

Forum

Head:

Countering Terrorism: The Clash of Values

By Ralph L. Keeney

Is your right to life, liberty and the pursuit of happiness important? Of course. Do you want to maintain all of your civil liberties? Sure. Is freedom of speech essential to our society? Definitely. Are these values that provide some of the foundation of our nation sometimes in conflict? Yes they are. Values conflict when we, meaning our nation, can enhance the manifestation of one value only if we accept a degradation in the manifestation of another value. Such decisions do not involve choosing one value over another; rather it is the degree of each that matters. Because values conflict, choices affecting them involve inherent value tradeoffs. We might not recognize these value tradeoffs or avoid acknowledging their existence, but that doesn't help to make informed choices. When we think about such value tradeoffs, it often is not explicitly or clearly articulated. Yet, since we all care about the consequences of decisions that affect our basic values, there is merit in trying to make the necessary value tradeoffs explicitly in an informed manner.

Three fundamental errors lead to inadequate thinking about value tradeoffs. To appropriately consider value tradeoffs, we need the following:

- 1) A clear understanding of all of the fundamental objectives influenced by competing alternatives being considered.
- 2) A recognition of the value tradeoffs that exist.
- 3) A willingness to think hard about and make necessary value tradeoffs.

Error 1: Incomplete Understanding of All the Fundamental Objectives. On Nov. 1, Gov. Gray Davis of California publicly announced that he had received information from federal authorities that terrorists may attempt to destroy one or more of the major bridges in the state. Gov. Davis was criticized by many for his remarks based on information that others said was not credible or corroborated. In defending his public announcement, Gov. Davis said, "If I didn't make that statement and, God forbid, something happened, I'd be kicking myself." Was Gov. Davis' announcement the result of a good decision? That depends on many things including the specific information he had, the objectives he considered in deciding, and the value

tradeoffs he made.

What are the fundamental objectives that Gov. Davis should use for appraising alternatives about whether to make such a public announcement and exactly what announcement to make? From a public perspective, I think that the major objectives should include the desire to minimize loss of life, injuries, property damage, disruption, fear and anxiety to all Californians and our visitors, and costs of responding. Such consequences could occur from attempts to destroy bridges or other terrorist acts now as well as in the future. The announcement could lower the chance that the bridges are attacked now or ever, or it could lower the chance of attack now and increase chances in the future, and/or it could increase or decrease the chances that other targets are pursued. Significant uncertainties about the consequences of each alternative render the choice very difficult.

What were the value tradeoffs that Gov. Davis thought about while contemplating a public announcement? His defense of his announcement was to avoid possibly "kicking himself." But where on the list of important fundamental objectives is the desire to minimize Gov. Davis' personal and political regret? Its relevance is insignificant compared to the importance of potential loss of life and the other possible fundamental consequences to Californians. How much did Gov. Davis weigh his potential regret compared to the real consequences to Californians? One cannot judge from press reports, but I'd have more confidence in the quality of Gov. Davis' decision if he had said something like, "I believe the consequences to the public, in terms of potential loss of life and disruption of society, are less given the announcement." It is essential to keep in mind a clear understanding of our fundamental objectives to even begin to make appropriate value tradeoffs.

Error 2: Not Recognizing Specific Value Tradeoffs that Exist. If we do not recognize the value tradeoffs that exist, it is not possible to make informed choices based on a clear understanding of the consequences of different alternatives. Decisions involving terrorism evoke personal value tradeoffs among competing objectives, value tradeoffs between individuals, individual versus societal tradeoffs and tradeoffs between different societal objectives. Aware of a threat of bridge destruction, an individual must balance his or her loss of freedom and inconvenience of not using the bridge against the potential safety consequences of using it. The state of California on Nov. 11 stopped and searched all large trucks before allowing them to cross the Golden Gate Bridge. This inconvenienced and reduced the freedom of truckers and increased the potential safety of all bridge users.

When we speak of civil liberties, it is important to clarify whose civil liberties are of concern. The State Department recently announced that it

would investigate backgrounds more thoroughly before granting visas to young men from Arab and Muslim nations. Pro-immigration groups criticized this decision as one that reduces civil liberties and is antithetical to American values. To better understand the issue, it is useful to distinguish between civil liberties of Americans and civil liberties given to others seeking to come to the United States.

One cherished American civil liberty is the freedom to go where we want and do what we want when it does not harm others. Terrorism and potential terrorism limit this freedom. A more thorough control of visas may prevent some terrorism while it reduces a civil liberty to some visa applicants. This is a tradeoff that cannot be avoided. To decide which competing value should be stressed here depends on the relative values for who and how many people are affected in what ways by the alternatives — in this case, reducing fear and increasing freedom for millions of Americans versus requiring a more thorough visa investigation for selected applicants.

Error 3: Unwillingness to Make Value Tradeoffs. We have all heard people claim that a specific right is so important that we cannot or should not give up any amount, however small, of that right regardless of the other consequences. Some people claim that freedom of speech or freedom of the press are paramount to other values we all cherish. But these values do conflict with other critical values, such as life, liberty and the pursuit of happiness. Choices must be made.

You cannot yell "fire" in a crowded theatre when no fire exists. This could lead to deaths and injuries in an ensuing panic. The value tradeoff made is that one's freedom of speech to yell fire is not as significant as the freedom to live of many others. Such value tradeoffs clearly are recognized and made. Is this not the same type of value issue in examining the freedom of the press to announce planned American military action, details about steps to apprehend anthrax terrorists, or specific vulnerabilities of infrastructure to terrorism? Balancing freedom of the press to release such information against the safety consequences to the public is very difficult. It must be made on a case-by-case basis. But one important point is that such a value tradeoff must be made in these situations. Given this, a second important point is that the value tradeoff should be made based on understanding the consequences and hard thinking about the values.

The Justice Department recently decided to allow authorities to monitor all communication between some people in federal custody and their lawyers. The stated purpose is to prevent possible future terrorist acts to save American lives. The president of the American Bar Association reportedly said, "No privilege is more indelibly ensconced in the American legal

system than the attorney-client privilege." That may be accurate, but explicit value tradeoffs should still be made to consider the relative merits of this Justice Department action.

One of the detained individuals whose communication is to be monitored is Omar Abdul Rahman, who was convicted of the 1993 World Trade Center bombing. What are the appropriate value tradeoffs between the number of American lives that may be lost in the future due to terrorism, the number of individuals in custody whose communications are monitored, and any precedence set by the choices? Failure to address these value tradeoffs explicitly cannot lead to an informed choice.

Thinking About Value Tradeoffs

The value tradeoffs necessary in a complex decision define the way to balance the pros and cons of the alternatives. They do not do that balancing. Consider the case described above concerning certain individuals in federal custody and their lawyers. The fundamental objectives include a desire to reduce loss of life due to terrorism, reduce lack of freedom of movement, and maintain the civil liberty of private attorney-client discussions.

To evaluate the pros and cons of whether such a ruling is desirable, we should estimate its consequences as well as we can. After a careful examination, suppose that the monitoring of communications was felt to result in a 10 percent chance of avoiding a terrorist attack that would kill 50 people, about 20 million people feeling more comfortable to go where they please safely, one million people who would not previously fly would be willing to do so, 1,200 people in federal custody would have their conversations with lawyers monitored, and a possible precedence to limit the attorney-client privilege.

Balancing these pros and cons requires value tradeoffs. We might decide that the loss of attorney-client privilege for 500 people in this situation is equivalently as bad as the loss of one individual's life to a terrorist attack. Then the positive consequence of avoiding the fatalities due to terrorism outweighs the negative consequence of 1,200 people losing their attorney-client privilege. The precedence set by monitoring conversations in this case may be viewed as being as significant (meaning bad) as having five million people feeling uncomfortable about moving around. Given this value tradeoff, the positive consequence of 20 million people feeling more free would outweigh the negative consequence of setting precedence for suspending attorney-client privilege in certain situations.

Determining appropriate value tradeoffs is very difficult. It requires finding even swaps — pairs of different consequences that we would be willing to evenly trade for each other. We might conclude, as above, a willingness to

swap the elimination of terrorist risk causing one expected fatality for an elimination of attorney-client privilege for 500 individuals in federal custody because of terrorism concerns. To make such a value tradeoff requires thinking about who and how many people are affected by each consequence and how severe each of the consequences are. Individuals with different perspectives should participate in discussions to identify an appropriate value tradeoff or a range of acceptable value tradeoffs. The reasons supporting different viewpoints should be clearly expressed so others can understand and appraise them.

If we could have the best of all worlds, I'd choose it. We all would. But that alternative isn't available. So let's make the necessary value tradeoffs as well as we can so we can make the best choices.

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