

Office Of Ethics Newsletter



SECRETARY KEYNOTES RETREAT

Ethics starting at the top was never more in evidence than at the recent 2005 USDA Ethics Retreat where we were highly honored with opening remarks from Secretary Mike Johanns. The Secretary stressed that “Ethics is everybody’s business.” He said, “It is not just a tagline. Every single one of us must always be vigilant to even the appearance of impropriety. To me, it’s simple: If something doesn’t feel right, you can’t go wrong with checking. If you’re not sure, ask. At risk is what is at the heart of government—public trust. The cost to the public good of not being ethical can be staggering.” The Secretary referenced recent ethical scandals involving defense procurement and research consultancies to emphasize the long-term personal and institutional damage that ethics violations cause. Secretary Johanns specifically commented on the presence of senior managers at the Retreat as evidence that USDA has a very strong commitment to its ethics program. [Thanks, Mr. Secretary].

Also addressing the attendees was newly-appointed Associate Counsel to the President Richard C. Painter. Other presenters from outside USDA

included: Lennard Lowentritt, Deputy Associate General Counsel, GSA, who discussed Federal travel issues; Steve Epstein, Director, Standards of Conduct Office, DoD, on how to sell an ethics program; David Apol, Chief of Administrative Law, Office of the USTR, discussing Values-based Ethics; Dr. Annetta L. Cheek, Office of the Administrator, FAA, speaking on “Plain Language Initiative;” as well as Cheryl Kane-Piasecki, Carolyn Chapman, and Allison George of OGE. From within USDA, Linda Persons of OPPM participated in a panel on contractor issues while Jan Engert of the USFS spoke on the FS National Partnership Guide. In addition to sessions provided by the Office of Ethics staff, USDA ethics specialists Mary Royster (MRP), Lori Delgado (FS), and Sue Mutchler (REE) moderated portions of the event.

The 2005 Annual Retreat was a huge success. This year’s three-day event, which drew more than 100 attendees from throughout USDA, was held in both the Whitten and South Buildings. The Retreat has grown exponentially in size and focus over the past 4 years. The number of non-USDA speakers provided attendees with an opportunity to hear experienced ethics professionals from outside USDA. As many of our attendees will not be able to attend the Annual Office of Government Ethics Conference, we like to think that our retreat helped to fill that void. More on the Retreat can be found elsewhere in this Newsletter.

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**THANKS to Ed Peterman and Annita Cunningham for arranging for rooms for the Annual Ethics Retreat**

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...RAISING the Bar

FSIS is...

Billy Milton, the Food and Safety Inspection Service (FSIS) Assistant Administrator for Management and Deputy Ethics Official (DEO), says his goal is to create a "model ethics program that is efficient, effective and highly visible." After receiving an award from OE for “Program Improvements” at the April 2005 Office of Ethics annual retreat, FSIS did **NOT** stop improving; but kept improving in unprecedented fashion. In May, FSIS elevated their ethics program by removing it from Labor and Employee Relations Division (LERD), and positioning it directly under the Deputy Assistant Administrator for Management. While most mission area ethics programs are customarily placed in LERD, such placement historically causes programs to lack in visibility, (continued page 2, column 1)

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 funding and credibility because employees tend to be hesitant to seek ethics advice from the same people responsible for enforcing agency discipline.

Additionally, placement within LERD and Human Resources divisions removes programs from direct accountability to the agency DEOs, and results in less senior-level oversight. Mr. Milton sees the move at FSIS as increasing "the level of responsibility and accountability to the Ethics Program." Milton said, "the employees of FSIS deserve an ethics program that reflects their commitment to integrity and impartiality as they carry out their regulatory responsibilities."
 (Elevating the ethics program in this way puts it on the organizational map. While smaller programs at National Finance Center and Office of Inspector General have made similar moves, FSIS is the first medium or large mission area program to take such a significant action.

FSIS began raising the status of the ethics program in 2003, when Milton created an ethics advisor position with promotion potential to GS-14. His intention was to increase retention and improve advisor continuity. In May, Milton elevated the acting ethics advisor position into a full Mission-Area Ethics Advisor (MAEA) position, appointing Dawn Ruffner to the post. Karen Messmore, Deputy Assistant Administrator for Management, will add additional executive leadership and oversight to the program as Assistant DEO. Other positions added to the program include, Program Area Ethics Advisors, Special Assistant, and an Ethics Specialist.

Additionally, several other great new highlights for the Ethics Program are underway, including an ethics mailbox for staff to direct ethics inquiries or comments directly to the MAEA, and an informational ethics web page that will be accessible from the FSIS homepage.



Quotable Quotes

"In civilized life, law floats in a sea of ethics." Earl Warren, Chief Justice of the US Supreme Court



Sue Mutchler Co-Hosts Ethics Round Table

One of the most successful portions of the recent Ethics Retreat was the "Science Ethics Roundtable." The Roundtable was an attempt to get a better handle on possible conflicts of interest situations faced by our research scientists when working with non-Federal entities such as universities, scientific associations, scientific journals, and other program participants. Sue Mutchler, REE Mission Area Ethics Advisor, moderated the Ethics Round Table at which more than 120 employees attended representing the USDA agencies with research scientists [Agricultural Research Service (ARS), Forest Service (FS), Natural Resources Conservation Service, and Animal and Plant Health Inspection Service), as well as a few Federal personnel from outside of USDA.

Topics discussed included:

- Relationships between USDA research scientists serving at Federal laboratories located on universities campuses and those universities. Included in this topic were issues relating to teaching, tenured status, university activities, perks and privileges;
- Participation as officer or director on scientific association in an official capacity;
- Limits on consulting;
- Official participation performing editorial services and peer review; and
- Serving as principal investigator on grant applications by non-Federal entities to Federal agencies.

In light of recent media and congressional attention to ethics issues relating to Federal scientists

and outside consulting arrangements, the Roundtable was particularly timely. "However, that's not what brought this about," said OE's Ray Sheehan. "We'd been working with ARS and FS in 2002-03 to fashion conduct guidelines for adjunct professor relationships. The resulting guidelines prompted some valid criticism and renewed interest in some related issues not reflected in the guidelines. In fact, our 2003 Ethics Retreat was really where we focused heavily on these issues. Almost half of the 78 retreat attendees in 2003 were scientists! The Roundtable actually was intended to keep that ball rolling. I think it did."

According to Sue Mutchler, "several issues will be resolved when each agency makes a determination as to what types of activities are more appropriately performed as official duties. When Agencies identify a relationship between the agency mission and the assigned duty, ethics conflicts are less likely to develop." The Roundtable will likely reconvene in August/September 2005.



Doctor, Is There an Ethics Advisor in the House?

Ethics can be a murky subject, the issues are complicated enough for Federal employees, and ethics pros. Assign an ethics story to a reporter on deadline, who does not interview an ethics advisor, and you have a prescription for misinformation. This may be why recent news articles have been unnecessarily critical of a Federal science agency.

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The articles accuse scientists of using taxpayer dollars to test items on which they held the patent and were receiving “royalties”. Pretty clear conflict of interest? Not so fast. Though the appearances look bad for the scientists; on further review, it looks worse for the reporters.

Reporters following the story could not get past the word “royalties”; leading readers to think that payments were paid directly to the scientists from non-Federal sources—normally a conflicts problem. Yet, royalties” paid under the Federal Technology Transfer Act of 1986, 15 U.S.C. §§ 3701-3717 (FTTA), are perfectly legal because they are paid to the agencies, not the scientists.

This appears to have been what was occurring in the agencies. However, not mentioning the Technology Transfer Act in the articles is a large omission on the part of the media. We’ll try to fill you in.

While government owns the rights to inventions made by Federal employees performing official duties, the FTTA requires Federal laboratories to seek opportunities to transfer technology to industry, universities, and state and local governments. Government agencies then share with the employee the “royalties” that the government receives from licensing the employee’s invention to non-Federal entities. Essentially, payment to the scientist is not from an outside party, but from the agency—like a performance bonus. Hence, no conflicting financial interests exist. Granted, a few reporters noted that the payments were legal; but did not explain any further. Admittedly, there is an appearance of conflict here and agencies should be sensitive to that appearance. However, the true problem appears to be that the reporters failed to research the FTTA and beat up on federal agencies implementing the law. Oh well, the founding Fathers only implemented laws assuring freedom of the press, not accuracy in the press.



Anyone who saw the 1993 movie *The Fugitive*, recalls how Marshall Sam Gerard (Tommy Lee Jones) responded to Dr. Richard Kimball’s (Harrison Ford) protestation of innocence—“I don’t care.”

In the “Ethics Biz,” we occasionally see an employee “step in it” by acting officially on matters in which he or she has a financial interest—say, contracting with a company owned by the employee’s spouse; or awarding a grant to someone who has offered the employee a job. The result, of course, is referral to the Inspector General for investigation. Upon learning of the referral, the employee naturally may offer a rationale to excuse the potential violation. While we ethics folks are a caring lot, when statutes are involved, remember: “The law doesn’t care.” My favorite excuse is: “I didn’t profit. I even lost money.” This excuse presents an intriguing application to public service of the well-known playground basketball principle of “no harm; no foul.” What this really means, however, is debatable. It could be sheer arrogance, as in “If I wanted to violate the law, I would’ve made a profit.” Or, it could mean the hope for self-improvement, as in “give me a second chance and I’ll make out like a bandit.” Either way: “The law doesn’t care.” However, the more frequent response is either: “I didn’t intend to violate the law” or, “I participated, but I recommended against [insert your financial interest here].” This response is sound; understandable; and completely irrelevant. Here’s why. Most conflict statutes [18 U.S.C. 202-209] originated between 1853 and 1872. Before that time, there were bribery statutes which, like 18 U.S.C. 201, prohibited giving something of value to a public official for a specific act. Conviction usually required a corrupt intent—difficult to prove. Moreover,

amidst the graft of the “Spoils System” of the mid-1800s, Congress had to address several scandals wherein public officials misused their official position for personal benefit, but did not accept bribes.

As a result, Congress enacted laws prohibiting actions which, under specific circumstances, *appeared* corrupt. Rationale: Most people faced with the same circumstances, would do the corrupt thing. Now, merely taking a specific non-corrupt action under certain circumstances constituted the offense—irrespective of corrupt intent, or intent to do the right thing. In short, lack of corrupt intent is irrelevant.

Employees and ethics advisors are stuck



with the laws as written. When it comes to excuses for actions that violate the conflict statutes, remember

Marshall Sam Gerard: “The law doesn’t care.”

HONORS in DA



Unsung Hero Award

Ray Sheehan received the Unsung Hero Award on May 3, 2005 during Public Service Recognition Week, for the many hours that he spends serving in the Office of Ethics.

The Patriot Award

John Surina was presented with the Patriot Award by the Committee for Support of the Guard and Reserve on behalf of the Department of Defense in a ceremony at the office of the Assistant Secretary for Administration. The Patriot Award recognizes employers for having employment policies and practices that are supportive of their employees’ participation in the National Guard and Reserve.

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Outstanding Career Armed Services Attorney Award

That support was exemplified in our own Reservist, Commander Mike Edwards, Judge Advocate General's Corps, U.S. Navy Reserve who this year has been awarded the Outstanding Career Armed Services Attorney Award by the Judge Advocates Association and, last week, the Rear Admiral Hugh H. Howell, Jr. Award of Excellence for senior officers--the highest award available to honor Navy Reserve Judge Advocates. Mike credited John Surina and the Office of Ethics for allowing him the extra time to carry out his Reserve duties.

Well done Mike and John!!!

Summer Interns

Adam Dean is a new summer intern at FFAS. He is a senior at The University of Pennsylvania with a combined major in Philosophy and Political Science. Adam is on the Dean's List, and is ecstatic to be with Ethics. He is hoping to have a future with us as well. Great start Adam! *****



Brittany Goodman is back in Office of Ethics this summer. She is a sophomore at The University of

Maryland- Eastern Shore. "I am majoring in Mass Communications-Television broadcasting. I plan to one day become a program director for a kids television show." , Ms Goodman said.



THANKS Pat Tippet for creating the Great Zamboni Fedora



THE GREAT ZAMBONI

The Great Zamboni made his first appearance at the 2005 Annual Ethics Retreat. He and his side kick, Spotless the Ethics Dog, have agreed to doing a regular column in the Ethics Newsletter answering pressing ethics



Questions:

Does the Foreign Gifts and Decorations Act apply extra-terrestrially? If so, would there be any difference between Plutonians and those outside our solar system.

Great Zamboni Speaks:

In the narrow context of the Foreign Gifts and Decorations Act, much depends upon the definition of "foreign." The Act infers an earthly jurisdiction through the use of "nation," but does not specifically limit its application to terrestrial entities. However, the Federal government has long recognized that laws may apply beyond our atmosphere: In 1798, long before Roswell, Congress passed the Alien and Sedition Acts. As the Acts were largely aimed at the French, the connection is fairly clear. In intervening centuries we have had the Alien Registration Act, Alien Enemies Act, Alien Species Act, Elian Gonzalez . . . the list is endless. As for Pluto, the Great Zamboni believes that the Act would cover all interplanetary affairs, including . . . Plutonic Relations.



As an aside, the Office of Ethics recently advised that travel from Mars to a location outside the solar system, without an intervening stop on the earth, would be acceptable under the Act.

Leave soon.



YOUR LETTERS AND COMMENTS

I'm an assistant ethics counselor with the DOI's Fish and Wildlife Service. When notifying employees of training options this year, I sent out a link to your site (among others). I began receiving feedback from employees who'd opted to use your modules -- very positive feedback! So, although I'd already met my annual training requirement, I logged on to see what the buzz was about. All I can say is: Well done! The touches of humor are just right, and the scenarios interesting and informative without being complex. Wish ours was that good! Kerry Kelly

Greetings!

I am writing to express my gratitude for the information that is available through your website. I am in the process of developing a course for my agency and I found your site very helpful.

Michele Mont,
Human Resources
Penna. Turnpike Commission

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**Mission Area Ethics Advisors
It is time to Commence
identification of employees
required to file the annual
OGE-450 or other alternate
report.**