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CIVIL SERVANT RESISTANCE AT THE EPA—A RESPONSE TO JENNIFER NOU

JOEL A. MINTZ*

INTRODUCTION

My task in this Symposium is to comment on Professor Jennifer Nou's thought-provoking article, "Civil Servant Disobedience" by focusing on resistance by Environmental Protection Agency (EPA) career employees who have strong objections to anti-environmental policies fashioned by political appointees. In Part I, I shall describe and assess Professor Nou's definition of civil servant disobedience. In Part II, I will examine Nou's normative guidelines for determining the circumstances under which civil servant disobedience should be seen as justifiable. Part III summarizes the sources of the factual information I will rely upon in describing EPA staff resistance to administration policies in two periods of crisis in the Agency's history: the first two years of the Ronald Reagan administration ("the early Reagan period") and the Donald Trump presidency to date ("the Trump era"). In Part IV, I consider the role of EPA's civil servants in resisting anti-environmental Reagan administration policies and the extent to which that resistance fits within Jennifer Nou's definition of civil servant disobedience. Part V examines EPA career staff resistance to anti-environmental initiatives within the Agency. Finally, I conclude by noting some questions that Nou's piece does not address that seem fit for further investigation and analysis.

I. DEFINING CIVIL SERVANT DISOBEDIENCE

Professor Nou prefaces her analysis of civil servant disobedience by briefly examining civil disobedience by private citizens. Quoting John Rawls, she defines private civil disobedience as "a public, non-violent conscientious yet political act contrary to law usually done with the aim of bringing about a change in law or policies of government."¹ Nou observes that citizen civil disobedience is often understood as an act that is non-

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1. Jennifer Nou, *Civil Servant Disobedience*, 94 CHI.-KENT L. REV. 349, 354 (2019).

violent, publicly communicative, done in good-faith on the basis of convictions, and contrary to the law.² Jennifer Nou's definition of "civil servant disobedience" closely parallels her notion of civil disobedience by private citizens. For Nou, civil servant disobedience must—like private disobedience—be nonviolent, conscientious, and an openly public effort to encourage reform. It should also be a "last resort," a step taken only after all internal channels of appeal and protest have been exhausted.³ Professor Nou intentionally excludes from her definition of civil servant disobedience wholly covert efforts to oppose official agency policies, public yet anonymous disobedient behavior, and policy objections raised by government employees after they have retired.⁴

Professor Nou's conception of civil servant disobedience has the significant virtue of being similar to commonly held notions of civil disobedience by private parties. This allows her to draw upon the rich body of literature concerning private citizen disobedience to help articulate normative principles for evaluating the appropriateness and limits of disobedience by government personnel. At the same time however, Professor Nou's definition of civil servant disobedience is arguably a too bit narrow to relate to the bulk of civil service resistance. As described below in Part III of this comment, in the case of EPA most career staff resistance administration-created policies that are perceived as objectionable have been either covert or, where publicly announced, entirely anonymous.⁵ Where EPA staff protests have been open, they were usually a feature of the angry, public resignation of a career staff member. Thus, at least in the context of the EPA, Professor Nou's definition does not squarely describe much of the resistance to administration policies actually engaged in by members of the Agency's career staff.

Notwithstanding this, Jennifer Nou's limited notion of civil servant disobedience has practical significance. Though it may be relatively rare in practice, instances of open public protest by civil servants have undoubtedly occurred; and they may well recur in the future. By clearly and precisely describing what she means by civil servant disobedience, Professor Nou has set the stage for a thoughtful, perceptive discussion of the rights and wrongs of such conduct by lower-level government officials.

2. *Id.* at 354–55.

3. *Id.* at 353.

4. *Id.* at 358.

5. See *infra* note 29 and accompanying text.

II. RECIPROCAL HIERARCHY AND THE APPROPRIATE LIMITS OF CIVIL SERVANT DISOBEDIENCE.

After defining civil servant disobedience as she has, Professor Nou turns to the question of when such disobedience should be viewed as justified. It is at this point in her piece that her perceptiveness and wisdom most shine through.

Nou asserts that the ideal administrative agency should be guided by the notion of “reciprocal hierarchy.”⁶ In her view, a well-functioning bureaucracy facilitates a bottom-up information flow that supplements and complements top-down mechanisms of internal administrative control.⁷ Nou notes that career staff members play an essential role in administrative agency operations in ways that are consistent with various democratic theories.⁸ They encourage participation and deliberation in policy matters by non-governmental parties, they facilitate bargaining among outside stakeholders, and they convey citizen concerns up the chain to the agency’s political leadership. Staff members also draw upon their specialized training and professional expertise to advise political leaders regarding non-obvious technical aspects of policy issues. Where a reciprocal arrangement between an agency’s staff and its leadership is lacking open staff, civil disobedience may indeed—as Nou suggests—constitute a benevolent form of “bureaucratic process-perfection.”⁹ Under these unfortunate circumstances, staff disobedience facilitates active public engagement in policy matters that would not occur in a healthy agency.

In addition to considering the presence or absence of reciprocal hierarchy to be a relevant source of normative guidance, Professor Nou notes several other conditions that she contends should be considered when assessing whether particular instances of civil servant disobedience are justifiable. In particular, she argues, agency staffs will not be justified in disobedience if they openly flout legal directives that afford political appointees unreviewable discretion.¹⁰ Civil servants must also refrain from disobedient acts where doing so will be inconsistent with the ethical norms of their own professions. Moreover, as noted above, in Nou’s view, civil servants should exhaust all avenues for dissent—such as elevating a matter to a high-level appointee or an agency inspector general—before engaging

6. Nou, *supra* note 1, at 363.

7. *Id.*

8. *Id.* at 363–65.

9. *Id.* at 366.

10. *Id.* at 368.

in open disobedience.¹¹ And finally, civil servants who disobey agency directives must be willing to submit to legal punishment for their actions.¹²

These normative guidelines strike me as logical and entirely appropriate. Reciprocal hierarchy is indeed the hallmark of a well-functioning administrative agencies. Prudent elected officials and political appointees make effective use of the experience, expertise, and institutional memory of their career staffs. Capable civil servants, in turn, realize that they have a valuable role to play in agency decision-making. They seek to assist their politically appointed bosses fully and faithfully, but with the understanding that final decisions on policy matters are for their superiors to make. Where reciprocal hierarchies are abandoned or abolished by unwise administrators, civil servant resistance appears both more likely and more appropriate.

As critical as career staff members are their function in a democratic government is necessarily limited. Career staff members are elected by the citizenry. They are not the appointees of democratically elected leaders, nor are they philosopher kings or queens. Their actions should thus be guided by administration-crafted policies in all but exceptional circumstances. Given these considerations, the limitations on career staff disobedience posited by Professor Nou are entirely consistent with democratic theory and well-merited.

III. RESISTANCE AND DISOBEDIENCE IN THE CONTEXT OF EPA

How relevant are Jennifer Nou's normative guidelines to past and ongoing resistance by EPA's career staff to radically anti-environmental policies? Ideally, the answer to this question should be based on thorough empirical research into the behavior of EPA's staff during periods when administrative policies most sharply conflicted with the Agency's underlying mission: protecting the nation's air, water and land, and the health of its population.¹³ As noted, two such periods have taken place to date: the "early Reagan period" (from January 1981 to January 1983) and the tenure of the Trump administration (from January 2017 to date).

I will base the observations regarding the early Reagan period that follow on my own documentary and oral history research into the history of EPA's enforcement program, as described in my monograph, *Enforcement*

11. *Id.* at 369.

12. *Id.* at 372.

13. U.S. Env'tl. Prot. Agency, *About EPA: Our Mission and What We Do*, EPA.GOV, <https://www.epa.gov/aboutepa/our-mission-and-what-we-do> [<https://perma.cc/Y9DV-XN8H>].

at the EPA: *High Stakes and Hard Choices*.¹⁴ Unfortunately, I have not yet been able to engage in systematic research into pertinent resistance activities of EPA's civil servants during the Trump administration—a phenomenon that is ongoing at this writing. I hope to do so in future. For now, however, I must base my (concededly somewhat impressionistic) findings regarding EPA staff resistance during the Trump era on three things: a limited series of brief, off-the-record conversations I have had with EPA officials over the past two years, relevant newspaper accounts, and my own knowledge of the sub-culture of EPA's staff. Some of the latter stems from my own, past six years' experience as an attorney and chief attorney in EPA's mid-west regional office and the Agency's Washington, D.C. headquarters, from 1975 to 1981. While pursuing my research, I've observed that parts of EPA's staff sub-culture have evolved over time. My clear sense, however, is that many aspects of that sub-culture have remain unchanged since I served in the EPA myself a good while back.

IV. EPA STAFF RESISTANCE IN THE EARLY REAGAN PERIOD

The first two years of the Reagan administration was a period of deep retrenchment in EPA's activities. The era was characterized by a sharp decrease in the initiation of new enforcement cases, deep distrust of the Agency's political appointees on the part of an increasingly fearful and demoralized Agency staff, budget cuts, intense clashes between the Agency's political appointees and congressional overseers, and growing interest in EPA's decline among the press and the general public.¹⁵

As one EPA official of the time later observed: “[T]here were plainly people in the administration, within EPA, who believed that EPA itself should be dissolved, that the statutes that it implemented were senseless, and that the federal government had no business in environmental management.”¹⁶ The Agency's appointed leadership adopted a so-called “non-confrontational” approach to enforcement,¹⁷ re-organized the Agency to de-emphasize its enforcement work,¹⁸ and engaged in behind-the-scenes contacts with defendants in enforcement cases that undercut staff negotiation efforts.¹⁹ These policies had a dramatic impact. The number of new civil

14. JOEL A. MINTZ, *ENFORCEMENT AT THE EPA: HIGH STAKES AND HARD CHOICES* (revised ed. 2012).

15. *Id.* at 41–61.

16. *Id.* at 42.

17. *Id.* at 43.

18. *Id.* at 44.

19. *Id.* at 47.

enforcement actions referred to EPA headquarters by the Agency's regional offices fell by seventy-nine percent in 1981 (compared to the previous year), and EPA's civil case referrals to the Department of Justice fell sixty-nine percent.²⁰

Learning of these shifts in EPA policies, the chairpersons of important congressional oversight committees became increasingly alarmed. Congressman John Dingell (D-MI), a powerful, experienced member of the House of Representatives held a series of widely publicized hearings in which EPA's lapses in enforcement were exposed and subsequently documented.²¹ Dingell and another House committee chair, Elliott Levitas, subpoenaed enforcement documents related to some 160 abandoned hazardous waste sites.²² The Reagan administration refused to provide those documents, based on a claim of executive privilege, following which the House of Representatives voted to hold EPA Administrator Anne Gorsuch in contempt of Congress.²³

This action set the stage for a constitutional confrontation between Congress and the Executive Branch that became the focus of particularly intense media scrutiny.²⁴ The Department of Justice (DOJ) sued the House of Representatives in U.S. District Court. That lawsuit was dismissed by the court, which admonished the two branches to settle their difficulties without further judicial involvement.²⁵ Within a short time DOJ and representatives of the Dingell and Levitas committees did, in fact, arrive at an agreement under which the administration agreed to withdraw its executive privilege claim and relinquish the subpoenaed documents.²⁶ In the aftermath of these developments, Anne Gorsuch was compelled to resign as EPA's Administrator, along with nineteen other top-level Agency officials.²⁷

Throughout this tumultuous period, as I have written "with few exceptions, the Agency's political appointees were the objects of intense resentment from the EPA enforcement staff. Their motives were distrusted, their . . . policies were disliked, and the professional competency of some was questioned."²⁸ In fact, some members of the Agency's staff covertly

20. *Id.* at 50-51.

21. *Id.* at 52-56.

22. *Id.* at 56-57.

23. *Id.* at 57.

24. *Id.* at 57-58.

25. *Id.* at 58.

26. *Id.* at 58.

27. *Id.* at 58.

28. *Id.* at 51.

assisted congressional investigators by providing them with copies of EPA documents and reports of anti-environmental developments within the Agency.²⁹ At the same time, however, EPA's career staff refrained from the sort of open public protest that would satisfy Professor Nou's definition of "civil servant disobedience." Some of that EPA staff reluctance was motivated by a concern that more public acts of resistance would result in the dismissal of the Agency staff members who chose to resist administration policy in an open manner. In other instances, staff members put their faith in the (ultimately successful) opposition to administration policies by influential members of Congress.

Perhaps more importantly, however, during the early Reagan period open public protest ran against the grain of a deeply imbedded aspect of EPA's staff sub-culture. As Jennifer Nou's article appropriately acknowledges, "Civil servants have historically held a strong sense of 'role perception,' powerful norms regarding their appropriate institutional role. These norms have included respect for politically-appointed supervisors and the need to channel dissent through appropriate internal channels."³⁰

Based on my long-term research, together with my first-hand employment experience with the EPA, it is my clear impression that "role perception" was (and continues to be) a pervasive aspect of the life of EPA's staff. EPA's civil servants overwhelmingly recognize the limitations of their roles. Even in perceived times of crisis, where staff members passionately disagree with the policies of Agency appointees, the career staff generally tries its best to influence EPA policy by offering specific recommendations to its superiors. Rarely, where its advice is rejected, staff members have attempted to influence Agency policies by contacts with entities outside the Agency, such as Congress and the media. Public protest, though, has been widely seen by EPA's career staff as taboo and ineffectual, as well as potentially career-limiting. It was not a significant feature in the contentious Gorsuch era.

V. EPA STAFF RESISTANCE DURING THE TRUMP ADMINISTRATION

Even before the presidency of Donald Trump began, the prospect of Trump's assumption of power alarmed and frightened EPA's permanent career staff. During his campaign for the presidency, Mr. Trump had pledged to all but eliminate the Agency; and his transition team recommended drastically cutting EPA's workforce from 15,000 employees to

29. *Id.* at 51–52.

30. Nou, *supra* note 1, at 352.

5,000 and decreasing the agencies budget by fifty percent.³¹ As Professor Nou notes, the President has referred to federal workers as “the deep state,” and he has approved of the “deconstruction” of the administrative state.³² Trump’s antipathy to regulation in general—and environmental regulation in particular—has been most emphatic and entirely open.

President Trump’s first EPA Administrator, Scott Pruitt, had been an active opponent of EPA policies regarding climate change and a staunch ally of the oil and gas industries; while serving as the Attorney General of Oklahoma, Pruitt had sued EPA more than fourteen times to block major environmental regulations.³³ He questioned whether human conduct contributed to climate change; and he was a leader in a national effort to dismantle President Barack Obama’s climate change policies.

In consonance with the President’s preferences, Mr. Pruitt proposed a radical set of regulatory rollbacks that deeply upset and demoralized EPA’s career staff. Pruitt met privately with regulated companies, often agreeing with their demands to weaken or eliminate important regulations designed to combat climate change and decrease more conventional air and water pollution.³⁴ EPA enforcement efforts also floundered during Pruitt’s administratorship.³⁵

Beyond this, Scott Pruitt adopted a closed-door policy with respect to the Agency’s career civil servants, whom he viewed with profound distrust, another step that deeply frustrated, frightened, and infuriated his staff. In an extreme manifestation of what Professor Nou might term “non-reciprocal hierarchy,” Pruitt shielded himself and a small circle of his advisors from nearly all contact with the Agency’s professionals.³⁶ Unfortunately for

31. Glenn Vaagen, *Former Trump Transition Leader Warns of Two-thirds Cut of EPA Staff*, WASH. AG NETWORK (Jan. 31, 2017), <https://www.washingtonagnetwork.com/2017/01/31/former-trump-transition-leader-warns-two-thirds-cut-epa-staff/> [https://perma.cc/F53P-8Z7T]; Joe Davidson, *Trump transition leader’s goal is two-thirds cut in EPA Employees*, WASH. POST (Jan. 30, 2017), https://www.washingtonpost.com/news/powerpost/wp/2017/01/30/trump-transition-leaders-goal-is-two-thirds-cut-in-epa-employees/?utm_term=.b06f75f2c478 [https://perma.cc/E3YT-Q4V2].

32. Nou, *supra* note 1, at 352.

33. *Pruitt v. EPA: 14 Challenges of EPA Rules by the Oklahoma Attorney General*, N.Y. TIMES (Jan. 14, 2017), <https://www.nytimes.com/interactive/2017/01/14/us/politics/document-Pruitt-v-EPA-a-Compilation-of-Oklahoma-14.html> [https://perma.cc/4UA9-5TJC] (compiling documents).

34. See Nadia Popovich et al., *78 Environmental Rules on the Way Out Under Trump*, N.Y. TIMES (Dec. 28, 2018), <https://www.nytimes.com/interactive/2017/10/05/climate/trump-environment-rules-reversed.html> [https://perma.cc/FBE9-94GY].

35. The most comprehensive report on EPA enforcement during the Trump administration (through the date of its publication) is LEIF FREDERICKSON ET AL., *A SHEEP IN THE CLOSET: THE EROSION OF ENFORCEMENT AT THE EPA* (Nov. 2018), <http://envirodatagov.org/wp-content/uploads/2018/11/Sheep-in-the-Closet.pdf> [https://perma.cc/EZG8-6MBM].

36. Conversations with several EPA employees denied access to the Administrator and his inner circle.

Administrator Pruitt, however, he engaged in a number of well-publicized ethical lapses that ultimately led to his resignation from office. While heading EPA, Pruitt leased an apartment in Washington, D.C., from a lobbyist with business before the Agency for an extraordinarily low rent; he instructed aides to do personal errands for him; he had an expensive phone booths installed in his office for him to use on private calls; and he often traveled extravagantly at government expense.³⁷ These corrupt actions appalled Pruitt's staff, including even some members of his inner circle, and spawned the negative publicity and multiple investigations that ended his tenure at the Agency in July 2018.³⁸

Scott Pruitt's successor as EPA Administrator, Andrew Wheeler, has perpetuated many of the anti-environmental policies favored by Pruitt and the President while abandoning the top-level isolation from career staff that characterized the Pruitt era.³⁹ Wheeler has openly welcomed civil servant input on policy issues and has ended the career staff's strict segregation from Trump political appointees. In fact, however, Mr. Wheeler, a former coal industry lobbyist, appears to have taken precious little advice from the EPA staff. Thus, with respect to the career staff, Wheeler has created the appearance of a reciprocal hierarchy without the reality of one—an arrangement that continues to conflict with the strongly held views of many staff members and to lower the morale of numerous EPA employees.⁴⁰

Reactions by EPA's career staff to the Trump administration's policy initiatives seem to have varied considerably. Professor Nou's observation that civil servants in a number of federal agencies has been publicly defiant in their resistance to Trump administration appointments and policy initiatives seems accurate. At EPA, however, much of this open staff defiance has proceeded at the behest of employee labor unions which enjoy legal privileges to speak out under federal labor laws. These unions organized an unsuccessful employee lobbying effort in opposition to the confirmation of Scott Pruitt as EPA Administrator,⁴¹ and they openly opposed actual and rumored administration policy changes.

These union organized protests notwithstanding, however, EPA's career staff generally appear to remain a cautious, risk-averse bunch; and, as was true with respect to EPA civil servant resistance in the early Reagan

37. Carol Davenport et al., *Mired in Scandal, Pruitt is Forced to Exit E.P.A.*, N.Y. TIMES, July 5, 2018, at A1.

38. *Id.*

39. Conversations with EPA career staff employees.

40. *Id.*

41. Coral Davenport, *E.P.A. Workers Fight to Stop Confirmation*, N.Y. TIMES, Feb. 16, 2017, at A1.

era, “role perception” among EPA employees still seems a powerful motivating force for a number of career staff members. Some EPA civil servants who disagree with Trump EPA-policies have consciously decided to remain silent. As one career staff veteran privately told me: “I think simply going to work quietly doing my job through this craziness is an act of resistance.”⁴²

Other staff members, though, have chosen to oppose Trumpian anti-environmental policies they object to more actively. Thus, some have leaked information to the press “on back-ground,”⁴³ filed complaints with the EPA office of inspector general, made use of an anonymous twitter account,⁴⁴ and issued open protest statements regarding administration policies immediately prior to resigning or retiring.⁴⁵

Without more extensive and systematic empirical study, it is very difficult to assess the extent to which EPA staff resistance to Trump administration policies has taken the form of quietly doing one’s job, or engaging in the more covert forms of opposition mentioned above—as opposed to open “civil servant disobedience,” as defined by Jennifer Nou. Nonetheless, my strong suspicion is that at EPA the former types of staff “protest” have been considerably more prevalent than the latter. To the extent that assumption is accurate, it can be argued that Professor Nou may be somewhat overstating her case when she asserts that:

What seems potentially novel in the Trump Administration . . . is the extent to which that [civil servant] resistance is publicly defiant. Instead of

42. Conversation with an EPA career civil servant.

43. Juliet Eilperin et al., *Resistance from within: Federal workers push back against Trump*, WASH. POST (Jan. 31, 2017), https://www.washingtonpost.com/politics/resistance-from-within-federal-workers-push-back-against-trump/2017/01/31/c65b110e-e7cb-11e6-b82f-687d6e6a3e7c_story.html?utm_term=.e4d1c69de92d [https://perma.cc/2Z82-999N].

44. *Why this U.S. civil servant runs a rogue Twitter account against Trump* (CBC radio broadcast Apr. 27, 2017).

45. See Joe Davidson, *EPA staffer leaves with a bang, blasting agency policies under Trump*, WASH. POST (Apr. 17, 2017), https://www.washingtonpost.com/news/powerpost/wp/2017/04/07/epa-staffer-leaves-with-a-bang-blasting-agency-policies-under-trump/?utm_term=.4130b49fd4fa [https://perma.cc/9L9T-S9YC]. I respectfully disagree with Professor Nou’s decision to exclude from her definition of civil servant disobedience open public protests accompanying a civil servant’s resignation or retirement. It is true that civil servants who protest just before they leave government are generally not likely to be sanctioned by their former agency. Nonetheless, such individuals may suffer stigmas that will make it difficult for them to obtain future employment if they wish to do so. Indeed, as Professor Nou herself acknowledges, “resignation is not as costless to civil servants as it may be to political appointees. . . . [T]hey may lack the networks and resources to be able to transition easily into new positions. As a result, they may not have as many alternate employment options as the revolving door narrative may otherwise suggest.” Nou, *supra* note 1, at 379. In most respects, protest resignations otherwise seem likely to satisfy Nou’s demanding definition of civil servant disobedience. Moreover, I do not concur with Professor Nou’s observation that protest resignations will depress an agency’s morale. In fact, I think such acts are more likely to provide hope to remaining career agency employees that something may be done to correct what they feel are utterly misguided administration policies.

being covert or channeled through official mechanisms, a greater degree of dissent seems to have spilled out into the open by civil servants identified as such. Bureaucrats seem to be increasingly opposing the President in their official capacity. And they are doing so despite strong agency norms to the contrary.⁴⁶

At the same time, however, it is important to note that EPA is merely one of many federal agencies, each of which has a staff culture of its own. Thus, one must be cautious about overgeneralizing from the more restrained non-public kinds of resistance that EPA civil servants have manifested with regard to policies of the current administration. This agency may not represent a government-wide trend. Nou's factual conclusion regarding the rise of civil service dissent may be entirely accurate with respect to non-EPA civil servants; moreover, the forms of staff resistance—at EPA and elsewhere—may change significantly in the remaining years of the Trump presidency.

CONCLUSION

Professor Jennifer Nou has written a first-rate piece of scholarship on a neglected yet important topic. While her definition of civil servant disobedience is rather narrow, it fits well with her masterful normative analysis, which effectively balances the public need for hierarchy and discipline among the ranks of civil servants with the parallel public need to have their experience and expertise to contribute to sound administrative policy-making.

Nou's excellent work opens the door to other considerations that were understandably outside the scope of her innovative article. The experiences of EPA career employees during two separate periods of staff resistance to anti-environmental administration policies that I have outlined demonstrate both the variability of civil servant resistance at the Agency and the relative rarity—at least within EPA—of the sort of open civil servant disobedience on which Professor Nou has focused. These facts raise additional issues that Professor Nou—and/or others—may wish to address in future scholarship.

What constitutes appropriate career staff behavior when a permanent government employee is convinced that the only internal channels of protest available to him or her will be “dead ends?” What are the appropriate normative limitations on civil servant contact with the press where those contacts provide information that counter administration policy prefer-

46. Nou, *supra* note 1, at 351.

ences? When should career staff members be restrained from making anonymous use of social media to oppose objectionable policies? What principles should guide civil servants with regard to closed door meetings with congressional representatives and staff concerning controversial policies? How much should government employee unions involve themselves in policy matters that are arguably outside the normal context of employer/employee relationships regarding terms and conditions of employment?

All of these questions appear to merit careful fine-tuned scholarly analysis. Each, of course, is beyond the scope of Professor Nou's outstanding piece. Future discussions of these issues may help government managers decide how best to react to staff level dissent. They may also assist federal career civil servants face the challenges they will encounter where agency leaders ignore their input and act contrary to law and good sense.

These yet to be addressed issues aside, the trail-blazing article Jennifer Nou has written focuses on an important, well-defined and challenging subject in a truly thoughtful way. It seems destined to be an especially valuable and lasting contribution to the literature of administrative law.