

OFFICE OF ETHICS NEWSLETTER



July 2003
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Volume 4 Issue

Ethics Perspectives

Ray Sheehan , Director



GUARDING THE BORDER

Having just enjoyed the fireworks, gatherings, and sweltering weather of Independence Day, it's natural for ethics officials to sit back with a "cool one" and ponder the value of what we do. (OK. In truth, we all stopped at the part about having a "cool one.") Yet, it really isn't too much of a stretch to look at what we do and say that government ethics is big part of what we celebrated. Ethics **always** has played a large role in our democratic form of government.

According to political scientist, Hubert G. Locke, in "*Ethics in Government: A Look Backward*," Americans are preoccupied with government ethics. Our history has been an on-going process of defining and redefining what constitutes appropriate official behavior for elected and

appointed public officials. **James Madison**, in

The aim of every political constitution is . . . first, to obtain for rulers men [and women] who possess the most wisdom to discern, and the most virtue to pursue the common good of society, and in the next place, to take the most effectual precautions for keeping them virtuous whilst they continue to hold the public trust.

The Federalist No. 57, wrote:

Our ethical system starts, thanks in large part to Madison, with the healthy respect for the all too human tendency to misuse power. This frailty was recognized by the Founding Fathers and first reflected in the U.S. Constitution through the
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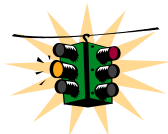
establishment of three separate and competing branches of government. What the Framers of the Constitution put in place was a remedy for a healthy distrust of power.

As we know, this was but a starting point. Over the next two centuries, the concept of government ethics expanded out from the Constitution to include criminal prohibitions against bribery and actual graft and corruption in the late 1700s; criminal conflict of interest laws designed to avoid the very appearance of corruption, in the mid to late 1800s; non-criminal regulations designed to avoid the appearance of a criminal conflict of interest, in the mid to late 1900s; and finally, the current, proactive, preventative advisory service. (Notice the transition from discipline to prevention).

*So, where exactly are we going with this?
Patience. I think I'm on a roll, here.*

We hear the term "Public Trust," all the time in our business. We use it so often that rarely do we think about how deep that term goes. Democratic forms of government are based on public trust: The trust of the governed that the elected and appointed officials who serve them generally are acting on what they perceive to be the best interests of the public as a whole. Democratic governments also are based on citizen participation. The flip side of citizen participation is apathy. One major cause of citizen apathy is prolonged public cynicism: The long-festering suspicion that evolves into belief that elected and appointed officials are "in it for themselves, or for the few" and that citizen involvement in government is fruitless.

But, is there a real danger of this?



Well, think of this. While bribery is still acceptable in many parts of the world (if not state-sanctioned) as a means of doing business with

governments and others, our modern ethical scandals far more often concern "appearances." Less likely are the kinds of scandals that routinely dotted our landscape in the mid-1800s.

Yet, while our standards of official behavior have and are continuing to rise (and the conduct of the

Less likely for us are the kinds of scandals that routinely dotted our landscape in the mid-1800s: For example, Lincoln's first Secretary of War, Simon Cameron awarding contracts for making Union Army uniforms to several Pennsylvania mills – all owned by him or his family – and then shipped on railroads in which he was a principal investor. Another example was the "Hall Carbine Affair" in which profiteers arranged to purchase obsolete Hall Carbines from the U.S. Army for \$3.50 each only to resell the rifles for \$22 each to Union Major General John C. Frémont for his troops. Compared to many other spots in the world and even to our own past, we in the modern U.S.A. really are ethically spoiled.

vast majority of our officials, both career and political rise likewise), the demands of our modern society seem to be rising even faster.

The news media, at least since the "Watergate" scandal, in the mid-1970s, has come to realize that any form or degree of ethical misstep by a government official makes for good copy. The media has not hesitated to use its increasing power to take issue with any action that even hints at ethical impropriety. While such oversight of public officials serves a critical role in any democratic form of government, the almost singular focus on the "negative" in government can only lead to public cynicism.

Not surprisingly, during that same period, a mainstay of the entertainment media has been the misuse of *(Continued on next page)*

ETHICS *(continued from previous page)*

official authority by government officials. Odds are that when you see a government official portrayed on TV or in movies, he or she will either be presented as (1) corrupt; (2) abusing authority; (3) incompetent; or (4) a combination of any of the three.

Furthermore, we live in the “Modern Litigious Society.” Those seeking to sue the government have become quite sophisticated in terms of making use of our ethical boundaries. This has significant implications. It means that officials have to contemplate that close ethical calls or questionable actions will be raised by those who don’t get their way in order to undercut policy decisions (e.g., disgruntled contract bidders). It means that those who have an axe to grind against high-level officials will use questionable ethical actions to undo those officials. It also means, from a simple public policy standpoint, that policies and programs may end up on the “back-burner” because the perception of ethical behavior, which, when raised by the media or in litigation, usually trumps the factual legality of an official action.



Am I hitting home yet?

Thus, while the “bar” of public official behavior rises (and is largely being met or exceeded by public officials), the public and media “bar” of expectations rises even faster. The public, quite logically, often sees only the gap between the bars. As a result, our reaction to allegations of ethical misconduct becomes equally visceral whether the issue is the acceptance of a gift, the misuse of office equipment, or proof of outright corruption. In short, the healthy distrust of power, of which the Founding Fathers would be proud, has, in the “Post-Watergate” environment (since the mid-1970s), given the appearance of warping

itself into public cynicism -- “outright distrust.” That is the danger: To paraphrase Canadian political commentator Rex Murphy, those of us who have the privilege to live in that small, precious corner of the world where we are free not to worry about having the government invade our homes and haul us away at night for our political leanings must be careful not to give up on the democratic process merely because our fellow man is not absolutely pure in heart.

So, what is our role, then?

One thought: Ethics helps guard the border between the healthy distrust of power that underlies governments of, by, and for the people and the prolonged public cynicism that ultimately can destroy it. All-in-all, not bad work if you can get it.

*Time for another
“cool one.”*

*A belated Happy
4th!*



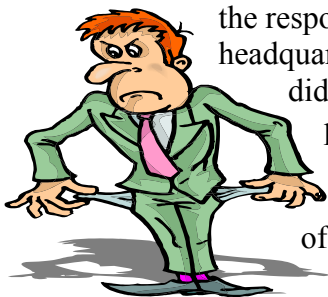
OGE RELEASES 450 SURVEY RESULTS

At the June 17 quarterly meeting with Designated Agency Ethics Officials, the Office of Government Ethics (OGE) released the results of its survey of the Confidential Financial Disclosure (450) Program. The survey, which was prompted by a similar survey done by the Standards of Conduct Office, Department of Defense, was designed (1) to give OGE and ethics program managers a picture of the value of the current 450 Program and (2) to focus efforts to design a replacement program.

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OGE 450 (Continued from previous page)

To its survey questionnaires, which OGE sent out earlier this year, 202 responses were received. Of the respondents,¹ 96 worked at headquarters, 101 in the field; 47 did ethics work full-time, 150 part-time; over half (51%) has reviewed less than 100 450s. Thirty percent of the respondents said that over half of their filers had nothing to report.



Over half of the respondents (52%), put that figure at between 26% and 100%.

When asked what part of the 450 system posed problems for ethics advisors, responses were as follows:

- Identifying new entrants: 19%
- Designating positions/filers: 14%
- Uncooperative filers: 11%
- Performing conflicts analysis: 14%
- Follow-up with employees: 22%
- Other: 20%

When asked whether changes were needed to the definition of “confidential filer,” 76% said “yes.”

In other words, 86% of the problems with the system had nothing to do with determining the existence of a conflict of interest.

Almost half of the respondents (43%) and almost 60% of those who said “yes,” believed that the definition should be limited by a combination of job and grade.

Whether a monetary filing penalty should be available, as is the case with the SF 278, broke



¹ While 202 responses were received, not all respondents answered all questions. Thus, the numbers do not always add up to 202.

down 56% against; 42% for.

Finally, in terms of whether categories could be deleted from the current 450 form, half said “no.” Of those that answered “yes,” the recommended deletions were (1) reporting of mutual funds de minimus assets (18%), (2) liabilities (14%), and (3) nature of income (5%).

OGE also discussed the possibility of creating what it called a “Cafeteria-style 450” in which OGE would create 15-20 reporting parts. Agencies would then be able to pick-and-choose those parts that it felt most applicable to its personnel.



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Training Viewed as Preventative Medicine for Martha's Muddle



Eager to avoid following in Martha Stewart's missteps, and hoping to avert future lawsuits, corporate compliance officers are fine-tuning their ethics training procedures.

As reported in an article by Marie Leone in CFO.com June 23, 2003; "Corporate lawyers and compliance officers are pouring over training policies and procedures to ensure that companies are free of liabilities that might trigger shareholder lawsuits. It's a good idea.

Of late, plaintiffs have been taking aim at insiders caught violating trading regulations by blaming the employer for weak or non-existent ethics training programs."

To assist corporations with ethics training, the law firm of Bryan Cave LLP has created a Web-based ethics course to help companies train, test, and track the training of their employees.



USDA Ahead of Corporate Curve

While corporate America rushes to find remedies for *Martha's Muddle*, USDA Office of Ethics may be ahead of the corporate curve. Our computer based training program, which began in 2002, recently entered a new phase in which Ethics Advisors and employees can track training. Not only are employees who are required to take annual training using our web based training modules, but other USDA employees, and people from other agencies have been taking advantage of our state of the art training program.

Interactive Ethics:

This is your chance to comment on a real life ethics enigma. Please read the following facts gleaned from an article published Fri, Jun. 13, 2003, on the web at the News Sentinel and wire service sources. <http://www.fortwayne.com>.

Just the Facts Ma'm



INDIANAPOLIS -- Lt. Gov. Joe Kernan allowed Mayor Bart Peterson to videotape two campaign commercials in his Statehouse office during normal business hours. An earlier State Ethics Commission opinion issued in March stated that, *(Continued on next page)*

INTERACTIVE *(Continued from previous page)*

“a state officer may not hold a partisan political event at his or her state business office during normal business hours.”

Based on facts provided, please write a short response of how you think this situation should be handled. Send your responses to daeo.ethics@usda.gov. The best answers will be published in the next edition of the Office of Ethics Newsletter.

Office of Ethics Meets With a Ethics Official From People’s Republic of China



From left to right; Dave Spradlin, Michael Edwards, Wang Mingan, Chi-Ho Chan. Story below. (photo courtesy of Ellen G. Pearson)

June 9, 2003 The Chinese Secretary General, from the Dalian Municipal Supervision and Inspection Bureau, Wang Mingan, recently met with Office of Ethics to learn about our ethics principals and policies.

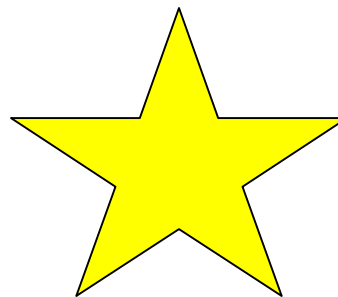
After the meeting Mike Edwards commented, “I think he was very surprised to find out that USDA was involved in so many projects such as Conservation, Forrest Service, Milk Marketing and Exports.”

The Office of Ethics was asked, by the State Department, to host the meeting and was honored to do so. During the 90-minute meeting with Ray Sheehan, (not in photograph), Mike Edwards, and Dave Spradlin, Mr. Mingan communicated with the assistance of interpreter, Chi-Ho Chan.

Mr. Mingan was eager to learn about our Ethics Program and noted the enthusiasm for the subject shown by our office. With his last question, Mr. Mingan received an education. He was curious about the justification for the size of USDA in relation to what he felt was agriculture’s small representation in the Gross National Product. Dave Spradlin immediately went through a listing and explanation of the various agencies and programs that fall under the USDA tent. Mr. Mingan’s response, which did not require interpretation was something along the lines of “... Oh.”

Ethics Forum News

The well attended June 9, Ethics Forum Teleconference provided a platform for Agency ethics officials to meet with the Office of Ethics and share ideas and ways to approach common problems. Topics discussed included: the Secretary’s initiative to restructure and improve the ethics program; the September retreat; the financial disclosure draft issuance; and identifying new and terminating filers. About 14 ethics specialists (including a few who dialed in) attended the forum and participated in the discussions. Ed Peterman, RD Ethics Advisor, has graciously volunteered to host the next Ethics Forum scheduled for August 5, 2003. Ed will be publishing more information about location and dial in numbers, as they become available.



Orientation for New Ethics Advisors



Pat Tippet assisted with teaching the May 27th-29th, New Ethics Advisors Orientation at the George Washington Carver Center in Beltsville, Md.

Twenty-six Ethics Advisors, many from outside of the metropolitan area, attended the Second Annual New Ethics Advisors Orientation training held at the George Washington Carver Center in Beltsville, Maryland, from May 27th through 29th. The Orientation course, put on by the OE, lasted 2 ½ days. It is designed to introduce new Ethics Advisors to the intricacies of Federal Government ethics, both substantively and in terms of managing the administrative portions of the program (training and financial disclosure filing) at their facility.

The Orientation covered such subjects as the history of Federal ethics, use of the OE website, a summary of the laws and regulations, focus on conflicts of interest, political activities, travel issues, and financial disclosure review. Much credit goes to Dave Spradlin of OE who almost single-handedly planned and arranged the event, from logistics to topics, moderating the event, and delivering classes himself.

OE plans to expand the New Ethics Advisor Orientation training to a semi-annually format, beginning this fall.

Meet an Ethics Advisor



Name: Kristie Kelm

Agency: Food Safety and Inspection Service
Address: USDA, FSIS, LERD
1400 Independence Avenue, SW
Room 3175 – South Bldg.
Washington, DC 20250
Tele No: (202) 690-3684
Employee count: 10,000
Number of confidential filers: 413

Food Safety and Inspection Service (FSIS) -- the keepers of the gate with respect to the safety of U.S. meat, poultry, and egg products. Enter another Ethics Advisor, Kristy Kelm.

General Information

Kristy entered her first FSIS position approximately 2-1/2 years ago with the rare opportunity of starting from “the top,” so to speak. Prior to her current appointments as Acting Branch Chief for Employee Relations and Mission Area Ethics Advisor, Kristy regularly participated in projects initiated by the Office of the Secretary. This unique opportunity was made possible because of her assignment to the Office of the Under Secretary for Food Safety. Working with top management enabled Kristy not only to “see policy in the making,” but also to frequently contact with the Office of Ethics--an unexpected training environment for things to come... When Kristy, ultimately, moved to Employee Relations, reorganization was underway and the knowledge she brought with her was valued and reinforced.

On a personal note, Kristy identifies herself as an Air Force Brat. Her family moved 12 times in 20 years and during that period she lived both
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MEET (Continued from previous page)

overseas and in the States. Her family finally settled locally in 1978 and she stayed. Kristy, her husband, youngest child (the eldest is independent and doing well) and two Yorkshire Terriers enjoy spending their summer weekends boating on the Potomac River. In her spare time, Kristy crafts quilts and works on embroidery.

Back to Work

When asked why Kristy chose to work in the ethics program, she replied chuckling, "So far, I think it has chosen me." Very shortly after assuming the Ethics Advisor function, she received notification that the Office of Government Ethics (OGE) was about to conduct several audits within USDA and FSIS was one of the agencies selected! In her own words, "Not only was I jumping into another role while maintaining my position as an Employee Relations Specialist, I was also scrambling to review files and trying to create some type of order before the auditors arrived." She concludes that while FSIS didn't fare as well as some of the other agencies reviewed, the process was invaluable because it identified areas within the ethics program that needed improvement. Since her position remained vacant for some time, the program languished. All in all, Kristy believes this to be an exciting time for the ethics program. FSIS has positively responded to the review and to the Secretary's initiative for the USDA program as a whole. Now the entire program at FSIS is being revamped and she sees this as the agency's opportunity to implement changes that will effectively meet its needs as well as the wishes of the Secretary and the requirements of OGE. Formal procedures have been drafted and a database has been implemented to track all conflict-of-interest cases and inquiries. Look out FSIS confidential filers, Kristy's also developing a database to track and monitor disclosure reports!

If you'd like to contact Kristy, you can do so by email at: Kristie.Kelm@usda.gov.

THE ETHICS ROGUES' GALLERY

GREEN ACRES

A former USDA employee was charged with recruiting friends fraudulently apply for farm loans; giving him money in exchange for approving the loans. The former employee helped his non-farmer co-conspirators fill out the required forms with the info required for approval. He then approved the loans (totaling \$1.8 million; \$340,000 for himself). **PENALTY** - The former employee has been charged with 98 counts (56 for bribery).



CIA EMPLOYEE CAUGHT KEEPING SECRETS

A CIA employee's Contracting Officer's Technical Representative (COTR) duties included supervision of 2 contracts. As COTR, he caused the company to hire a friend of his as a consultant. It just happened that the friend owed the employee a substantial sum of money and couldn't pay up. Not surprisingly, the COTR did not disclose this fact to the CIA (don't they know this stuff anyways?) or to the company. The government alleged a violation of 18 U.S.C. 208 in that the COTR had a financial interest in the company's decision to enter into a consulting agreement with his friend (kind of obvious, that one). **PENALTY** - The COTR pled guilty to a felony violation of section 208. He received 3 years supervised release and paid a \$4,000 fine. [We'd tell you more, but they'd have to kill us.]

BUYING NEAT STUFF ON SOMEONE ELSE'S CREDIT CARD: PRICELESS.

A former VA employee used her government credit card to purchase expensive items (TVs mostly), which she then re-sold or kept for herself. **PENALTY** - The former employee pled guilty to one count of theft of government property. She received 5 years probation and ordered her to pay \$170,000 in restitution.

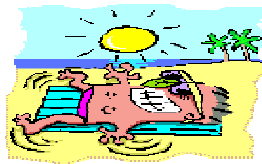
“PAC MEN” GOBBLED UP

Four Federal employees were convicted of political fund-raising on Federal property. The employees organized a Political Action Committee to raise money for the 1992 campaign. They collected a total of \$3,250 in checks from various individual in the building. To, shall we say, “encourage” donations, the employees also suggested that contributions might result in special consideration from the officials affiliated with the Administration. Following the election, the gang of 4 created a list of employees who should not, in their opinion, receive special consideration from the Administration.

PENALTY - *The 4 defendants each received 4 years probation. Two of the defendants were fined \$1,000.00 and ordered to perform community service. The other 2 defendants were fined \$2,500 and ordered to serve 30 days detention in a halfway house.*

THE “CLUB FED” VACATION

*A Department of Defense (DoD) official was to travel to a 3-day conference in Florida while on DoD travel orders. His wife accompanied him. After checking in at the hotel and renting a convertible, the couple promptly fled for a short, 3-day vacation, told a subordinate to “cover for him,” and filed a fraudulent travel claim with DoD for the 3 days. **PENALTY** - A proposal was made to have the official separated from Federal Service.*



[We hope that gross stupidity is also a basis for removal].

These selection of cases were prepared by the Department of Defense – 10/02

AND FINALLY . . .

WARNING: Due to the uncontrollable fits of laughter, hysteria, and outright incredulity experienced by the otherwise sober and sane members of our staff, we strongly recommend that anyone choosing to read the following be properly seated in a sturdy chair (preferably straight-backed with arms rests) for their own safety.

NOTE: The facts have been mildly altered.

A relatively new Federal employee was discussing her performance appraisal with a second-line supervisor (in the absence of her immediate supervisor who was on an extended vacation). The supervisor informed the employee that, based largely upon conversations with her immediate supervisor, it appeared that her performance had declined since the mid-year review and stated his concerns and expectations. The employee started to cry and told the supervisor she could not find enough time in the day to perform all of the assigned duties.

The supervisor, of course, provided her with an opportunity to explain. The reason provided was . . . well, . . . novel, to say the least.

The employee stated that the research and cataloging alone took several hours a day . . . and further stated that often she was on-line for several hours when a bid was active. The supervisor, looking just a bit dazed and confused, questioned what she was talking about.

“What research? What cataloging? That’s not even remotely part of your job.”

It was then that he realized that there was an even bigger fish to fry.

“What bidding? Our contracting folks handle all of the bids. Did I authorize any additional purchases?”

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FINALLY *(Continued from previous page)*

The employee responded “Comic books” and “no” in that order.

Responding to the supervisor’s unquestionably stupefied expression, the employee filled in the corresponding pregnant pause as follows:

“Ever since I came on board, I’ve been fully occupied cataloging his [her immediate supervisor’s] collection of rare comic books. Prior to cataloging, I was also required to research their net worth.”

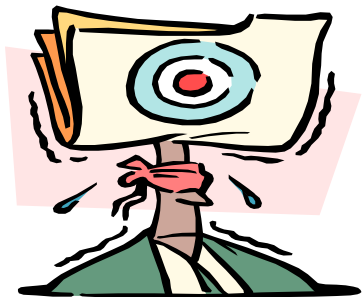
Sporting an already souring and pained expression, the supervisor, already seeing the cliff over which this path was headed, then asked:

“ . . . and the bids?”

“Well, . . . E-Bay, of course!”

Having said this, she went on to state how she did appreciate the fact that her immediate supervisor had allowed her to earn credit hours and also offered overtime on weekends and holidays for her to do the work. A tinge of guilt was expressed, but quickly overcome.

“Here he is complaining that I can’t get my work done AND he’s the very reason why I can’t get it done. I think we’re even all around.”



It is our understanding that the immediate supervisor also had difficulty understanding why the employee later filed a grievance against him.

Well, . . .Duh!

ANNOUNCEMENTS!



New Ethics Personnel

Forest Service

Peggy St. Peter – OK. Well, Peggy really isn’t new to the ethics program; but she’s back and, if only temporarily, is worth a mention and a huge cheer.

Details

Lolita Roberson – OE to ARS. Lolita stays at ARS until August 1 when OE will gratefully welcome her back by presenting her with a stacked “in” box.

Ellen Pearson – FSA to OE. Ellen stayed with us through early July and provided enormous help in terms of the formatting of this newsletter, development of an OE Customer Survey, and in assisting Lolita Roberson in conducting a departmental review of 450 filers. Many thanks, Ellen and thanks to FSA for letting us have her services.

Aarik Robertson – FSA to OE. Aarik is a student intern who came to OE for 2 weeks in mid-June. During that time he contributed to OE’s program reorganization efforts by looking at the placement of ethics in commercial establishments. Thanks Aarik.

Marta Naziolek –RD to OE. Marta is a student intern who was assigned to us for one week in mid-July while RD went south for a conference. Her energy and interest in our work was immediate. In her short time with us, Marta addressed specific statistical concerns in our OE Customer Survey and conducted the interview with Kristie Kelm. Thanks, Marta.