

OFFICE OF ETHICS NEWSLETTER



APRIL 2004



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The Only Constant

If you are over 50, you will remember the phrase. It was familiar to all of us who grew up in the “Golden Age of Television” -- back when programming was mostly local, laughter was real, and broadcast links often failed. If you are over 50, you can hear it now: “We’re experiencing technical difficulties. Please stand by.”

That phrase describes the Office of Ethics (OE) as we head into May 2004. Oh, we’re still here and our advice is still good currency, we think. Yet, something’s missing. Come to think of it, two somethings are missing.

In early March, Senior Ethics Specialist Dave Spradlin, in accord with plans that he made a year ago, dignifiedly, and without fanfare, announced that he was ending his Federal broadcast day, so to speak. Dave’s retirement is a well-deserved “rest” after **38** years of dedicated, unselfish service to the American public.

Dave has been at the heart of the ethics program at USDA for more years than he’d want to count. A trusted advisor of top-level USDA officials, Dave was the first person John Surina added to this office when OE opened for business in 1998. A better choice could not have been made. Pat Tippet, Lolita Roberson, and I had the pleasure of working closely with Dave throughout the 1990s on efforts to improve the USDA program and we are grateful that we were able to continue this close working relationship as we regrouped within the walls of OE.



He’s our friend, our coworker, and a truly decent human being. OE has lost its corporate memory, voice of reason, and, to an extent, its soul. At the same time, Clan Spradlin and the Scottish Highlands are the richer. We may fill his office, but never his shoes.



Then, in late March, our student intern/Ethics Program Assistant, Dwaine Grove accepted a position as Ethics Specialist at Agricultural Research Service. Dwaine was our “youth movement.” We “old folks” will have a hard time trying to muster half the energy that Dwaine’s inquisitive personality brought to the table -- and from which

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we have benefited so much. We thank Pat Tippet for seeing the benefits of bringing an intern to OE. Credit Dwaine for the rest of it. He jumped into our work with gusto, a quick grasp, and an appreciation for the value of the program. Losing Dwaine, however, has a larger upside to USDA as he remains with the departmental program at ARS and in a position that has increased impact. In that sense, our loss is really, well, our gain. It couldn't work out better for him, for ARS, or us.

OE's Staff -- February 2004



From left to right: Mike Edwards, Ray Sheehan, Lolita Roberson, Dave Spradlin, Pat Tippet, John Surina, Leine Whittington, and Dwaine Grove.



Meet An Ethics Advisor

Name: **Monique S. Jones**
Agency: **Food Safety and Inspection Service**
Address: **1400 Independence Ave., S.W.
Room 3175, South Building**
Tele. No.: **(202) 205-0062**
Email: **monique.jones@fsis.usda.gov**
Employee Count: **9,280**
Number of Confidential Filers: **602**

Our hats go off to Monique Jones for her personal and professional accomplishments, as well as her hard work, commitment, and motivation to the FSIS program.

****GENERAL INFORMATION****

Monique was born and raised in Norfolk, Virginia. Both parents are civilian employees with the Department of the Navy in Norfolk. Her father was a Vietnam Veteran. Monique enjoys attending Sunday morning worship service and weekly bible study. She enjoys attending live jazz events, performing arts, dance, theatre, poetry readings, and exhibits displaying unique aspects of various ethnicities. She finds history museums, monuments, and historical sites interesting. Her favorite non-contact sport is table air hockey.

After finishing Law School at the University of Wisconsin, she found her way into the military by way of a job fair in Cleveland, Ohio. She applied for and accepted the commission into the Army Judge Advocate General's Corps (JAGC). She was sold on the opportunity to travel as a regional defense attorney. She was most interested in taking ownership of a caseload and clients right away, without "carrying someone else's brief case" for three years. Of course, all the esprit d'corps and invaluable legal and military experiences were also selling points. "Although, I didn't get to travel the world, I managed a three-year tour in Germany that allowed me to see different parts of Europe at least."

How long have you been in your current position?

I came on board in September 2003. I work on the Ethics Program full time.

Where did you work and what did you do prior to your current position?

As an active duty Captain in the Army JAGC, I served as a Professor of Procurement Law and Ethics at the Army Logistics Management College, Ft. Lee, Virginia. I provided classroom instruction on all aspects of contract law, small businesses, military justice, law of war, and ethics. Ethics was an important part of my 10-week Officer Basic Course training at the JAGC School and throughout my military career as an Administrative Law Attorney and Trial Counsel. I often advised military and civilian leadership as an Ethics Counselor on issues such as fundraising, use of Government property, gifts, etc.

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(MEET AN ETHICS ADVISOR – CONTINUED FROM PAGE 2)

Were you surprised to find out what was entailed in administering the ethics program at FSIS?

Honestly, the program administration and coordination has provided many challenges in the implementation of the program within such a large Agency. Realistically, I didn't know what to expect from a program in its early stages of development, there was no precursor from which to gauge, as a new Mission Area Ethics Advisor. I also render advice on demand to all Mission Area staff including top Agency officials, managers, supervisors, and employees at all levels. In addition, I train all employees, facilitate the OGE 450 program, and develop internal policies and directives. This makes for very busy days.

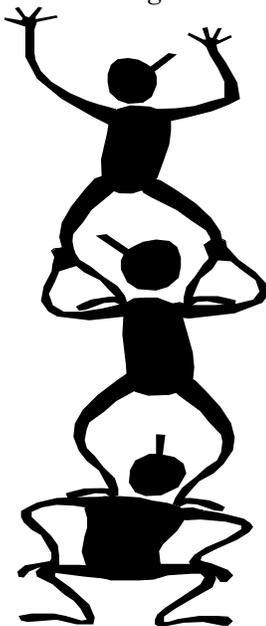
** SPECIAL RECOGNITION & AWARDS **

I am very proud to report that at the Office of Ethics (OE) Retreat in September 2003, OE recognized the FSIS program as being its "Most Improved Program: based on an improvement in program rating from "poor" to "very good."

Any closing remarks or concerns?

I would like to give a special note of thanks to OE for its support over my first 6 months with FSIS. I was immediately embraced by the office and given several unique training opportunities. I appreciate your presentations at mission area advisor training sessions and assistance with the OGE 450 Program and developmental training aids. Both personally and professionally, the support provided by your office helped ease my transition into this new position in a fairly new ethics program.*

** NOTE: No appropriated monies were used in procuring this shameless endorsement of our office.*



Gifts Exception Under 31 U.S.C. § 1353

*Words of love, so soft and tender,
Won't win a girl's heart anymore.
If you love her, then you must send her,
Somewhere where she's never been before.*

BY JOHN PHILLIPS (MAMMAS AND THE PAPAS)

Many of our friends outside the Federal Government seem to believe John Phillips' sentiments apply to Feds' hearts as well. We ethics officials are regularly questioned about whether to accept gifts of official travel from outside sources. This article discusses a recent change in the rules, which allows some gifts to be approved after the travel.

While other authorities may be used in conjunction with 31 U.S.C. § 1353, the definition of "travel expenses" in the act, takes care of a broad range of gifts. "Travel-related expenses" under 41 CFR part 304 (the implementing CFR) includes baggage expenses, services of guides, drivers, interpreters, communication services, conference rooms, lodging taxes, laundry/dry cleaning, taxi fares, and similar expenses. Also included are conference and training fees as well as benefits that cannot be paid under the applicable travel regulations, but which are incident to the meeting and which are provided in kind and made available by the sponsor to all attendees, such as sporting events or golf tournaments. See 41 CFR § 304-2.1. (This does not mean that agencies **must** allow acceptance of a golf tournament.)

Prior to last summer, gifts under § 1353 must have been approved by the Agency in advance of the travel. This led to an uncomfortable situation for some Federal travelers. Sometimes as official travelers were checking out of hotels, they found that their room was already paid. It was too late to request approval of the gift, and there was no convenient way to decline. Examples like these persuaded GSA and OGE that the rule should be relaxed to allow after-the-fact approval of gifts of official travel from outside sources in **some** situations.

It is still true that no after-travel gift of travel expenses may be approved if the traveler or the Agency had

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(GIFT EXCEPTION - CONTINUED FROM PAGE 3)

prior knowledge that the gift was offered. See 41 CFR § 304.3.13 question. Depending on the situation, however, there are now two categories of after-travel expenses which may be accepted under § 1353: (1) where the Agency has approved acceptance of **some** travel expenses from this outside source prior to travel and (2) where the Agency **did not authorize acceptance of any** travel expenses from this donor prior to travel.

a. Advance approval of some expenses. (I think of these as presumed approved.) You may accept additional travel only if the travel expenses are comparable in value to those offered to or purchased by other similar meeting attendees and the Agency has not already declined to accept these particular expenses prior to travel.



b. No advance approval of any expenses. (I think of these as presumed disapproved.) These may be authorized **only if the traveler requests Agency authorization within 7 business days of returning from travel.** Also, the type of travel expenses must have been authorized by the employee's travel authorization such as meals, lodging, and transportation, (not recreation) and only these only up to the maximum amount the employee would have been authorized to claim from the Federal Government on the orders. If the Agency does not authorize acceptance of this gift of travel expenses, the gift must be returned: either the Agency reimburses the giver, or the traveler does and seeks recoupment from the Agency on his or her travel claim.

Things have changed. So when you're analyzing a problem involving gifts of Federal travel remember, "Worn out phrases and warning gazes won't get you where you want to go." Read the rule.



USDA ETHICS PROGRAM HITS THE "BIG APPLE"

The Office of Government Ethics Annual Conference is an important opportunity for ethics folks to find out what's happening in Government ethics, mix with other ethics professionals, and generally obtain the tools to better perform their jobs. OK, enough of the self-important, professional stuff. It's fun too. Especially when, as happened this year (from March 1 through 4), it is in a decent location. This year's location was, well, . . . decent: Times Square (Yes, New York City – famous for salsa) provided a neon-rich environment for this year's congregation of ethically-oriented (or is the proper phrase "corruptibly-challenged?") Federal employees from all over the Government. And USDA was there in a big way.

Much like last year, USDA had one of the largest contingents. Attendees included: Lori Delgado, Karl Mettke, and Laura Bemis (USFS); John Riffie (MMA); Ed Peterman, Montsie Yarborough, and Rita Medina (RD); Linda Simmons and Dawn Bolden (NFC); Mary Royster and Julie Dunn (MRP); Tonya Willis, Patricia Dunn, and Ellen Pearson (FFAS); Monique Jones (FSIS); Clarice Carter (REE); and Anita Cunningham (FNS). Headquarters folks consisted of DAEO John Surina and OE members Ray Sheehan, Patricia Tippet, and Lolita Roberson.

For the second year, OGE kicked off the conference with a pre-conference for new ethics advisors.

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(OGE CONFERENCE - CONTINUED FROM PAGE 4)

Sessions worked through the basics on conflicting financial interests, gifts, seeking employment, post-employment, and "How to Run an Effective Program."

The main conference started the following day and hit the more complex issues, such as: public access to ethics records, relations with contractors, Intergovernmental Personnel Act issues, Federal Advisory Committee practices, and analyzing book deals. Not surprisingly, this being 2004, the conference had a session on the Hatch Act (political activities) and three sessions addressing specific presidential transitions issues. Clearly, however, the best session, however, was "Professional Associations: Where Are We Now?"*

The next OGE conference is slated to be held in September 2005. Location has not yet been determined.

* Ray Sheehan was on the panel, so we're required to bolster his sagging self-esteem. We haven't the heart to tell him that none of us attended it.

NEW LAW EXPANDS COVERAGE



OF 1-YEAR "COOLING OFF" POST- EMPLOYMENT RESTRICTION

IMPORTANT: If you currently are a member of the Senior Executive Service (career or non-career) formerly paid at levels ES-1 through ES-4 and are considering post-government employment that would involve interaction with the Department of Agriculture (USDA), you need to be aware of recent legislation that may affect your ability to interact with the USDA within one year of your termination.

Effective January 11, 2004, most members of the Senior Executive Service (SES) will become subject to the 1-year post-employment "cooling off" period,

under 18 U.S.C. 207(c). This statute bars a former Federal "Senior Employee" from representing another before his or her former Agency for a period of one year from termination and covers any particular matter in which the Agency has an interest. For USDA "senior employees," this means the entirety of USDA, not just your former component thereof. It also covers all matters before USDA, not just those before your component.

The expansion of coverage came about on November 24, 2003, when the President signed the National Defense Authorization Act for Fiscal Year 2004 (Act), Pub. L. No. 108-136. Section 1125 of the Act abolishes the existing SES compensation scheme (ES-1 through ES-6), as well as locality pay, and establishes a pay-for-performance system consisting of a single pay band. Under section 1125, the "cooling off" period now applies to individuals whose rate of basic pay exceeds 86.5 percent of the rate for level II of the Executive Schedule (EL II). Thus, while the former "cooling off" bar applied just to ES-5 and 6, as of January 11, 2004, the statute now covers everyone down to and including all those formerly at ES-2, as well as those at ES-1 in San Francisco. [We will keep affected employees advised about new developments and/or guidance on the matter.]



Hatch Act for Federal Employees

Who is Covered?

Aside from the President and Vice President of the United States, every full-time and part-time civilian employee in the executive branch of the Federal Government is covered by the provisions of the Hatch

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(HATCH ACT - CONTINUED FROM PAGE 5)

Act. The Hatch Act, as amended, sets out basic restrictions upon Federal employees participating in partisan politics.

How the restrictions apply to an employee depends largely upon the type of employee. Political appointees with Senate confirmation (PASs) and employees paid from an appropriation for the Executive Office of the President may engage in political activity: while on duty; in any Government room or building; while wearing a uniform or official insignia; and while using a Government vehicle, if the costs associated with the political activity are not paid for by money derived from the Treasury of the United States. Conversely, Career members of the Senior Executive Service, Administrative Law Judges; and Contract Appeals Board members (“**Restricted Employees**”) are very limited in their participation in partisan political activity, whether on official or personal time. All other employees are free to participate in a wide variety of partisan political activities, though only on their personal time. However, under most circumstances, all Federal employees are prohibited from seeking public office in, and fundraising in connection with, partisan elections.

**PERMITTED & PROHIBITED ACTIVITIES –
PARTISAN ACTIVITY**

All employees MAY:

- **Be candidates for public office in nonpartisan elections;**
- **Register and vote as they choose;**
- **Assist in non-partisan voter registration drives;**
- **Express opinions about candidates and issues on their personal time;**
- **Join political clubs and parties;**
- **Attend political fundraising functions; and**
- **Attend political rallies and meetings.**

Additionally, employees other “Restricted Employees (see above)” MAY:

- **Actively participate in political rallies, meetings and conventions;**
- **Seek and hold office in political clubs and parties;**

- **Endorse candidates for partisan office and speak at rallies and fundraisers;**
- **Plan (but not host) fundraisers for partisan candidates; and**
- **Be employed by a candidate or party [except PAS officials].**

NO Federal employee may:

- **Seek nomination for, or election to, a partisan political office;**
- **Participate in partisan fundraising efforts through sponsorship, hosting, or solicitation;**
- **Use their official authority or influence to interfere with an election;**
- **Engage in political activity while on duty or while in any Government office or building;**
- **Wear political buttons on duty;**
- **Engage in political activity while wearing an official uniform; or**
- **Use Government resources for Political causes.**

Additionally, “Restricted Employees” MAY NOT:

- **Organize, manage, or participate in political rallies or meetings;**
- **Hold office in political clubs or parties; or**
- **Work to register voters for one party only.**

For more information visit our web site at www.usda.gov/ethics. Under “Rules of the Road,” you will find the Political Activity Regulations and our “Political Activities Quick Reference Chart.” If you have questions, call us at (202) 720-2251.

[For more information, see Political Activity and the Federal Employee 2003 edition issued by Office of Special Counsel]

ETHICS QUOTE OF THE DAY:

“The only obligation which I have a right to assume is to do at any time what I think is right.”

~HENRY THOREAU



FLASH!

By George! The Executive Office of the President requested copies of USDA's landmark online ethics training modules!

ETHICS ANNOUNCEMENTS



Office of Ethics

- David L. Spradlin retired on March 3
- Dwaine Grove accepted an Ethics Specialist position with ARS.

Office of Inspector General

- Mike Ching is the new Ethics Advisor
- Dave Gray is the new DEO

Office of Government Ethics

- Marilyn L. Glynn, Acting Director

New Training Modules!!!

Check out the latest modules on our website!

Ethics Sweepstakes

and



Use of Government Travel Cards



Updated Modules:

- **Conflicting Interests & Gifts between Employees**

Coming Soon!

- **Purchase Cards**

Tributes to Dave

(Edited for space)

CONGRATULATIONS on your retirement. I hope you & your family enjoy many years of doing whatever you want to do. You're a guy with lots of interests outside of ethics-- and we found time to discuss things we liked (other than ethics). You were a knowledgeable resource for me when I had ethics questions and you always treated me well. I wish you the best.



John Riffie

I had the pleasure to work with you for 8 wonderful years. I wish we could have worked together for another 8 years, but I know that is only wishful thinking. You have definitely made an imprint in my life over the years. Thanks for all the kind acts you have bestowed upon me, such as: sharing your wisdom & history, your support and encouragement, and most of all for just being **YOU**. You are terribly Missed!! **Lolita Roberson**

When I was going to college, I tended bar at a Private Golf Country Club where learned something unexpected – not golf, but the value of acting with class -- I mean that in terms of treating other people with dignity and respect, and always acting in the appropriate manner that the situation requires. Many of the club members I dealt with didn't have it, but those who did I will not forget. Similarly, you have that way about yourself, in dealing with friends, colleagues, ethics clients, or whomever. You always show a genuine interest, care, and respect for them. I learned a ton from you, Dave. I learned a little about ethics and a lot more about everything else. I consider myself fortunate to have started my career next to you. You are a great mentor, and an even better friend. **Dwaine Grove**

Dave & Dwaine: We miss you. COME BAAAACK! Actually, best of luck to you both. You deserve it!
Leine Whittington

Dave: A sincere thank you for both your professional leadership/mentoring and technical advice in the area of

ethics. Your institutional knowledge of USDA and depth of experience has been a true inspiration. You enjoyed ethics and made it enjoyable for others. I want to thank you for sharing your expertise, institutional knowledge, war stories and funny anecdotes as a special guest during the first training session I facilitated with FSIS. You intrigued the attendees and provided valuable information on the history of ethics and the status of the Agency's ethics program. Thanks and congratulations on your retirement. I regret not having the chance to work with you longer. **Monique Jones**

I believe that we are made up of bits and pieces of all who have touched our life, and often we are more because of it. Dave, you're one of those individuals whom I will never forget and I consider it an honor to have worked with you. Not only were you a mentor to me, we became friends along the way. I respect you for your guidance and knowledge, but more importantly for who you are. I met you on September 11, 2001 at the OGE Conference. I immediately noticed what a kind and genuine man you are. You had such a calming effect on everyone during a time of confusion. You will probably never realize how much you taught me about "ethics". You always encouraged me to stretch my thinking and challenge my reasoning. I will always cherish our conversations. I have an unusual sense of humor and was pleasantly surprised to see you jump right in and join me, we shared many laughs. While I was happy to hear that you would be enjoying your retirement, I will miss you. Best wishes to you Dave...enjoy! **Sue Mutcher**

I Knew I'd miss you, Dave, and boy do I! A quiet gentleman, one of the truly most ethical people I've ever had the pleasure of knowing. I'll never forget the first time we met. I recently transferred from FDA to ARS and was working on scientist issues. My advisors asked me to call "the Department" to find out if outside employment approval forms should be required of our employees serving as adjunct professors. I called you and to my horror, you said, "Pat you shouldn't have asked me that question. The answer is 'yes.'" I laughed and asked if I could retract my question and got a resounding "no!" At that point, you earned my respect, and over the years my friendship and loyalty. I wish you all the best, Dave; good health, good fortune and great joy. **Pat Tippett**

Dave: It's only appropriate for me to offer an ancient Irish Blessing or two: May the saddest day of your future be no worse than the happiest day of your past and may you live a hundred years with one extra to repent. (i.e. enjoy yourself). **Ray Sheehan**