LONELINESS OF WHISTLE BLOWING**

The reaction of the other hospital employees has left Spiegel nonplussed. After he was ordered to Texas, but before he was actually separated, Spiegel reported that many staff people would come up to him to express their support and to "leak" information to him on what the administration was planning next. When he returned to his job, many people came up to congratulate him and to tell him how happy they were that a person could successfully stand up to *them*. Despite the positive reception that he received upon his return and prior to his leaving, none of the staff contacted him during his hiatus. "I assumed that the people who are tied into the system were afraid, but I really don't know," he says ....

Had it not been for George Katz, a Wadsworth psychologist fired along with Spiegel when he too refused to accept a transfer, and the AFGE, Spiegel indicated that it would have been very difficult psychologically. He and Katz were in frequent contact comparing their similar situations. The AFGE, he said ... was "really marvelous. There was always someone there you could talk to. And they were always willing to try something." (Spiegel had not always been a union supporter. It wasn't until after he had received his transfer order and had received the immediate backing of local union representatives that he joined the union.)

In view of the publicity surrounding his case and the considerable brouhaha that it generated, Spiegel assumed that everyone would have known about it. Not so. Soon after his return to the hospital after an absence of nearly 3 years, he ran into an old colleague. "Where have you been?" the other researcher asked, "I haven't seen you around in a while."