

STANDARDS OF CONDUCT

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I. Introduction

What is "ethics?" Ethical behavior is doing the right thing even though nobody is watching; it is doing what is right... because it is right. The objective of this article is to explain the basic rules and their underlying principles, so that you will understand what those rules are, why we have them, and how they apply.

As supervisors, managers, and leaders, how many times have you heard that, as such, we have to set the example for our subordinates? That simple, guiding principle is nowhere more true than it is here. If you understand the basics, when called upon to make the ethical choices that you are going to have to make throughout your careers in the Army, you will be able to make the right choices. Also, never forget that you set the tone for your office, in terms of priorities and areas of emphasis.

Ethical decision-making is critical to who and what we all are as government employees. Keep in mind that we are dealing with (and spending) large sums of appropriated funds, a fact which brings us under various statutory and regulatory restrictions of which you need to be aware. If we appear to be foolishly squandering the scarce resources we now have, we are likely to get that much less next year. Suppose, for example, you expended your whole TDY budget on one extravagant trip, say, you sent one of your people to a legal conference that was held on a Caribbean cruise. What do you think the response will be when you go to the resource manager and plead for more funds next year?

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Think of some of the things that made their way into the news several years ago. Remember the headline that read, "General's flight cost taxpayers \$120,000." That was a report on the flight of an Air Force General from Italy to the United States, where he was basically the only passenger on the flight. The article pointed out how much less a civilian flight would have cost, and the whole incident proved to be a serious embarrassment to the military.

The San Antonio Express News ran an article on November 23, 1995, page 18A, titled, "Whistle is blown on AF reservists' alleged basketball jaunt." It reported that Washington State Air Force-Reservist training flights (in-flight refueling missions) were found to be following the path of the Seattle Supersonics Basketball Team, from Seattle to Charlotte, North Carolina, and then on to Indianapolis. It might have seemed like coincidence, except for the fact that at the Charlotte airport, an Air Force van was unloaded from the plane and the reservists drove it from the airport to the downtown basketball game.

As Government employees, how we conduct ourselves can and will drastically affect the perceptions that people have about their government and its employees.

II. The DOD Joint Ethics Regulation (JER). The Joint Ethics Regulation, DOD 5500.7-R, has replaced the old Standards of Conduct regulation, AR 600-50. As DOD employees, we are all subject to the JER. Much of the JER is based on federal criminal statutes and, as is generally the case, ignorance of the law is not an excuse for violating it.

The JER was issued under the authority of DoD 5500.7-R, "Standards of Conduct," on August 30, 1993. It provides a single source of standards of ethical conduct applicable to all DoD employees (a term which includes NAFI employees). Note that it also applies to "Any Reserve or National Guard Member performing official duties, including while on inactive duty for training or while earning retirement points, pursuant to Title 10... or while engaged in any activity related to the performance of a Federal duty or function." Many of its provisions are punitive, meaning that violations may result in UCMJ action against military personnel who violate it. Civilian employees face possible adverse action, to include removal from their jobs. Also, since much of the JER is based on provisions of Title 18 of the United States Code, those who violate it may face possible criminal prosecution by the Justice Department.

These are serious infractions and the resulting sanctions can be very severe. The Merit Systems Protection Board, for example, has upheld removal actions even though the employee's misconduct was a first offense.

III. Areas of Coverage. The areas covered by ethics regulations and statutes are those that are most ripe for potential abuse. For example, the guidelines cover issues like gifts and gratuities from outside sources and from within the Government, conflicts of interest, and misuse of government position and resources for personal gain.

IV. Principles of Ethical Conduct for Government Employees. Contained in Chapter 2 of the JER (5 CFR Section 2635.101), these are to be followed "to ensure that every citizen can have complete confidence in the integrity of the Federal Government." Where a situation isn't covered by a specific rule, these general principles are to be applied by employees to determine proper conduct:

1. Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws and ethical principles above private gain.

2. Employees shall not hold financial interests that conflict with the conscientious performance of duty.

3. Employees shall not engage in financial transactions using non-public Government information or allow the improper use of such information to further any private interest.

4. An employee shall not... solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.

5. Employees shall put forth honest effort in the performance of their duties.

6. Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the Government.

7. Employees shall not use public office for private gain.

8. Employees shall act impartially and not give preferential treatment to any private organization or individual.

9. Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.

10. Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.

11. Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.

12. Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those -- such as Federal, State, or local taxes -- that are imposed by law.

13. Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, natural origin, age, or handicap.

14. Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards.

This last principle bears added emphasis. Always remember that the appearance of impropriety can be as damning and harmful as the reality thereof. The fact that something may have been "technically legal" may be of little consolation if it brings the scorn of public opinion upon us and our organization. If you are considering an action that is questionably permissible under, or simply not addressed by, the JER standards, think for a moment about how your conduct would look if it was reported on the national news tonight -- if you, or the Army, would be embarrassed by such a story, then just don't do it.

V. Gratuities.

A. General. Why do we have a rule against government employees accepting gifts? After all, if somebody appreciates what I did and wants to reward me for having performed my duties, what's wrong with that? The answer is that people do not normally want to reward Government employees just because they did a good job. More likely, the particular way that the

employee did his or her job is what is to be rewarded, namely how the employee's decision benefited the offeror.

If acceptance of gratuities was permissible, it would tend to influence the employees' behavior in an inappropriate manner. Employees would soon be making decisions not because they are best for the Government, but because they are best for the individual employee. Think also about how this would look to the public -- what about those who were not satisfied with the decisions that you made? The impression of those who are dissatisfied with a decision made by an employee who received a gift from a benefited third party will be that the employee was bribed, and that if they want a favorable decision, then they, too, must offer bribes.

Indeed, the result will look (and smell) very much like bribery. Even where not constituting an outright bribe, such rewards can have the same effect. The prohibition against gratuities is designed to ensure that Government employees receive only one source of compensation -- their official salaries. If others were to provide compensation, then employees' loyalties would be divided.

B. Underlying Federal Statutes. The JER rules on gratuities reflect underlying federal criminal statutes. An employee who acts carelessly here is facing more than a regulatory violation; he/she may also face indictment and criminal prosecution under Title 18 U.S. Code.

1. 18 U.S. Code Section 201(c). This provides that a Government employee who "directly or indirectly, corruptly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself or for any other person, in return for: (1) being influenced in his performance of any official act; or (2) being influenced to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or (3) being induced to do or omit to do any act in violation of his official duty" is subject to criminal prosecution and possible imprisonment for up to 15 years.

The crime here is bribery. The key to bribery is that the thing of value was given as the inducement for the employee's performance (or non-performance) of an official act. The one who offers or gives the bribe is also guilty of violating the law (18 U.S. Code Section 201b).

2. 18 U.S. Code Section 209. This is a lesser included offense of the bribery statute. It covers a government employee who receives "any salary, or any contribution to or supplementation of salary, as compensation for his services as an officer or employee of the executive branch of the United States... from any source other than the Government of the United States." In other words, for doing your job, only one source can pay you, and that is the U.S. Government. If somebody else seeks to compensate you for having done your job, this should raise the proverbial "red flag" and you should seek legal guidance.

As opposed to bribery, here the payment isn't an inducement to get you to do or not do something, but normally comes after-the-fact. If an employee does his job in a certain way and somebody wants to give him an extraneous payment, think about what happens the next time that employee has to make a similar decision? He will want to obtain a similar reward the next time. This is bound to influence the manner in which Government employees perform their official duties. In terms of how this appears to third parties and the public, it looks, smells, and feels very much like bribery.

C. JER Provisions -- Basic Prohibitions. The basic rule is that one "shall not, directly or indirectly, solicit or accept a gift: (1) from a prohibited source; or (2) given because of the employee's official position" (5 CFR Section 2635.202). Reflecting the bribery prohibition, the JER provides that one may not accept a gift in return for being influenced in the performance of an official act.

A "prohibited source" is one who: (1) is seeking official action by the employee's agency; (2) does business or seeks to do business with the employee's agency; (3) conducts activities regulated by the employee's agency; or (4) has interests that may be substantially affected by performance or nonperformance of the employee's official duties. Remember the basic rule: If someone wants to give you a gift and is (a) a "prohibited source"; or (b) wants to give you the gift because of your official position, then you should seek legal advice (5 CFR Section 2635.107). Blindly accepting such offers would be an invitation to disaster.

D. JER Provisions -- Exceptions to the Gift Prohibition. Everything, of course, is not a gift, or the rules would lose sight of their objective and become unreasonable. A gift is defined to include "any gratuity, favor, discount,

entertainment, hospitality, loan, forbearance, or other item having monetary value" (5 CFR Section 2635.203). This definition specifically excludes such things as the following:

1. Modest items of food and refreshments, such as soft drinks, coffee and donuts, offered other than as part of a meal;

2. Greeting cards and items with little intrinsic value, such as plaques, certificates, and trophies, which are intended solely for presentation;

3. Opportunities and benefits, including favorable rates and commercial discounts, available to the public or to a class consisting of all Government employees or all uniformed military personnel, whether or not restricted on the basis of geographical considerations. An example of this was when our troops returned from Operation Desert Shield/Storm. Various theme parks across the Country offered free passes to military personnel and their families. Another example is a discount offered by some local car dealers, movie theaters, etc., to all military personnel. A discount limited to senior officers would not be permissible, since the exception speaks of a class of "all uniformed military personnel." Discriminating in favor of those of a certain rank violates this limited exception;

4. Rewards and prizes given to competitors in contests or events, including random drawings, open to the public. If I win the Texas lottery, for example, that would (fortunately) fall under this exception;

5. Anything for which market value is paid by the employee. For tickets entitling the holder to food, entertainment, etc., the market value is the face value of the ticket (5 CFR Section 2635.203 (B)9); and,

6. Travel, subsistence, and related expenses accepted by an agency under the authority of 31 U.S.C. 1353 in connection with an employee's attendance at a meeting or similar function related to his official duties, which takes place away from his duty station. For more guidance about travel expenses, see another article in this Deskbook, "Gifts of Travel Benefits from Non-Federal Sources to Military and Civilian Employees."

Additionally, even if falling under the definition of a "gift," there are some further exceptions to the "no gift" rule such as the following:

a. Unsolicited gifts of \$20 or less. This is a "de minimis" exception. It does not apply to gifts of cash, however, and gifts from any person or entity may not exceed \$50 in a calendar year. This normally covers such things as coffee mugs, pens, and similar promotional item. Note, however, that regulations such as AR 40-38, paragraph 3-6 (which covers the Clinical Investigation Program and the trying-out of "investigational drugs, devices, biologics, vaccines, or placebos") may be applicable, so coordinate with contracting. For procurement officials, previous regulations (FAR Section 3.104-4f) set the exclusion at \$10, instead of \$20. Current regulations, however, no longer specify this more strict prohibition on acceptance of gifts. The \$20 exclusion limit now applies to procurement officials as well.

Title 41 U.S. Code Section 423 imposes other restrictions on "procurement officials," in terms of their divulging proprietary or source selection information, and discussing employment opportunities with competing contractors (as well as post-employment restrictions). If you are a "procurement official" and if a competing contractor or another vendor seeks to either offer you a gift or discuss post-government service employment opportunities with you, you should contact your SJA office for a specific briefing concerning this area.

b. Gifts based on personal relationship. This covers the situation where the circumstances "make it clear that the gift is motivated by a family relationship or personal friendship rather than the position of the employee."

c. Meals, lodging and transportation in connection with job interviews.

d. Free attendance at widely-attended gatherings when attendance has been determined to be in the best interests of the Army "because it will further agency programs or operations." This includes attendance, and materials furnished to attendees, as well as refreshments, but not travel and lodging.

VI. Benefits Incident to Official Travel. This is a particular form of gratuity and there are special rules governing this area; it is, therefore, being handled separately. The basic

rule is that benefits earned incident to official travel belong to the government, not to the individual employee (JER Section 4-200). For more detailed guidance on the handling of travel benefits, see Deskbook article, "Gifts of Travel Benefits from Non-Federal Sources to Military and Civilian Employees."

VII. Outside Speaking, Teaching and Writing -- the Honoraria Ban. What if somebody wants you to go give a speech and pay you for giving it? After all, we all have areas of personal interest and expertise -- can you accept the payment? 5 CFR Section 2636.202 provides that an employee may not receive an outside source of compensation, to include travel expenses, "for speaking or writing on subject matter that focuses specifically on his official duties or on the responsibilities, policies and programs of his employing agency." The ban applies to "a payment of money or anything of value for an appearance, speech or article" (5 CFR Section 2636.203). The term "article" does not, however, extend to a book or "works of fiction, poetry, lyrics or script." Similarly, 5 CFR Section 2635.808a states that an employee "shall not receive compensation from any source other than the Government for teaching, speaking or writing that relates to the employee's official duties."

An activity meets this definition if it is "undertaken as part of the employee's official duties," if the circumstances "indicate that the invitation to engage in the activity was extended to the employee because of his official position rather than his expertise in the particular subject matter," if the invitation "was extended to the employee directly by a person who has interests that may be affected substantially by performance or nonperformance of the employee's official duties," if the information conveyed "draws substantially on ideas or official data that are nonpublic information," or if the subject of the activity deals in significant part with "any matter which the employee presently is assigned or to which the employee had been assigned during the previous one-year period" or "any ongoing or announced policy, program, or operation of the agency."

This is not, however, as broad as it may seem; there is an exclusion "for teaching, speaking or writing on a subject within the employee's discipline or inherent area of expertise based on his educational background or experience even though teaching, speaking or writing deals generally with a subject within the agency's area of responsibility." In addition, the speaker may permit the inclusion of his/her titles and positions as biographical details in the publication of the speaking

engagement as long as that information is given no more prominence than any other biographical data.

The U.S. Supreme Court recently struck down the Government's attempt to apply the honoraria ban across the board to any Government employee giving any speech or writing any article, regardless of its subject. See United States v. National Treasury Employees Union, 115 S.Ct. 1003 (1995). As a result of this Supreme Court opinion, the broad ban on accepting honoraria still remains in effect for GS-16 and above employees (and their military equivalents). However, the opinion permits a GS-15 or below civilian employee to accept honoraria for participation in a meeting, speaking engagement, or similar activity, so long as the employee is acting in his or her personal capacity. On the other hand, the opinion did not address the issue of whether active duty military members may also accept honoraria -- thus, the law in this area remains unclear.

As a result, the Department of Army Standards of Conduct Office, Office of the Judge Advocate General, advises that a military member may conditionally accept honoraria when the subject of his speaking, teaching, or writing does not relate to his official duties (defined above). There are two recommended options for acceptance and treatment of honoraria:

a. Direct the donor to give the honoraria to a charity. A donation to a charitable organization, including an educational institution, is permissible as long as the honoraria does not exceed \$2,000 and you do not receive an income tax credit. In addition, you and your dependents may not otherwise benefit, directly or indirectly, from the charitable donation (5 CFR Section 2636.204).

b. At the suggestion of the Standards of Conduct Office, place the honoraria in escrow pending the resolution of the Supreme Court case or congressional action. However, an adverse and retroactive Supreme Court decision on this issue could require you to repay all of the honoraria received.

Also note that the JER prohibits you from explicitly or implicitly endorsing a non-federal entity. Furthermore, if the content of your speaking presentation deals in significant part with any ongoing or announced policy, program, or operation of the U.S. Army, and you have not received proper authorization to present that material as the official Army position, then you must make a disclaimer that expressly states that the views

presented are those of the speaker and do not necessarily represent the views of the Department of Defense, or of any of its components. See Paragraph 3-307 of the JER.

Finally, note that the JER recognizes an exception for compensation accepted under specific statutory authority, citing 31 U.S. Code Section 1353 (previously discussed). More specifically, travel, subsistence, and related expenses accepted by an agency under the authority of 31 U.S.C. 1353 in connection with an employee's attendance at a meeting or similar function related to his official duties which takes place away from his duty station fall outside the prohibition.

VIII. Outside Employment. The basic rule is that one may not engage in outside employment that: (1) interferes, or is not compatible, with one's Government duties; (2) that brings discredit upon the Government or the Army; or (3) that creates a conflict of interest or the appearance of one. In terms of conflicts of interest, watch for things like working for a pharmaceutical company that supplies the hospital pharmacy; this could be a conflict of interest. Also, you should not work for an organization, company, or institution in the community where you may have to refer eligible TRICARE beneficiaries for treatment.

Although the JER itself does not prohibit outside employment or require command approval, MEDCOM Regulation 600-3 does require DOD health care practitioners to receive command approval of outside employment; see MEDCOM Regulation 600-3, Off-Duty Employment, 8 July 1998. Further, it provides that requests exceeding 16 hours per week will usually be denied. It contains both a command approval requirement and a reporting requirement. There are some further exceptions applicable to physicians. They may not engage in a solo practice or assume responsibility for a patient on a continuing basis. The employer must be advised that military duties always take priority, and may require the physician to leave his/her civilian employment without notice. Finally, those in a training program are prohibited from engaging in off-duty employment. A specific discussion of the off-duty employment issue is contained in another section of this deskbook.

IX. Gifts in the Workplace. As opposed to gratuities coming from outside the office (to include those from prohibited sources), a special set of rules govern the supervisor/subordinate relationship and the giving of gifts within the office. The danger is that without rules, some supervisors

would coerce their subordinates and compel the giving of gifts, misusing their official position for personal gain.

The basic rule is that an employee may not directly or indirectly give a gift to, or make a donation toward a gift to, an official superior, nor may an employee solicit a contribution from another employee for a gift to either his own or the other employee's official superior (5 CFR Section 2635.302). The opposite side of the coin is that an employee "may not, directly or indirectly, accept a gift from an employee receiving less pay than himself unless: (1) the two employees are not in a subordinate-official superior relationship; and (2) there is a personal relationship between the two employees that would justify the gift."

There are, though, limited exceptions. Beyond the general rule that any gifts must be voluntary, there are two basic exceptions to the prohibition; they are as follows:

A. Occasional basis gifts. This includes any occasion on which gifts are traditionally given or exchanged. An example would be gifts, other than cash, with a value of \$10 or less on Christmas, a birthday, or when gift-giving is a matter of etiquette (e.g., bringing a bottle of wine to a supervisor's house when invited for dinner).

B. Special, infrequent occasions. This applies to "infrequently occurring occasions of personal significance such as marriage, illness, or the birth or adoption of a child." It also applies to "occasions that terminate a subordinate-official superior relationship such as retirement, resignation, or transfer."

An employee may solicit "voluntary contributions of nominal amounts from fellow employees." This **employee may not solicit more than \$10 from any individual (although, an individual may voluntarily choose to donate more than \$10)**, or a total aggregate of \$300 for any gift from a donating group (JER Section 2-203). Be careful, in terms of defining the donating groups. Suppose, for example, the battalion commander is retiring and you contributed to a farewell gift from subordinate officers of one of the companies. You now discover the NCOs are going to give their own gift, and you think it would be nice to contribute to that also. Can you do so?

You can contribute to multiple donating groups, but watch out. A "donating group" is made up of all contributors to that

group's gift. If an individual contributes to more than one group, the separate groups are considered to be a single group, subject to the single \$300 limitation. In this example, then, if the first gift came to \$299, if you then contributed to the NCOs' gift, the total amount of the second gift could not exceed the sum of \$1.

Also, be careful in defining how low to go in defining the groups. If, for example, the brigade commander retires, how about a gift from each company? What about each platoon? What about each individual? There is no absolute rule here, but use a common sense test. As a general guide, strive to keep the donating groups no more than two echelons below the recipient. Use common sense, so we don't have the ugly picture of departing personnel driving away with trailers full of gifts.

X. Personal Commercial Solicitation. This is "any effort to contact an individual to conduct or transact matters involving unofficial business, finance, or commerce" (JER Section 1-228). The basic rule is that DA military and civilian employees may not make personal commercial solicitations or sales to DOD personnel who are junior in rank, grade, or position. This prohibition applies at any time, on or off duty, on or off-post, in and out of uniform. As an example, you may not peddle AMWAY or Mary Kay products, or similar commercial products to your subordinates. The same is true for your spouse: "Personal commercial solicitations by the spouse or other household member of a DoD employee to those who are junior in rank, grade, or position to the DoD employee may give rise to the appearance that the DoD employee himself is using his public office for personal gain." Accordingly, such is to be avoided where it may "cause actual or perceived partiality or unfairness... involve the actual or apparent use of rank or position for personal gain...(or) otherwise undermine discipline, morale, or authority. Before allowing this, the supervisor of the DoD employee "must consult an ethics counselor" (JER Section 5-409d).

The reason for the prohibition is to prevent the superior from coercing subordinates to buy things they don't need or want, but that they feel intimidated into buying. It reflects the rule that one may not use his official position for his own private gain. A similar rule is that government property is for the conducting of government business, not the conducting of private commercial business.

There are some exceptions. The prohibition does not include "off duty employment of DoD employees employed in retail establishments." Also, it does not cover the sale or lease of a privately owned former residence, or the sale of other personal property not held for commercial or business purposes. You can, therefore, advertise your car or other personal property in the local newspaper and sell it to a subordinate.

XI. Use of Government Facilities, Property and Personnel. 5 CFR Section 2635.704 states: "An employee has a duty to protect and conserve Government property and shall not use such property, or allow its use, for other than authorized purposes." Similarly, an employee shall use official time in an honest effort to perform official duties" (5 CFR Section 2635.705a). Likewise, an employee "shall not encourage, direct, coerce, or request a subordinate to use official time to perform activities other than those required in the performance of official duties or authorized in accordance with law or regulation" (5 CFR Section 2635.705b).

XII. Conflicts of Interest. In the area of gratuities, we saw that one may not act in order to improperly attain personal gain. The rule here reflects a similar consideration: one may not act where his interests and the interests of the Government are in conflict. No matter how hard one may try, one may not faithfully serve two masters. 18 U.S.C. Section 208 covers an employee who takes official action with regard to matters in which he has a personal financial interest.

Use a simple example - let's say I have to take official action; specifically, I have to recommend to my supervisor what sort of typewriter equipment to purchase. Let's also say that I own \$500 stock in IBM Corporation. Is it permissible for me to recommend purchasing IBM equipment, since, technically, I am just making a recommendation and am not the ultimate decision-maker? Besides, what impact would any of this have on my \$500 worth of IBM stock? The answer is that I should not participate in this decision because one may not participate personally and substantially in any particular matter in which he has a financial interest. This prohibition goes beyond ultimate decision-making, and includes acting "through decision, approval, disapproval, recommendation, the rendering of advice, or otherwise." Further, one should not participate in any particular matter that is "likely to have a direct and predictable effect" on his financial interests or the interests of a member of his household (5 CFR Section 2635.502).

In this example, would it be okay if I simply didn't recommend purchasing the IBM equipment? The answer, again, is no. Since there is a direct conflict of interest, I must either divest myself of the financial interest, or disqualify myself from taking official action with respect thereto. There is no middle ground. Deciding not to recommend purchasing the IBM equipment may not be fair to IBM. The point is that you may not take official action in this situation. Note that the financial interest of a spouse or minor child is considered to be the employee's own financial interest; in other words, the interest is imputed to the employee.

A DoD employee is also forbidden from taking action regarding an organization with which he is negotiating for future employment. After all, to the critical eye of the outsider, would it not look like the employee desired to please the organization that he hopes will soon be hiring him?

The rule is that one who is negotiating for employment with a company is deemed to have a financial interest in that company. The options are: (1) disqualification; or (2) divestiture. It doesn't matter that the prospective employer initiated the contact, unless you have rejected the offer. If you are negotiating for future employment with an entity, you are prohibited from participating as a DoD employee in an official capacity, personally and substantially in any particular matter affecting that entity (JER Section 8-200).

The rules here are not intended to prevent government employees from moving into positions in private industry. On the contrary, the JER notes that "the statutory provisions are not intended to discourage the movement of skilled professionals in Government to and from positions in industry, research institutions, law and accounting firms, universities and other major sources of expertise. Such a flow of skills can promote efficiency and communication between the Government and private activities, and it is essential to the success of many Government programs" (5 CFR Section 2736.101(c)5).

XIII. Post-Employment Restrictions.

If I am retiring from Government service, can I go to work for a Government contractor? The subject of post-employment restrictions is a complicated one. The general rule is that there is no overall prohibition against a DoD employee retiring and then going to work for private industry (to include defense

contractors). There are, however, some important statutory prohibitions of which one must be aware.

18 U.S.C. Section 207(a). There is a permanent prohibition against "switching sides." It prohibits a person from representing another in connection with a particular matter involving specific parties, in which the United States has a direct and substantial interest, and in which the individual "participated personally and substantially" as a Government employee. In other words, you could not work for the Government (personally and substantially) on a "particular matter involving specific parties" and then leave the Government and go to work for a private contractor, switching sides and now representing it (or anyone else) in an attempt to influence the United States concerning that same particular matter involving a specific party. Thus, in practice, this restriction ends up being a limited one.

The prohibition applies to representational activities in connection with particular matters involving a specific party, as opposed to the general formulation of policy, standards, objectives, procedures and regulations (5 CFR Section 2637.201c). It would not restrict your internal actions on behalf of the company where such actions involved no representational activities. Also, you could work for the Government and formulate policy, and then retire and go to work for a company in connection with a matter involving applying that policy to a particular set of facts or individuals. Participating as a government employee in the "formulation of policy, procedures and regulations... does not restrict the employee after leaving the Government as to particular cases involving the application of such policies, procedures or regulations."

There is a similar but more limited two-year "switching sides" restriction. It prohibits a person from representing another in connection with a particular matter involving a specific party, in which the United States has a direct and substantial interest and which "was actually pending under the individual's official responsibility... within a period of one year before the termination of his or her services or employment with the United States" (18 U.S. Code Section 207b). Again, this applies to the DoD employee who seeks to switch sides in a revolving-door scenario. It, too, is a limited restriction, in that it also applies "in connection with any particular Government matter involving a specific party," as opposed to the general formulation of policy (5 CFR Section 2637.202).

41 U.S.C. Section 423(d) adds additional limitations to post-government employment that apply to individuals who were formerly employed in the area of federal procurement. For example, such individuals may not work for a contractor within a period of one year after serving "as the procuring contracting officer, the source selection authority, a member of the source selection evaluation board, or the chief of a financial or technical evaluation team in a procurement in which that contractor was selected for award of a contract in excess of \$10,000,000."

Overall, the issue of post-employment representational activities is a very complex one. Employees contemplating civilian employment should consult with their ethics counselor, in terms of identifying the permissible limits of what they may and may not do. Since the prohibitions in the JER reflect underlying federal criminal statutes, companies who are negotiating with retiring DoD personnel will frequently themselves request that the employee furnish them with an ethics opinion that the contemplated negotiations are permissible.

XIV. Conclusion. Ethics, as we saw at the beginning, is knowing and doing what is right, even when you think nobody is watching you. As Government employees, we need to understand the principles that are behind, and which give life and meaning to, the rules. We have them because we need them. As supervisors, subordinates will look to us to set the example. Knowing the ethical rules and their underlying purposes will help enable you to set a proper example for your subordinates; it will also help you to make the difficult decisions that lie ahead.

