

OFFICE OF ETHICS NEWSLETTER



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The HOT Corner

Ray Sheehan
Director

"Holistic Ethics:" Know the Neighborhood.

How often do you get calls from employees because they just don't know where else to go for an answer? You can hear the questioner thinking: "If I can't define it any other way, it must be one of those weird ethics rules." How often do you find yourself, even after years of doing this work, craning your brain because you just know that there's an answer, but you just can't find it in the Standards of Ethical Conduct?

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SECRETARY ISSUES ETHICS MEMO

On February 28, 2003, Secretary of Agriculture Ann Veneman, issued a Memorandum to a Mission Area Heads, Agency Heads, and all USDA employees that set out her goals for a stronger USDA Ethics Program.

As a starting point, the Secretary emphasized the need for employees to comply with financial disclosure requirements (both in terms of timely filing and in cooperating with ethics officials reviewing the reports) and to take ethics training during CY 2003.

However, the Secretary, responding in part to the recent Office of Government Ethics (OGE) Audit, went well-beyond that point in ordering all USDA mission areas and agencies to undertake, in coordination with the USDA Office of Ethics, a full review of their ethics programs to identify any programmatic weaknesses related to personnel and budgetary resources, location of ethics advisors within the organization, training for ethics advisors, and ethics advisor employee level and position. Moreover, the Secretary ordered all mission area/agency heads to include an assessment of potential conflicts of interest as part of the process leading up to the appointment of individuals to key Federal positions within their respective mission area or agency.

Read the full-text of the Secretary's Memorandum on pages 3 & 4.

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It's usually after one of these sessions when you shake your head and mutter to yourself something about getting even with the supervisor who got you involved with ethics. After sufficient cooling down, however, you probably realize why many Federal employees view government ethics as an oxymoron. It's then that you probably call our office and learn a truth that REALLY makes your hair stand on end: You find out that your issue indeed looked like an ethics issue, it walked like an ethics issue, it talked like an ethics issue, and it did everything else just like an ethics issue - BUT it was NOT an ethics issue. As you reach for the aspirin, it is then that you realize what your boss got you into: To be a good ethics advisor, not only do you have to be able to make heads and tails of the Standards, not to mention those pesky and largely incomprehensible conflict of interest statutes, but you also have to know about other stuff: Lots of other stuff -- stuff that looks like ethics, but isn't. That's when you really ask yourself what you did to deserve this.

WHAT DOES ETHICS COVER?

Ethics relates to many different, but related and similar, areas of Federal law and regulation -- so much so that it is easy to think of ethics as covering far more than it does. In truth, it does and it doesn't. Certainly, Federal government ethics can be limited to what is appropriate or inappropriate under the criminal statutes, the Ethics in Government Act, and the Standards, or what is required under financial disclosure or training requirements. Frankly, just becoming familiar with these animals would be enough to tax anyone's abilities, especially if you are doing this on a collateral basis. However, in the real world, it's not enough -- not by half.

SPOTTING THE REAL PROBLEM.

A heart specialist is certainly paid to know the heart, but you, as a patient, are better served if he or she knows enough about interrelationships between the heart and the surrounding organs to spot when the problem really is, say, the kidney masking itself as a heart problem. Similarly, to be a good ethics advisor, you need to know enough about the surrounding Federal neighborhood to spot the real problem and where to go with it.

FOLLOW THE MONEY.

Appropriations Laws and Principles. The most important neighbors are Federal appropriations laws and regulations. These really are at the heart of anything that involves Federal expenditures. Simply put, Federal monies (including Federal official 'time and dime') should only be expended on those things for which Congress has said the money can be spent. In this sense, good questions to ask yourself in almost any situation that is unfamiliar to you are (1) "How does this relate to the agency mission?" and (2) "should this be part of the employees official duties?" That the activity would accomplish 'good things' is not an acceptable answer. To paraphrase lawyer Johnny Cochrane, "If its purpose doesn't blend, you can't expend." Ahem . . . or, words to that effect.

USE OF TIME & EQUIPMENT.

One area of ethics/appropriations 'crossover' is found at subpart G of the Standards in relation to the use of official equipment, personnel, time, etc. for purposes other than the accomplishment of official duties. Another arena where this comes up is in terms of participation by agency personnel in outside organizations in their official capacity. Whether the agency can spend its appropriated funds on memberships for its personnel, or travel costs to participate, depends upon whether the expense is *necessary* (*i.e.*, more than just a neat thing to do) in order to carry out the agency's statutory function. In terms of officials seeking to serve as officers and directors of outside entities in official capacity, the question that we have repeatedly posed to the agency is this: "Just how is the agency mission served by having our officials running the internal and fiscal operations of a non-Federal entity?" (Of course, having such activity further prohibited by 18 U.S.C. 208 is also helpful.)

ANALYZING THE GIFT.

Yet, expenditures are not the only concern. Another place where appropriations laws interplay with ethics is in terms of agency gifts. Often, ethics advisors get confused by gifts to Agencies and how they are to be analyzed. The natural reaction is to analyze anything received by an employee from an outside source under the Standards. Yet, many agencies have statutes that allow them to accept gifts. These are governed by appropriations laws, not the Standards.

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United States Department of Agriculture

Office of the Secretary
Washington, D.C. 20250

MEMORANDUM FROM THE SECRETARY

TO: Subcabinet
Agency Heads
All Employees

FEB 28 2003

SUBJECT: USDA Ethics Program

Maintaining high ethical standards is essential to fostering the public's trust. This is true for both the government and the private sector.

The vast majority of all Federal employees, particularly those with whom I have the pleasure of serving with at the Department of Agriculture, meet both the letter and the spirit of the ethics laws and regulations. While I am proud of the fact that USDA is currently scandal-free, there is no better insurance against the effects of an ethics scandal than the operation of an effective ethics program.

Unfortunately, a recent audit by the Office of Government Ethics (OGE) noted certain deficiencies in our ethics program at USDA. Rest assured that I am committed to correcting those deficiencies.

First, we must ensure that each of us has reviewed and understands the conflicts of interest statutes and applicable regulations, namely, the *Standards of Ethical Conduct for Employees of the Executive Branch* and the *Supplemental Standards of Ethical Conduct for Employees of the Department of Agriculture*. With these statutes and standards firmly in mind and with your assistance, I am ordering the following actions to address the deficiencies noted in the OGE report:

- All mission areas and agencies shall undertake, in coordination with the USDA Office of Ethics, a full review of their ethics programs to identify any programmatic weaknesses, including, but not limited to:
 - whether sufficient personnel and budgetary resources have been provided to operate an efficient and effective ethics program,
 - whether ethics advisors are properly situated within the organization so as to improve access to decision-makers and involvement in decisions;
 - whether ethics advisors receive the necessary training to perform their tasks successfully; and
 - whether ethics advisor responsibilities are being assigned to the appropriate employee level and position.

- All mission area/agency heads shall include an assessment of potential conflicts of interest as part of the process leading up to the appointment of individuals to key Federal positions within their respective mission area or agency. This is essential in terms of non-career positions, but should also apply to key career positions within the mission area and agency.
- One key aspect of the Federal ethics program, and one that can be found in a growing number of private sector companies as well, is disclosure of financial interests. This tool is designed to prevent official decisions from being made in the atmosphere of conflicting financial or personal interests. These reports are only effective as a tool where filed both accurately and timely. Accordingly, all financial disclosure filers in USDA (whether public, confidential, or alternative form filers) shall file their reports within the time limits prescribed by regulation (May 15, 2003, for public filers; October 31, 2003, for confidential filers), or obtain an extension prior to that date, and shall cooperate fully with ethics personnel in obtaining certification of their reports as soon as possible.
- A solid working knowledge of the Federal and Departmental ethics standards is critical to maintaining these standards. This means early ethics standards training of new employees accompanied by annual review/training thereafter. Accordingly, all employees who file financial disclosure reports of any kind, shall take ethics training during CY 2003. Further, all other USDA employees should be encouraged to do so as well. An effective way to obtain training is to utilize the training modules created by the Office of Ethics at www.usda.gov/ethics/training. The National Finance Center maintains a newly-established system that automatically reports all ethics training taken by USDA employees.
- Finally, all financial disclosure report filers who are considering leaving the Federal government in CY 2003, as well as any other USDA employees who wish to do so, must meet with their ethics advisors to assure full understanding of the rules governing the process of seeking outside employment and Federal post-employment restrictions.

Our goal is worthy, our people caring, and by working together, we will make the USDA Ethics Program a model for the Federal government and increase the public's confidence in the integrity and effectiveness of our programs.

USE OF GOVERNMENT PROPERTY

The question is - When is personal use of Government property acceptable? This article will hopefully give you basis idea of what is and is not is not an acceptable use of Government property. First of all, as a Government employee, you are authorized to use Government property in performing your job. Government property includes: office equipment (supplies, telephones, computers; fax machines, television, etc.); credit cards; and motor vehicles, just to name a few. It is your duty to protect and conserve this property and not to use it, or allow its use, for other than authorized purposes.

But wait a minute; there is an exception to this rule. Employees are permitted, under rules set out by the Chief Information Officer, to use Government office equipment for personal needs if the use does not interfere with official business and involves minimal additional expense to the Government. The "Permissive Use" rule permits limited personal use, though such use should occur during the employee's non-work time, whenever possible. "Personal Use" does not include using office equipment to conduct or operate a personal business. Further, certain personal uses are considered inappropriate, such as: activities that over-burden any Government systems or equipment (large email broadcasts or group mailings); illegal activities (tapping into, or gaining unauthorized access to other systems); pornography; fundraising; unauthorized acquisitions; and transmission of trademarked information.

Now, you may ask: "What is limited personal use? Let's look at the 4 examples listed to determine what it is.



Example 1: Telephone Use

Linda's supervisor asked if she could work late to finish a major project he needed completed in time for a meeting the next day. Linda agreed to stay late to complete this project for her supervisor. She will need to make a call to her day-care provider to inform them that she will be late picking up her son. - **Authorized permissive use**

Mark drops off his car at a body shop for repairs before coming to work. Once at work, he remembers he forgot to inform the repairman to replace his bumper, so he calls the repair shop to inform the repairman to replace his bumper. - **Authorized permissive use**

Susan is idly chatting with a girlfriend for 15 minutes about her wedding plans. - **Only acceptable if the call is local, if done on her personal time, and if done in a manner that does not hinder office operations.**

Ken calls his uncle long distance to discuss their arrangements for an upcoming family reunion. - **Not acceptable use unless he did this on his personal time, e.g. at lunch and using his personal calling card.**

Example 2: Copy Machines:



During a lull at work, Tom copies a 2-page recipe out of Betty Crocker's Cook Book for personal use - **Authorized permissive use, so long as this doesn't get in the way of office operations and the privilege isn't abused. It's best to wait until personal time unless absolutely necessary.**

After working hours and while no one else is using the copier for office purposes, Margo makes 15 copies of a 2-page recipe for her personal use. - **This may depend on the supervisor and the time that it is done. (e.g. after normal office hours).**

After working hours, Stan copies a 20-page term paper he is doing for an evening class. - **Authorized permissive use.**

Judith makes 50 copies of a flyer announcing a fish fry that her church plans to hold to raise money for choir gowns. - **Not acceptable**

Al makes 2 copies of a flyer announcing the opening of his new outside business. - **Not acceptable**

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Example 3: FAX Machine

Lisa faxes wedding announcements to out-of-state family members.
- **Not acceptable**

Joann faxes medical documentation locally to her physician.
- **Authorized permissive use**

Example 4: Internet Use



John searches the web for job announcements on his lunch period.
- **Authorized permissive use**

Billy searches the web for pornography on his lunch period. - **Not acceptable use**



Permissive use is limited and occasional personal use that does not affect the performance of your official duties; is of reasonable duration and frequency; and does not reflect **adversely** on **USDA** or **YOU**. One more thing. As its names implies, permissive use is permissive. It is not a right. It is provided at the discretion of the office manager. Abuse the privilege and you may lose the privilege.

For additional information, please view our training module titled "Using Government Property and Time."



MEET AN ETHICS ADVISOR

You may recall that our last interviewee was Dawn Bolden from the New Orleans. Let's now head north and catch up with a Washingtonian ...

Name: Ed Peterman
Agency: Rural Development
Address: 1400 Independence Ave.
Room 1310
Washington, DC 20250
Tele. No: (202) 692-0338
Email: ed.Peterman@usda.gov

Employee Count: 6,973
No. of Confidential Filers: 2,951

GENERAL INFORMATION

Ed joined USDA in 2001 by accepting the Mission Area Ethics Advisor position in Rural Development (RD). He came to USDA straight from the Office of Government Ethics (OGE), and his credentials are impressive. While at OGE, Ed served as the liaison between OGE and 18 other Federal departments and agencies. After a 5-year stint, he decided that it was time to run his own program; hence the move here.

Ed was raised in a small agricultural farming community in Virginia where his mother still holds the title "lunch lady" in the elementary school cafeteria. Interestingly, the land that he was raised on was part of a land grant from King George II to an ancestor, Robert Poage.

He attended Virginia Tech (Tech) in Blacksburg, Virginia, where he obtained an undergraduate degree in Agriculture. Ed's specialty was horticultural crops, and with this training he applied for work at USDA. Perhaps, unfortunately for him, but of ultimate benefit to us, he

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**(Meet An Ethics Advisor -
Continued from Page 6)**

didn't land a job at the Department at that time and sought "outdoor" work elsewhere. Later he accepted a business development specialist position at the Department of Commerce working for the National Technical Information Service (NTIS) in Springfield, Virginia. There he was tasked with digging through attics and basements all across the Federal sector looking for documents to place into a scientific and technical collection of information for ultimate sale to the public. The pursuit apparently appealed to Ed and with fond memories he even recalled searching through USDA's attic only to find oodles of interesting things in storage bins; no skeletons I hope! From NTIS he found his way to ethics at OGE and came full circle to us. Ed shares that even though he always wanted to work for the USDA he never imagined finding his way back in the field of ethics instead of plants.

On a more personal note, Ed's now a happy resident of DC. He and some bank co-own a 1912 row house that is about 5 blocks from the Capitol. Outside interest include working with the Capitol Hill Restoration Society Zoning Board, serving as an Elder at the Church of the Pilgrims in Dupont Circle, and country western and ballroom dancing. And now a few questions for Ed...

Q. Did the program administration/coordination meet your expectations?

A. I really didn't know what to expect when I joined RD other than the fact that the program needed work. I had no idea how many confidential disclosure files were in the National Office, and certainly no handle on the coordination of an ethics program in the State Offices. The first three months I devoted all of my

time to establishing basic policy procedures, i.e., delegations of authority, organizing the 450 reports, shredding documents, (no national security documents, I can assure you), etc. By January 2002, I knew that the program was on its way to stabilization. Unfortunately, I also received a jury summons in January for an 18-month stint as a Federal grand juror. Needless to say the program took a back seat while I juggled my court duties.

Regardless, the job is getting done. I'm blessed to have a regional ethics advisor in the St. Louis Field Services Branch, Alice Green. Alice is a treasure! She is the coordinator for the State Offices and she is responsible for responding to the bulk of the questions. Without Alice's assistance, this program would not be where it is today, especially with my absence 2 days a week. In addition to Alice, I have 47 wonderful State Ethics Advisors in the states and Puerto Rico. Even though RD's ethics program may be a diamond in the rough, I feel we will be shining like the Hope Diamond very soon.

Q. Were you surprised to find out what the administration of the ethics program in your agency entails?

A. RD is composed of three program specific areas, Rural Housing, Rural Business and Cooperative Service, and Rural Utilities, and the three units really do see themselves as separate islands. Administratively, we (RD and the Office of Ethics) are working on a supplemental regulation specific to RD's unique program area. The supplement will be similar to the Farm Service Agency supplemental regulation.

Q. If you had one wish for the program what would it be?

A. I'd really like to see more regular interaction with the ethics advisors in the DC area. Anita Cunningham worked hard to establish the Interagency Working Group (IWG) specifically for the purpose of allowing all of us the opportunity to brainstorm and share our concerns with one voice. I encourage my colleagues to support this council. Through it we have a chance to make a change in our programs, to think outside of the box, and to use our collective resources. Unless we, the ethics advisors, join forces and dedicate our time and knowledge to the greater program, USDA's program will not be at its utmost.

**SPECIAL RECOGNITION,
HONORS & AWARDS**

I've been blessed in so many ways. I think it would be best for me to respond by saying that the work that I do, both for the USDA and for my community, is for a higher power than I. As Granny said - "much is required of them that much has been given" and I think that sums it up for me.

**INVITATION TO
NETWORK/PARTNER**

Again I think the most important partnership opportunity that we have is the IWG. I'd also like to work on some training modules specific to USDA.

Thanks Ed.

Editor's Note: In closing, I too, want to promote the IWG, and if anyone's interested in collaborating with Ed on a training module or two, OE will help out in any way it can.



NEW

RULE RELAXES RESTRICTION ON TRAVEL GIFTS

On March 17, GSA issued a final rule amending the Federal Travel Regulation that should make it easier for Federal employees to accept free meals, lodging and transportation regulations. [68 Fed. Reg. Pgs 12602-12610].

Under long-standing rules, agencies may accept from outside groups, such as conference organizers, payment for travel expenses to meetings. The rules have generally required travelers to get their agency's approval before accepting such offers.

The revised rule still requires approval for travel paid by an outside organization. But now agencies can accept additional travel costs after they arrive at an event.

For example, a Federal traveler who is speaking at a conference gets approval before heading to the conference to allow the meeting organizers to pay for his airfare. When the traveler arrives at the conference, he learns that the organizers are also paying for accommodations and meals. Under the revised rule, the traveler can accept those additional costs, as long as he notifies his agency within 7 days of the end of his trip. The traveler, however, could not accept payment for his hotel room from anyone but the meeting organizers who paid for the airfare.

There are still a number of restrictions on the type of

meeting and types of expenses for which agencies may accept travel cost. Chapter 304 of the Federal Travel Regulation lays out the rules that Federal travelers must follow. The final rule can be accessed at: <http://a257.g.akamaitech.net/7/257/2422/14mar20010800/edocket.access.gpo.gov/2003/03-6126.htm>

ORIENTATION FOR NEW ETHICS ADVISORS

On May 27-29, 2003, the Office of Ethics (OE) will hold an orientation session for new ethics advisors in the Department. The location will be Room 3-1160 at the Carver Center in Beltsville, Maryland.

The sessions will include an overview of the Ethics program, a review of the Standards, and reviewing of the financial disclosure report.

ORIGINS OF 18 U.S.C 201

BRIBERY & CAPE HATTERAS

This is the granddaddy of ethics statutes. To be technical, though, this is not a conflict of interest statute. This is the real thing; the true grit. It is the fear of this crime - actual corruption, actual graft -- that led to the current conflict-of-interest statutes.

As currently constituted, this statute prohibits anyone from giving, promising or offering to a "public official," or for a "public official" to seek or receive, a bribe or a gratuity. A bribe, under this statute,

infers corruptness which, for purposes of this statute, means that a thing of value was offered or given/or sought or received, in order to: (1) influence the public official in his/her official actions; (2) defraud

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RECENT 18 U.S.C 201 VIOLATION

Richmond, VA. As reported in the Washington Post, March 5, 2003, a former USDA State Director of the rural development program pleaded guilty to an 18 U.S.C. 201 violation. He is accused of accepting a **bribe** from a Texas developer.

He faces up to 15 years in prison and a fine of as much as \$25,000 when sentenced May 23 in U.S. District Court. He was ordered to forfeit any money he received from developers while in office.

His office made loans to providers of rental housing for senior citizens and low-income residents in rural areas. The indictment alleges that he received more than \$60,000 during his tenure in exchange for giving preferential treatment at USDA.

(Origins of 18 U.S.C. 201 - Continued from Page 8)

the Government' or (3) to have the official violate his/her official duties. Hence, there must be a direct relationship (lawyers like the word "*nexus*") between the item offered or provided and a resulting official action. (Another nice, descriptive, lawyerly way to say it is that the item offered was a "*quid pro quo*" in return for the official act done or not done.) The lesser offense of receipt of an illegal gratuity covered situations differs only in the absence of proof of a "corrupt" intent.

The current statute is really the culmination of a number of prior statutes that either addressed bribery on a government-wide, or agency-specific basis. Bribery had a long and colorful history as a recognized offense in the British Government before the American Revolution. In fact, Thomas Jefferson and his supporters in Virginia alleged that the British Government bribed Alexander Hamilton and New York City to take an anti-slavery position.

Perhaps the first major prosecution of bribery in the new Republic was also one of the most bizarre, especially in light of 200 years of Federal jurisprudence. In 1797, one William Worrall, a Philadelphia building contractor with a fresh lot of immigrant stone masons, was eager to get in on the ground floor of the new Federal government's building craze - a might too eager, in fact. Tenche Coxe, also of eastern Pennsylvania had recently been appointed by Secretary of the Treasury Alexander Hamilton to serve as Commissioner of Lighthouses. The United States was looking to erect a lighthouse on Shell Castle Island, on Ocracoke Sound, North Carolina. Worrall, for his part, was so excited to put his crafts (and cheap labor) to public service that, in a lengthy letter, he proposed that if he were selected to erect the structure, it should yield a clear profit of 1400 pounds and that he, Worrall, would happily present half to Coxe, 350 at the issuance of the contract and the remainder at its completion.

Small problem: Coxe, surprisingly, was outraged. Despite being relegated to the New Jersey hills due to a plague of yellow fever in Philadelphia that made the then-seat of government untenable, he summoned bailiffs and instructed them to forthwith arrest Worrall and impound him in jail for offering a bribe to a Federal official. Not to take all dignity and honor out of the occasion, however, there is some indication that perhaps the grievousness of this high offense was a trifle less important to the Commissioner than the fact that he . . . really

didn't like Worrall much anyhow. There is also some indication that differences in political affiliation played a role, as well (Imagine that).

Here's where it gets really interesting, though. At the time, there was no law on the Federal books against undertaking to bribe public officials. Not a problem. Despite the absence of a law for the poor Mr. Worrall to violate, apparently the bailiffs tricked him into verbal proposals within the hearing of witnesses and these statements were also laid before the court, along with the initial letter. Interestingly, the charge against Worrall describes him as a "yeoman, being an ill-disposed person, and wickedly contriving and intending to bribe and seduce [obviously the English language doest evolveth] the said Tench Coxe." No doubt about how the courts felt about what he did in those days. The two trial judges, subsequent to the jury's guilty verdict, decided that was good enough for anybody. Besides, reflecting a principle later applied by the Supreme Court in terms of obscenity, the judges figured that they didn't need a statute - they knew bribery when they saw it. Worrall was sentenced to jail for three months and fined \$200. However, poor sport that he was, Worrall appealed his conviction up the Federal court chain.

In 1798, the case finally reached the U.S. Supreme Court, which stood tall in splitting 4 to 4 in terms of overturning the conviction. Hence, not only did the conviction stand, but the case established two principles for American legal posterity: First, that the Supreme Court had jurisdiction over charges of bribery involving the Federal government; and second, that all ties go to the revenue. As a postscript, Congress, always ahead of the power curve, finally rushed ahead with all deliberate speed to put a law on the books, and leaving poor Worrall to ponder what would have happened if only the ninth judge hadn't been called back to France due to an Olympic skating scandal (or do I have my judges mixed up?)

Ultimately, the contract to build the lighthouse went to a General Dearborn. Hauling rocks from his native New Hampshire on a barge down to the Cape, his price was \$34,800. Dearborn ultimately complained that he made no profit whatever. He was vexed at intervals by Coxe's inspectors. If American jurisprudence has changed; American bureaucracy remains steadfast and faithful to its roots.

FULL USDA CONTINGENT ATTENDS OGE CONFERENCE

The Office of Government Ethics annual

conference is a high point of the year for many ethics professionals. It is an opportunity to attend important training classes, find out what's happening in Government ethics, mix with other ethics professionals, and generally obtain more tools to better perform our jobs. OK, admittedly it's fun too. This year's conference held March 10 - 13 in King of Prussia, Pennsylvania, was no exception.

USDA had perhaps the largest contingent of any Department. Attending from RD were Ed Peterman, Claire Bavaria, and Ellie Dettrey. NFC sent us Dawn Bolden, and Mary Royster, and Julie Dunn represented MRP. Tonya Willis and Ellen Pearson attended from FFAS. Dawn Ruffner came from Food Safety, and Marie Davis from NRE. REE gave us Sue Mutchler and Clarice Fleming. Headquarters folks consisted of Ray Sheehan, Lolita Roberson, Dwaine Grove, and Mike Edwards. Finally, we honored to have our DAEO, John Surina, with us.

In addition to the enjoyment of eating together and getting better acquainted, the conference provided valuable ethics training. Monday's "basic" series contained lectures on financial disclosure, conflicting financial interests, gifts, seeking employment, post-employment rules, and a primer for running an ethics program. Tuesday through noon on Friday delivered a full range of electives on Government ethics subjects. The biggest problem was deciding which valuable elective to attend.

The OGE annual conference is fun and profitable for you and your ethics program—wherever you are in your professional development. Keep your eyes open for news about the next conference.



Left to right, Julie Dunn, MRP; John Surina, OE; Tonya Willis, FSA; Mike Edwards, OE; Ray Sheehan, OE; Mary Royster, MRP, and Lolita Roberson, OE.



John Surina, Designated Ethics Official.



Ray Sheehan, Alternate Designated Ethics Official.

"What did you think of the rubber chicken?"

"Tasty."



Mary Royster, MRP.



Left to right: Mike Edwards, OE, Ellen Pearson, FFAS, and Ray Sheehan, OE.



Dawn Bolden, NFC.

Photos Courtesy of Ellen Pearson, FFAS

Non-Federal Employment Form Available Online

Are you engaged in non-Federal employment? If so, the following information will be of benefit to you.

Part of the Financial Disclosure filing process now includes submission of management's documented approval for the conduct of non-Federal employment.

Consequently, we have made a one-page non-Federal employment application form available to you online to help guide you through the approval process.

Basically, non-Federal employment requiring management's approval includes:

- a. Any type of non-Federal employment or business relationship or activity involving the provision of personal services by you for direct, indirect, or deferred compensation other than reimbursement of actual and necessary expense; and
- b. Irrespective of compensation, both:
 - (1) providing personal services as a consultant or professional, including service as an expert witness or as an attorney; and
 - (2) providing personal services to a for-profit entity as an officer, director, employee, agent, attorney, consultant, contractor, general partner, or trustee, which involves decision making or policymaking for the non-Federal entity, or the provision of advice or counsel.

For information relating to non-Federal employment, please see our web site at: <http://www.usda-ethics.net>. USDA Supplemental Ethics Regulation at 5 C.F.R. 8301 is available under "Rules of the Road," and the one-page application form that may be used to seek formal approval is available under "Forms."

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If the gift or donation is really intended to benefit the employee (personally), the employee's spouse, or family, it must be looked at under the Standards; if it is really intended to benefit the agency, or to benefit the employee in the performance of official duties, it is governed by appropriations laws, not the Standards. If it is a gift to the agencies, you must determine whether the gift can be accepted under any agency gift acceptance statutes or regulations.

POLITICAL ACTIVITY.

Another area that creeps into ethics is political activity. Most of us are well aware of the Hatch Act limitations upon Federal employee involvement in *partisan* political activity. Technically, these restrictions are NOT considered to be part of the Federal ethics program. However, it's wet, waddles a bit, and sort of quacks. So, we treat it as . . . ethics. Yet, it is important to know the difference and inter-relationship. For example, the Hatch Act would prohibit an employee from running for a partisan political office, but does not affect continued service in such an office by an employee who had been elected to the post prior to coming to work for the Federal government. In contrast, ethics rules would govern (conflict of interest/impartiality; representation; misuse of authority, etc.). Similarly, the Hatch Act would prohibit an employee from engaging in fundraising activities in support of a partisan political campaign, but would not stop you from soliciting money from a prohibited source at a fundraiser for a *non-partisan* campaign; however, the Standards would.

GOVERNMENT & PERSONAL LIABILITY.

Liability is always an issue and one that is often overlooked. However, I guarantee that if you know enough to mention it under the right circumstances eyes will open and minds can be changed. For example, the United States Government can be held liable wherever a Federal employee can be deemed negligent while acting within the scope of his or her employment (when they are doing what they are paid to do.)

Normally, this involves the Federal Tort Claims Act. Where an employee commits the agency to being involved in an effort, or in an organization (*e.g.*, such as helping to incorporate a non-Federal partner), he or she commits the United

States. If that entity is engaged in anything that leads to a lawsuit, you can bet that the United States, as the deepest pocket in town, will be a named defendant. Agency liability is a concern under a number of statutes, one notable example being the Civil Rights Act of 1964. Where actions are taking place that appear discriminatory, the agency could be liable (and the monies now may have to come from the agency budget).

Final, personal liability **ALWAYS** opens eyes. If the employee is seeking to do something that is outside the scope of his or her official duties, any legal action that comes about as a result of those activities could make the employee the defendant. Similarly, if an employee takes actions that violates an individual's constitutional rights, he or she may be personally liable.

LOBBYING.

The Federal Anti-Lobbying Act, 18 U.S.C. 1913, comes into play whenever an employee is using official 'time and dime' to drum up a grass roots movement to lobby (represent) before Congress.

TOUGHLY REGULATIONS.

Government agencies have regulations (ours are found at 7 CFR part 1, subpart K) that govern and regulate the appearance of its employees before courts to testify on official matters. The Standards set out restrictions on appearing as an expert witness. These two often become confused.

FOREIGN GIFTS & EMOLUMENTS.

If a gift is offered by a foreign government, or foreign-owned entity (including many universities), an ethics advisor needs to be alert to whether the gift can be accepted under the Foreign Gifts and Decorations Act, 5 U.S.C. 7342. If a gift cannot be accepted under that statute, it may be considered an emolument the acceptance of which is prohibited under Art. I, Sec. 8 of the Constitution of the United States. In the case of an emolument, the Standards serve no role. This issue often comes up in terms of employment with foreign entities and in the acceptance of a research scholarship offered by a foreign university or foreign entity.

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PROCUREMENT REGULATIONS.

Those of you who are up to your eyeballs in A-76 (competitive sourcing) issues, already know that there is considerable interplay between the ethics rules that address personnel conduct (the rules that we deal with), and organizational ethics rules that apply to how procurements are awarded.

These are just a few of the laws and regulations that a good ethics advisor needs to be aware of in order to properly steer agency managers and employees. For most of these (in fact, all except Political Activities), the source of advice ultimately will be the Office of the General Counsel (OGC). However, a quick call to this office can help you to phrase a question or issue to OGC. Certainly, a knowledge of how these rules interplay with our ethics rules can be a recipe for success as an ethics official, but even simple awareness of where and when such rules usually interplay can be of great assistance to your managers. (Moreover, to the extent that the ethics program moves forward in visibility and influence at USDA, this may well become expected of the USDA ethics advisor in the near future.) The bottom line: **Get to know your neighbors.**

