



NDTA – USTRANSCOM Transportation University

DELIVERING NATIONAL OBJECTIVES:
OPERATING IN AN INCREASINGLY DISRUPTIVE WORLD

Session: F2

**Title: Government Ethics and Interaction with
Industry**

Transportation University encourages a free flow of ideas. In the spirit of this academic setting, the views of the instructors and participants are assumed to be their own and not those of NDTA, DoD, USTRANSCOM, or anybody's parent organization/company.



Government Ethics and Interaction with Industry

United States Transportation Command
Office of the Staff Judge Advocate

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“BE IT KNOWN...”



- This is a US Government perspective on Ethical Issues involving interactions with non-federal entities (NFE).
- Every situation is different!
 - Government personnel should consult with legal counsel.
 - Non-DOD personnel should contact their own legal representative or counsel.
- The opinions expressed in this presentation are those of the presenter and do not represent the official views of USTRANSCOM or any other government entity.

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WHY do we worry about ethics?

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Sad, But True ...



Encyclopedia of Ethical Failures

- http://www.dod.mil/dodgc/defense_ethics/resource_library/guidance.htm

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Key Laws and Regulations



- 14 Principles of Ethical Conduct
- Standards of Ethical Conduct for Executive Branch Employees (5 C.F.R. Part 2635)
- The Joint Ethics Regulation (JER), DoD 5500.07-R (Change 7)
- 18 U.S.C. §§ 203, 205, 207, 208

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We will discuss:



- Involvement with Non-Federal Entities (NFEs)
- Conferences
- Meetings with Contractors
- Gifts from Contractors
- Individual Conflict of Interest/Procurement Integrity
- Contractors in the Workplace

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Scenario #1



A DOD leader sends out an official “End of Year Status” email to all employees. The email covers a variety of topics. Near the end, it mentions the Association of Community Members Supporting Our Military (ACMSM*). The email states:

“The impact of ACMSM on our local military community is undeniable. In the last year, the local chapter provided 70 local military families with \$25,000 in emergency assistance. The national organization has tirelessly lobbied for better military pay and benefits. I believe that part of being a professional is giving back to the community. Giving to organizations like ACMSM is a great place to start.”

The boss also states he will be the keynote speaker at ACMSM’s upcoming Valentine’s Day Dinner & Silent Auction. The email contains a hyperlink to ACMSM’s membership web page and the email address of the local ACMSM membership/fundraising coordinator. On the ACMSM membership web page, the boss is listed by rank, name, and current DoD position as the ACMSM state membership drive co-chairman. His official mail address is also listed on the web page.

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* Not a real organization



What Are the Issues?



Involvement with NFEs

- Endorsement of NFEs
- Support to NFEs
- Attendance at NFE meetings/events
- Managing/advising NFEs

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Involvement with NFEs



- What is an NFE?
- How does that differ from a Prohibited Source?
- What are trade associations like NDTA – NFEs, Prohibited Sources, or both?
- Does it matter?

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Involvement with NFEs



- General Rule – no unauthorized endorsement of / support to NFE.
- Limited Exceptions
 - Endorsement: CFC, Service funds
 - Support: by Personnel (i.e., speaking at an event)
 - Official capacity? Not if it's a fundraiser...
 - If it's not a fundraiser? Maybe OK; apply Seven-Factor analysis
 - Personal capacity? Probably OK.
 - Support: of Non-Personnel Logistics (i.e., other government resources)
 - Seven-Factor analysis

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Involvement with NFEs



- Can a DOD general/flag officer sit on the Board of Directors of an NFE?
 - Official Capacity – this is a really bad idea. It may also be a crime.
 - Personal Capacity – might be OK (but why was the position offered?)
 - Senate Armed Services Committee policy re 3 and 4-star GOs
- How about simply attending a meeting or event?
 - Officially, or personally?
 - Who decides if the event is “official”?

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Involvement with NFEs -- Takeaways



- NFEs are not government organizations.
- Their work/events do not generally constitute official business.
- NFEs who are Prohibited Sources (i.e., contractors) get stricter scrutiny
- Consult your ethics advisor

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Scenario #2



The Armed Forces Communications Association is sponsoring a 3-day conference in San Diego. Your commander is invited to speak on the 2nd day. She is a member of the Association and really wants to do this.

- The Association is waiving the fee for her lunch on day of her speech.
- It is also waiving the conference registration fee for the entire 3 days.
- The Association has also invited her to attend a general reception (sponsored by a DOD contractor) on the first night of the conference.
- She would like to attend a formal dinner for Association members on the second night. It costs \$35 (not included in registration), and the Association did not mention that in its waiver offer.

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What Are the Issues?



- Special rules for Conferences (vice fundraisers, other events)
- Attendance/speaking at an NFE Conference
- Gifts
 - Free attendance, from NFE sponsor
 - Food/entertainment, from Contractor

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Conferences



- HUGE interest item, heavily regulated
 - OMB (May 2012)
 - Provisions in JER, JTR, FMR
 - P.L. 113-6 (introduced oversight -- reports to Congress; forbids use of funds, etc.)
 - DoD Guidance Version 4.0 (June 2016)
- Three Types of conferences
 - Official DoD Conferences and Meetings
 - NFE-sponsored training conferences
 - Co-sponsored (co-managed) by DOD and an NFE

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Conferences



Gifts from Contractors, Take 1

Relating to conferences

- General Rule re Gifts
- Exceptions to the General Rule
 - Government employees requested as speakers -- free attendance/meals
 - Widely attended gatherings (WAGs)
 - 31 USC Section 1353 Travel



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Conferences - Takeaways



- HEAVILY regulated, major Congressional (and public) interest item.
- Rules change frequently.
- Must get high-ranking approval; reporting requirements
- Keep legal counsel involved

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Scenario #3



You are an Army leader assigned outside the US. Next week you will be on official travel to the United States Army Association of Supporter's Annual Symposium* (USAAS-AS) in Washington, DC. Your secretary just came into your office and said:

“Sir, I received a call from your old friend LTG(Ret.) Tom Smith. He asked if you could drop by and see him when you are in Washington next week for the USAAS-AS. He suggested meeting up at the Dynamo Corporation’s reception at the Hilitz Hotel on Friday night. He said that as Dynamo’s Chief Operating Officer, what good would he be if he could not find a ticket for a fellow West Pointer like you? He also mentioned buying you and your spouse dinner later that evening. I know that you two go way back, so I have penciled the reception in on your itinerary.”*

* Not a real organization

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What Are the Issues?



- Meetings with contractors
- Gifts from contractors
- Meetings with former government employees

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Meetings with Contractors



TCJA's Top 10 Advice List for Government Personnel:

10. Don't offer special assistance or make commitments beyond your authority
9. Protect Advance Procurement Information/other protected (FOUO) information
8. Don't ask for personal favors or negotiate for employment

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Meetings with Contractors



7. Avoid appearance of favorites.
6. Do not meet with contractors once a solicitation has been released (or at least don't talk about that solicitation).
5. Do not direct a contractor to take action beyond the scope of the contract or consent to a change in contract requirements.

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Meetings with Contractors



4. Avoid discussing matters that are the subject of current litigation or criminal investigation; REAs or TDRs.
3. Be careful meeting with (recent) former Government Employees on Government business-related matters

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Meetings with Contractors



2. Know the Gift Rules; avoid gratuities.
1. Both criminal and civil penalties may apply (not to mention, consequences in the acquisition process).

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Meeting with Contractors – Takeaway



- Expect Government Personnel to be in “receive mode”
- Prevent an unfair competitive advantage
- Be concerned about appearance as well as reality

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Meetings with Contractors



Gifts from Contractors, Take 2

Relating to Meetings with Contractors

- General Rule re Gifts
- Practical Analysis:
 - Is it a “gift”?
 - If Yes, is there an exception?
 - If there is an exception, would the appearance undermine integrity



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Scenario #4A – Boeing (USAF)



“Biggest Pentagon Scandal in 20 Years” – CBS News

Sentenced to 9 months in prison, fined \$5,000 and ordered to perform 150 hours of community service.

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Scenario #4B – Ft. Bliss (Army)



Former Ft. Bliss commanding general MG Dana J. H. Pittard, investigated for steering a \$492K defense contract to a firm run by two former West Point classmates.

Reprimanded by Secretary of Army in Feb 2015, retired.

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Scenario #4C – “Fat Leonard” (Navy)



- Bribery; passing classified info
- As of July 2016, 200 under investigation; 30 admirals.
14 Navy officials arrested
 - 6 Admirals
 - Latest was June 2016 (to be sentenced)
 - 3 censured, retired, one as O-6
 - 1 Captain (46 months prison, \$100K fine)
 - 2 Commanders (6 yrs prison)
 - NCIS special agent
- Navy cancelled all GDMA contracts
- “Fat Leonard” facing 25 years, \$35M forfeitures.



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What are the issues?



- Crime and penalties (bribery)
- Financial Conflicts of Interests
- Procurement Integrity
 - Negotiating for employment
 - Imputed interests

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Financial Conflicts of Interest



18 USC § 208:

An executive agency employee may not:

- Participate **personally and substantially**
- In his/her official capacity
- In any **particular matter**
- In which he or she has **a financial interest**
- If the particular matter will have a **direct and predictable effect** on that interest.

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Financial Conflicts of Interest



- Procurement Integrity Act - 41 USC § 2101, *et seq.*
- Provisions
 - Prohibits disclosure or receipt of procurement information
 - Prohibits acceptance of compensation from contractors
 - Post-employment restrictions
- Criminal and civil penalties
 - 5 years prison
 - Fines (\$50K for individuals; \$500K + 2X comp for orgs)

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Financial Conflicts of Interest



- **Negotiating for / Seeking Employment**

- If you participate “personally and substantially” in a competitive procurement, and

- If that procurement > SAT (\$150K), and

- If you are contacted by an offeror about possible non-Federal employment,

- you must:

- **Report** the contact in writing to your supervisor and to designated ethics official, and
- **Immediately reject** the possibility of employment, or
- **Disqualify** yourself in writing from any further participation.

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× **Deferring a decision until later is NOT a rejection.**



Scenario #5



Bob is a contractor employee who has worked in various positions at Camp Swampy for almost 20 years. He is well-liked and respected. He will be retiring shortly. His co-workers (all military or government employees) want to give him a retirement luncheon/party on his final work day, and farewell gifts similar to what military or government civilians receive when they retire. His supervisor (military) has also written him up for an award.

- What if Bob’s company throws him a lunch, invites the government employees to attend and picks up the tab for everyone?
- Can Bob and other contractors attend the command’s “Hail & Farewell” All-Hands meeting?

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What are the issues?



- Gifts FROM Contractors (can the company throw him a party and invite the office?)
- Gifts TO Contractors (can we host a party/pay for his lunch/buy him a gold watch?)
- Time management
- Awards

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Contractors in the Workplace



Gifts from Contractors, Take 3

- General Rule re Gifts
 - (Does not prohibit gifts FROM government employees TO contractors)
- Relevant exceptions:
 - \$20/\$50 rule
 - Anything for which government pays fair value

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“Always do right. This will gratify some people and astonish the rest.”

-- Mark Twain

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QUESTIONS?

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