



ACQUISITION RESEARCH PROGRAM SPONSORED REPORT SERIES

**An Analysis of Ethics Laws, Compliance with Ethical
Standards, and Ethical Core Competency within the
Department of the Army**

15 June 2016

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Prepared for the Naval Postgraduate School, Monterey, CA 93943.



The research presented in this report was supported by the Acquisition Research Program of the Graduate School of Business & Public Policy at the Naval Postgraduate School.

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ABSTRACT

This project examines the Department of the Army (DA) ethics laws, compliance with ethical standards, and ethics training core competency requirement to address Acquisition Research Program Topic #T15- 013: “Ethics—Can it be taught?” What changes are needed in civilian and military leadership training to address recent ethical violations and to ensure that future leaders are well-grounded in their ethical responsibilities and standards of conduct?

This research explores the disparities between the DA ethics training objectives versus the subjectivity involved in applying ethical principles to decision-making. We analyze the DA ethics training courses, policies, and procedures. The project explores the distinctions between ethics, values, integrity, standards of conduct, and morality as they relate to clearly defined ethics rules and scenarios where ethical laws or policies may be ambiguous or absent.

The research methodology includes a comparative analysis of the Joint Ethics Regulation (JER), the Federal Acquisition Regulation (FAR), and DA ethics training objectives. We also provide an analysis of adjudicated cases involving ethical failures to address changes needed in DA training to ensure that future leaders understand their ethical responsibilities and standards of conduct.



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ACKNOWLEDGMENTS

Nancy Lyons: To my thesis partner, Nate Wienhoff, thank you for the great discussions and outstanding support throughout our educational experience at NPS. I would also like to acknowledge the support and encouragement of Mr. Harry Hallock, Deputy Assistant Secretary of Army (Procurement; DASA[P]) and my supervisor Mr. Rodney H.C. Schmidt, director, Expeditionary Contracting, DASA(P). Thank you for investing in my professional development. To my best friend, Arthur Martin, thank you for the support and shoulder to lean on when life became hectic over the past two years. I could not have done this without you.

Nathan Wienhoff: I would like to thank my partner, Nancy Lyons, for her outstanding teamwork; it was truly a pleasure. I would also like to extend my deepest gratitude to our advisors, Dr. Thomas Bagwell, Jr., and Dr. Patricia Cook, for their instrumental guidance, sponsorship, and support. To the Acquisition Research Program editors, thank you for your time and services. A special message of appreciation goes to my supervisor, Mr. Jeffery Knight, division chief, Aviation Missile Research Development and Engineering Center (AMRDEC) Contracts Division A, for the recommendation into the NPS program and for his continued understanding and support throughout the process. Last but certainly not least, I would like to thank my family and loved ones for their continued belief in me and encouragement, which has kept me motivated and in good spirits.



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Disclaimer: The views represented in this report are those of the author and do not reflect the official policy position of the Navy, the Department of Defense, or the federal government.



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LIST OF ACRONYMS AND ABBREVIATIONS

ADRP-1	Army Doctrine Reference Publication One
AMC	Army Materiel Command
ARP	Acquisition Research Program
AWC	Army War College
BBP 3.0	Better Buying Power 3.0
BEGA	Board of Ethics and Government Accountability
CAS3	Combined Arms and Services Staff School
CAPE	Center for Army Profession and Ethic
C.F.R.	Code of Federal Regulation
CGSC	Command and General Staff College
COA	Course of Action
DA	Department of the Army
DOD	Department of Defense
DOJ	Department of Justice
EO	Executive Order
FY	Fiscal Year
GAO	Government Accountability Office
IG	Inspector General
JAG	Judge Advocate General
JER	Joint Ethics Regulation
NDAA	National Defense Authorization Act
NPS	Naval Postgraduate School
OGE	Office of Government Ethics
U.S.	United States
SES	Senior Executive Service
SOCO	Standards of Conduct Office
SWOT	Strength, Weakness, Opportunity, Threat
VBDM	Values-Based Decision-Making
WOSSC	Warrant Officer Senior Staff Course



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EXECUTIVE SUMMARY

This project proposes that the Department of the Army (DA) mandatory compliance-based ethics training courses falls short in providing a framework for personnel to make well-reasoned, ethical business decisions. The trust U.S. taxpayers place in DA professionals to conduct business in an ethical manner creates stability and support for the DA mission and vision. Nevertheless, that trust is compromised by ethical failures, hindering the DA's ability to accomplish its mission and vision.

The on-going ethical violations by leaders at all levels of the government drive the need to determine what is causing a lapse in judgment. An analysis was conducted comparing the DA objectives for ethics training courses with the subjective application of those ethical principles by DA personnel. A review of the DA ethics training courses, policies, and procedures, which were designed to establish a set of core principles, were determined to be ineffective in altering unethical behavior because compliance-based ethics training courses are less effective than scenario-based, peer-to-peer training courses. To be effective, ethics training should emphasize values-based ethical decision-making (VBDM) and require its use in lieu of compliance-based factors.

An analysis of DA ethics training determined that current ethics training requirements failed to create, motivate, and sustain a command climate that encourages ethical decision-making. An ethical culture is a reflection of senior leadership; therefore, command climate surveys should be conducted annually to assess the health of the organization. Survey results should be linked to performance standards of DA senior leadership in an effort to ensure an ethical work environment is maintained and employees who adhere to the DA's code of conduct are retained.



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I. INTRODUCTION

The trust that U.S. citizens have in Department of the Army (DA) professionals creates stability. Nevertheless, that trust is compromised by ethical failures, hindering the DA's ability to accomplish its mission and vision. DA professionals are held to a code of conduct. To ensure compliance with the code of conduct, the DA provides annual ethics training courses designed to standardize a code of ethical conduct in decision-making. This project examines the DA's objectives for the annual ethics training course required by all DA personnel, as well as the subjective application of those ethical principles by DA personnel examined through ethical violations and reports.

A. BACKGROUND

The National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2015 House Report 113–446 included a provision that “directs the Comptroller General of the United States to initiate a comprehensive review of the Department of Defense (DOD) and military departments’ programs on professionalism, ethics, and integrity in the armed services for officers and enlisted service members” ([NDAA], 2014, p. 142) There are several on-going investigations by the DOD Inspector General (IG), the Government Accountability Office (GAO), and the Department of Justice (DOJ) concerning allegations of ethical violations within the DOD and military departments. These events contextualize the current project. The area of research for this project is an analysis of distinctions between the DA teaching objectives for ethics courses versus the subjectivity involved in applying ethical principles to decision-making. We analyze the DA ethics training courses, policies, and procedures, which were designed to establish a set of core principles by which to conduct business. The project explores the distinctions between ethics, values, integrity, standards of conduct, and morality, as they relate to clearly defined ethics rules and scenarios where ethical laws or policies may be ambiguous or absent.



B. OBJECTIVE

The following objectives for this project were derived from the Naval Postgraduate School (NPS) Acquisition Research Program (ARP) topic #T15-013: “Ethics–Can It Be Taught?” The ongoing saga of ethical violations by leaders at all levels of the government drives the need to determine what is causing this lapse in judgment and then occasions an assessment of what changes can be made in training, assignments, and performance expectations.

C. RESEARCH QUESTIONS

Research questions were derived from the original proposed ARP topic. From a scientific standpoint, analysis was conducted to answer the reverse question: What would make one think ethics could not be taught?

Our primary research question is as follows: Are prescribed business practices within the DA adequate to ensure that decision-making reflects high standards of conduct? This question examines whether ethics training requirements create, motivate, and sustain a command climate that encourages ethical decision-making. When ethics rules do not provide a clear answer, is there adequate subjective judgment used in determining if the proposed activity meets ethical standards? Ethics rules are “reflected in law, Army Values, creeds, oaths, ethos, and shared beliefs embedded within Army culture” (Center for the Army Profession and Ethic [CAPE], 2014, p. 11).

The following are our secondary research questions:

Secondary Question 1: Is DA mandated annual ethics training consistent with federal guidelines? We use a strength, weakness, opportunity, and threat (SWOT) analysis to examine DA-mandated annual ethics training and how it compares to federal guidelines for ethics, ethical responsibilities, and standards of conduct.

Secondary Question 2: What changes can the DA institute to address ethical violations to ensure that future leaders understand and comply with their ethical responsibilities and standards of conduct? Utilizing data collected from previous



research, we examine ethical nuances and the appearance of ethical violations versus actual ethical violations to provide recommendations as needed.



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II. PURPOSE

In this chapter, we conduct a literary review and analysis of the objectives of ethics laws, compliance with ethical standards, and ethical core competency within the DA. The research provides a comprehensive analysis of ethics policies, regulations, and guidelines regarding the application of ethics training courses. The research compares the DA ethics training objectives and the actual application of the material taught. The project also examines ethical dilemmas that occur when ethical regulations are ambiguous or absent. The following sections include an explanation of the benefits of this project, the scope and research methodology used, and the thesis statement.

A. BENEFITS

This project investigates ethical training courses and core ethical competency requirements to identify gaps in Army ethics training courses. The research examines ethical regulations and considers the impact of new policy objectives regarding ethical decision-making. A root-cause analysis of various investigations and reports helps determine why ethical failures have occurred and whether trends or similarities exist in these cases or if each failure was unique. This analysis identifies possible improvements to DA ethics training that can ensure that not only future leaders, but all DA personnel, are well grounded and have a clear understanding of their ethical responsibilities and standards of conduct. This study also explores ways of improving and aligning the objectives of DA ethics training courses with the application of what was taught in those training courses.

We do not evaluate ethics instruction provided in military and civilian leadership courses such as Command and General Staff College (CGSC) and Combined Arms and Services Staff School (CAS3) for the military and the Civilian Education System leadership training for civilians because they are additional education courses, not mandatory training courses required annually for all DA personnel.



B. SCOPE AND METHODOLOGY

The scope of this project encompasses an examination of current mandatory ethics training to determine whether it is adequate to ensure that decision-making reflects high standards of conduct. It also determines whether current ethics training is in keeping with Army ethical standards, which Army Doctrine Reference Publication One (ADRP 1) describes as “the evolving set of laws, values, and beliefs, embedded within the Army culture of trust that motivates and guides the conduct of Army professionals bound together in common moral purpose” (Department of the Army [DA], 2015, p. [1-2]). A root cause analysis of various investigations and reports helps to determine why ethical violations occurred; possible trends, similarities, or aberrations in ethical violations; and changes needed in leadership training to reduce the risk of ethical violations. Additionally, an in-depth SWOT analysis of ethical training courses identifies areas for improvement.

In the development of this project, we conduct an in-depth analysis and examination of ethics regulations and the impact of new policy objectives regarding ethical decision-making using various online resources. We evaluate various investigations and reports to determine root causes that may have contributed to ethical violations, and we review reading material from various NPS courses. In conducting the SWOT analysis, we examine library material and internet articles.

As part of the analysis of whether ethics can be taught, we examine Statute 5 Code of Federal Regulation (C.F.R.) 2635.101(b)–Basic obligation of public service, which lists 14 principles that federal employees are sworn to uphold (see Appendix A). This research examines whether ethics training course objectives adhered to the 14 tenets, which were designed to create a framework for ethical conduct for both military and civilian federal employees. At the conclusion of this research, we provide recommendations to improve and enhance current ethics training courses and other processes and procedures that were identified during research.



C. THESIS STATEMENT

The DA annual ethics training should provide a distinction between compliance with laws and regulations versus ethics alongside values and integrity in decision-making. Training should emphasize values-based, ethical decision-making and require its use in lieu of compliance-based factors. It should require a new test that utilizes these factors in critical decision-making scenarios, and it should mandate annual command climate surveys of DA leadership by DA personnel to assess the health of the organization. The impact and effectiveness of ethics training achievements should be addressed in performance standards and evaluations of DA employees designated as ethics advisors and instructors, as well as survey results for DA senior leadership, which would, in turn, ensure an ethical work environment that retains employees who adhere to the DA code of conduct. In this climate of budget constraints and reduction of manpower, the DA does not have enough personnel with the skill sets necessary for coordinating some of the recommended changes; additional DA leader-mandated ethics education should be required.



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III. LITERATURE REVIEW

This project explores the question, what would make one think ethics cannot be taught? In the first two sections of this chapter, the distinctions between ethical acts and laws are defined, along with the ethical responsibilities and standards of conduct for DA employees. Section C compares “taught” and “educate” as they relate to the DA annual ethics training objectives. In the next three sections, ethical (D), values-based (E), and compliance-based (F) decision-making choices are explored. The decision-making plans and models that are further defined in these sections are not found in current ethics training, but could meet the needs required and requested by the DA. Section G addresses the moral courage that DA employees need to ensure ethical business is conducted and to report violations. Finally, Section H looks at management oversight, including potential reasons why violations still occur, and the special role leaders play in ethics.

A. ETHICS VERSUS LAWS

To begin the discussion regarding ethics, it is imperative to distinguish between ethics and laws. *Ethics*, as defined by the Joint Ethics Regulation (JER) DOD 5500.7-R, “are standards by which one should act based on values. Values are core beliefs such as duty, honor, and integrity that motivate attitudes and actions” (Secretary of Defense, 2011, p. 118). In accordance with the *Army Ethic*, “These values tell us what we need to be in every action we take” (CAPE, 2014, p. 4). In comparison, *laws* are “rules that a community recognizes as regulating the actions of its members and may be enforced by the imposition of penalties” (“Law,” n.d.). Laws are normally written (as opposed to being unwritten or informal) and are specified with precision in an objective code. The U.S. Office of Government Ethics (OGE) published the *Compilation of Federal Ethics Laws* that included 104 pages of laws and statutes for ethics officials to use when “helping federal employees to fulfill the public trust placed in them when they enter public service” (OGE, 2015).



The fundamental difference between laws and ethics are that laws require compliance to a set of rules, whereas ethics are personal and values-driven, giving ethics a “subjective” element. To hold a leadership position in the DA requires going beyond what the law demands. According to Weinstein’s article in *Bloomberg Business*, leaders should conduct business so that “the answer to ‘What should I do?’ should therefore not be, ‘What can I get away with legally?’ but ‘What does ethics ask or even require of me?’” (Weinstein, 2007). Conduct can be perceived as ethical based on an individual’s value system when laws are silent, in grey areas in which the law is not clear, or in situations that require noncompliance with a set of laws. Compliance with laws “is something that the government requires you to do” (Watson, 2014). Since laws are open to interpretation, compliance with laws does not “mean people are not going to be behaving unethically or not have an environment that encourages unethical behavior” (DiPietro, 2014). Therefore, what is considered legal based on compliance to a set of laws may be perceived as unethical behavior based on someone’s value system.

For example, waterboarding, an interrogation technique that simulates drowning, that was used on terror suspects during the Iraq War as a method for gathering intelligence information was in compliance with the law. President George W. Bush “approved use of the tactic on Khalid Sheik Mohammed, a plotter of the September 11, 2001, attacks, adding that when he was told that it and other harsh interrogation techniques were legal, he ordered: “Use ‘em” (Kornblut, 2010). Upon taking office, President Barack Obama banned the use of waterboarding and in subsequent interviews called waterboarding and other harsh interrogation techniques “torture” (Kornblut, 2010). The International Committee of the Red Cross deemed waterboarding to be torture because it “causes severe pain or suffering, whether physical or mental, inflicted for a purpose, such as obtaining information or a confession, exerting pressure, intimidation or humiliation,” (Bravin, 2014) and therefore was in violation of the Geneva Conventions. Yet, the Bush administration declared “that al Qaeda and Taliban detainees were not protected by the Geneva Convention, and secret Justice Department memos asserted U.S. law imposed almost no restraints on interrogation methods the president believed were necessary for national security” (Bravin, 2014).



The use of the waterboarding as an interrogation technique is an example of how laws can be subject to interpretation. In accordance with the U.S. Justice Department's interpretation of torture, waterboarding and other harsh interrogation techniques were legal. Still, an individual ordered to use harsh interrogation techniques may deem them unethical and immoral. Therefore, "the ultimate standards for deciding what we ought to do are ethical, not legal, ones" (Weinstein, 2007).

B. ETHICAL RESPONSIBILITIES AND STANDARDS OF CONDUCT

DA employees are required to adhere to certain ethical standards of conduct, and they have a responsibility to conduct themselves with integrity. All ethical requirements and guidance can be found in the *Joint Ethics Regulation DOD 5500.7-R* (Secretary of Defense, 2011). Additional general employee responsibilities include the following:

- Abide by the ethical principles established by Executive Order (EO) 12674 (Reference (q)), in subsection 12-100 of this Regulation, ethics statutes, and the ethics regulations promulgated by OGE and the DOD there under;
- Set a personal example for fellow DOD employees in performing official duties within the highest ethical standards;
- Report suspected violations of ethics regulations in accordance with subsection 10-200 of this Regulation;
- Perform all official duties so as to facilitate Federal Government efficiency and economy;
- Attend ethics and procurement integrity training as required;
- File financial and employment disclosure reports as required. (Secretary of Defense, 2011, pp. 14-15)

Despite the regulations in place along with the additional expectations, ethical violations continue to occur. Further investigation into the required annual ethics training could provide additional insight to the ethical problems at hand.



C. WHAT WOULD MAKE ONE THINK ETHICS CANNOT BE TAUGHT?

The origins of ethics are rooted in Greek philosophy. Ethical studies conducted by Socrates concluded that “ethics consists of knowing what we ought to do, and such knowledge can be taught” (Velasquez, Andre, Shanks, S.J., & Meyer, 1987).

1. Teach

To *teach* means “to impart knowledge of or skill in; give instruction in.” (“Teach,” n.d.) The DA, Office of General Counsel, teaches in-person or online mandatory annual ethics training for all personnel who are required to file an OGE Form 278 Executive Branch Personnel Public Financial Disclosure Report or an OGE Form 450 Financial Disclosure Report. In accordance with OGE regulation, some of the required filers are personnel in the following covered positions:

Officers and employees (including special Government employees, as defined in 18 U.S.C. § 202) in positions that (1) are paid under a system other than the General Schedule, e.g., Senior Executive Service (SES), and (2) have a rate of basic pay equal to or greater than 120% of the minimum rate of basic pay for GS-15 of the General Schedule; members of the uniformed services whose pay grade is O-7 or above; and officers or employees in any other positions determined by the Director of the Office of Government Ethics to be of equal classification. (OGE, n.d.)

In 2015, to comply with OGE annual ethics training requirements, the Office of the Army General Counsel conducted in-person training. The following is a synopsis of the teaching objectives:

- Compliance with ethics rules is a minimum obligation that all federal employees accept as a condition of employment.
- Positions that require filing of financial disclosure forms involve exercise of discretion.
- There is great need to maintain public trust in methods used to manage programs and operations.
- Integrity of the acquisition process is paramount (Office of the Army General Counsel, 2015).

The Office of the Army General Counsel does not indicate that teaching compliance with ethics policies has an effect or impact on the decision-making process.



Merely adhering to training objectives does not ensure that DA leadership has learned and is therefore educated in ethics. As Burrus (2015) stated, “You train people for performance. You educate people for understanding.”

Ethics training courses are designed to teach laws governing conduct and regulations to meet OGE compliance requirements. With ongoing ethical scandals in the DA, “there is a growing suspicion that legal compliance alone is not sufficient to promote responsible practices and to maintain the public trust” (Schmidt, 2008). Some professors believe it is not possible to teach right from wrong; instead, they might try to “help people with ideas about how to make critical decisions” (Cohen & Burns, 2006). Others believe that while ethics courses have “a very low chance of changing people’s behavior in the long run, they are still an essential starting point for laying out expectations” (Cohen & Burns, 2006).

Training objectives of DA ethics courses impart compliance boundaries that establish what is determined to be right or wrong in an effort to inform DA leadership of the consequences of nonconformance to ethical laws and regulations. Nonetheless, “members across the Army Profession have noted that no single source document exists to identify or define the Army culture and ethos” (CAPE, 2012, p. 14). The *Army Ethic* states, “we cannot expect that Army Professionals will be worthy of Trust—through consistent demonstration of Character, Competence, and Commitment—without explicit programs to provide for their professional development” (CAPE, 2014, p. 8).

2. Educate

To be educated in ethics differs from being taught rules of conduct. To *educate* means “to develop the mental, moral, or social capabilities of, especially by schooling or instruction.” (“Educate,” n.d.) An education in ethics stems from various sources like “childhood upbringing, a dramatic or otherwise pivotal life experience, religious beliefs, discussions with family, colleagues, and friends, and the ethical teachings of whatever philosophers the person may have read” (Head, 2006). These elements shape an individual’s understanding and perception of right and wrong behavior.



OGE mandates annual ethics training in either online or lecture format that is geared towards ethical compliance. The following was found in the article, “A Meta-Analytic Investigation of Business Ethics Instruction:”

The role of criteria, study design, participant characteristics, quality of instruction, instructional content, instructional program characteristics, and characteristics of instructional methods as moderators of the effectiveness of business ethics instruction were examined. Overall, results indicate that business ethics instructional programs have a minimal impact on increasing outcomes related to ethical perceptions, behavior, or awareness. (Waples, Antes, Murphy, Connelly, & Mumford, 2009, p. 133)

The online ethics training resources are provided by the Defense Acquisition University, which establishes a baseline for ethics training courses across the DOD. In reviewing the content from CLM 003—Overview of Acquisition Ethics and the DOD Standards of Conduct Office (SOCO), we observed that the model values-based training sample slides were designed to be conducted as a one-directional professor-to-student construct.

D. ETHICAL DECISION-MAKING

Ethical decisions are based on “standards by which one should act based on values. Values are core beliefs such as duty, honor, and integrity that motivate attitudes and actions” (Secretary of Defense, 2011, p. 118). In reviewing *The Army Ethic* and ADRP 1, we discovered that the goal of the ethics instruction program is to increase awareness of ethical issues with hopes of preparing DA personnel to make better ethical decisions. The JER states, “DOD employees are required to accept responsibility for their decisions and the resulting consequences. This includes avoiding even the appearance of impropriety because appearances affect public confidence. Accountability promotes careful, well thought out decision-making and limits thoughtless action” (Secretary of Defense, 2011, p. 118). Our research examined two factors that impact ethical decision-making: perception and reasoning.



1. Ethical Perceptions

Perception is defined as “intuitive recognition or appreciation, as of moral, psychological, or aesthetic qualities; insight; intuition; discernment” (“Perception,” n.d.). Perception influences decision-making based on what is perceived to be right or acceptable decisions based on one’s values, morals, integrity and code of conduct. Leadership’s ethical perceptions are based on “their perception of what reality is, not on reality itself” (Robbins, 2001). Perceptions are based on personal experiences and religious and philosophical influences. The following factors influences one’s perception:

- The Perceiver—attitudes, motives, interests, experiences, expectations
- The Target—novelty, motions, sounds, size, background, proximity, similarity
- The Situation—time, work setting, social situation (Robbins, 2001).

Ethical perceptions are situational and vary based on the perceiver’s assessments of consequences. It is possible for two people to view the same situation differently based on the perceiver’s attitudes, motives, interests, experiences, and expectations.

Ethical perception

is the driver of the entire decision-making process, is concerned with a person’s recognition of a moral issue and own moral responsibility. A person who does not recognize an ethical issue will either not act on the matter or is likely to use other criteria such as economic rationality to resolve the issue. (Tsertsvadze, Das, Anjaparidze, Mesabliashvili, & Aivaziani, 2010, p. 226)

2. Ethical Reasoning

Ethical reasoning is defined as “standards that are defined by personal values which come into play when the person faces certain dilemmas or decisions” (“Ethical Reasoning,” n.d.). When making decisions, people’s interpretation of ethical versus unethical decisions are based on their personal values. People develop values and ethical reasoning based on five criteria:

- their concepts and beliefs



- desirable end states or behaviors
- specific situations
- selection or evaluation of behavior and events
- ordering of relative importance. (Hitlin, 2003, p. 119)

Ethical laws and regulations may be in conflict with a person's values, morals, and integrity and, therefore, may be deemed unethical according to that person's reasoning process. Ethical reasoning is a process that helps DA personnel determine the appropriate course of action (COA) when making decisions. The COAs chosen should be ethical and consistent with DA values. On the other hand, when the DA values (loyalty, duty, respect, selfless service, honor, integrity, and personal courage) conflict with personal values, the result is an ethical dilemma. DA personnel may also face moral dilemmas when loyalty is expected for cohesion of the unit or team, but that loyalty is in direct conflict with a person's honesty and integrity. When a breakdown occurs between organizational and personal values, ethical reasoning forms a framework for understanding ethical implications and consequences of a decision. Ethical reasoning is not a process used only when ethical dilemmas occur, but should be the foundation of the decision-making process.

Traer (2007) created the ethical reasoning model depicted in Figure 1. The model can be used to address questions of a leader's ethical rights, duties, character, and responsibilities based on the leader's reasoning and perception of consequences. As stated earlier, leaders should make decisions based on "What should I do? What does ethics ask or even require of me?" (Weinstein, 2007) According to Traer (2007), "The results of answers to these questions become our ethical presumption (our moral hypothesis) as to how we should act and, as we act, who we should be. While conducting research for this project, we were unable to locate a depiction of the ethical reasoning process in either DOD or DA ethics training and leadership material.



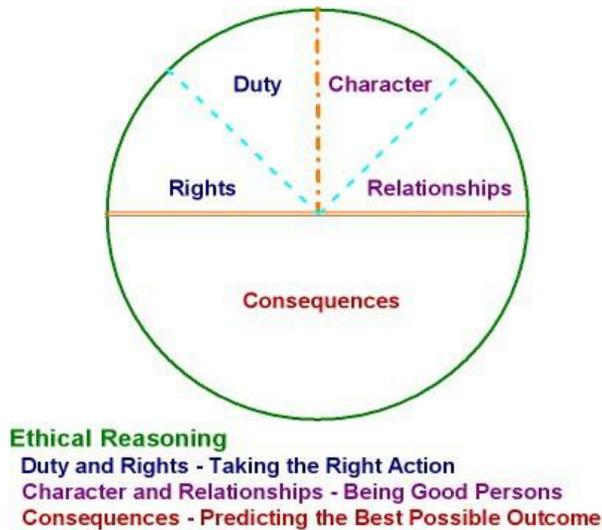


Figure 1. Ethical Reasoning Model. Source: Traer (2007).

3. Ethical Decision-Making Plan

Leaders in the DA make very important decisions on a regular basis that impact mission, budget, and personnel. Some decisions are fairly routine with no ethical consequences. Conversely, other decisions require addressing “What should I do?... What does ethics ask or even require of me?” (Weinstein, 2007). To assist leaders with navigating ethical dilemmas, the secretary of defense published the following ethical decision-making plan in the JER to highlight ethical consequences and alternative solutions:

- Define the Problem. Proceed from a general statement of the problem to specific statements of the decisions to be made. As you take the following steps, such as identifying goals and naming stakeholders, new problems or needed decisions may become apparent. Be willing to add these to your problem list as you go.
- Identify the Goal(s). Proceed from a general statement of an end result both long term and short term. Goals are something to strive toward. They are statements of the best possible results. The very best is not always achieved for everyone. Many problems do not allow for “win/win” outcomes. Be prepared to fall somewhat short of some goals for the sake of ethics and other considerations.
- List Applicable Laws or Regulations. Laws and regulations are basic constraints within which official decisions are made. Until all relevant



laws and regulations are considered, ethical decision-making is impossible. Although it is conceivable that an ethical decision could violate a law or regulation, such circumstances are rare.

- **List the Ethical Values at Stake.** Listing the ethical values at stake can awaken you to problems and goals that you may not have otherwise considered. It may alert you to stakeholders you may not have recognized. Listing the values reminds you of your commitment to them at a time when the stress of the problem may cause you to forget.
- **Name All the Stakeholders.** A stakeholder is anyone who is likely to be affected by a decision. Many stakeholders will be apparent because of the previous steps you already followed. More will occur to you as you give the matter a few minutes of thought. Do not forget to include yourself and the people who may depend on you for support, both at work and at home. As you list the stakeholders, try to note the way your decision could affect them. In other words, name what is at stake for the stakeholder.
- **Gather Additional Information.** This step is frequently overlooked. The stress from the problem urges speedy solutions. Instead, hasty decisions usually create problems of their own. Take the time to gather all necessary information. Ask questions, demand proof when appropriate, check your assumptions.
- **State All Feasible Solutions.** By this time, some feasible solutions will have presented themselves. Others may be found by sharing the lists and information you have pulled together and “brain storming.” As you state the feasible solutions, note which stakeholders could be affected and what might be gained or lost.
- **Eliminate Unethical Options.** There may be solutions that seem to resolve the problem and reach the goal but which are clearly unethical. Remember that short term solutions are not worth sacrificing our commitment to ethics. The long term problems of unethical solutions will not be worth the short term advantages. Eliminate the unethical solutions.
- **Rank Remaining Solutions.** Other solutions may not be clearly unethical but may be questionable. You may have to rely on intuition or “gut feelings” to weed out these solutions. Put these possible solutions at the bottom of your list. Rank the remaining solutions, which are all ethical ones, in order of how close they bring you to your goal and solve the problem.
- **Commit to and Implement the Best Ethical Solution.** Commitment and implementation are vital to the ethical decision-making process. Determining which solution is the best ethical one is a meaningless exercise unless implementation of the ethical solution follows. If the right



decision is not implemented, the door is left wide open for others to implement unethical solutions. (Secretary of Defense, 2011, pp. 120-121).

If ethical decision-making was solely based on adherence to the JER ethical decision-making plan, instances of ethical violations by leadership in the DA would be minimal. Often, “tension between ethical priorities and financial priorities typifies many ethical dilemmas in business decision-making” (Cahn, 2011, p. 7). To retain and sustain the public’s trust, “each of us must also adhere to the ethics laws, regulations, and principles that govern participation in official matters where those matters intersect with our personal and financial interests” (Deputy Secretary of Defense, 2010). As potential ethical violations are based on ethical reasoning and ethical perceptions, the JER decision-making plan provides a mechanism to view decision-making from various perspectives. “Whether people make decisions ethically or not is not a trivial matter, as the outcome of those decisions can make a significant difference to their lives and to the lives of others” (Woiceshyn, 2011).

E. VALUES-BASED DECISION-MAKING

Expanding further on the research that indicates building an ethical work environment goes beyond compliance with laws, a DOD memorandum dated February 16, 2016, regarding leader-led, values-based ethics engagement stated,

integrity and public confidence in Department of Defense activities and in its people are indispensable to mission success. As such, I have continued to make ethics and values-based decision-making (VBDM) a priority. This involves more than rules-based compliance, although such compliance is imperative. Implementing VBDM from the top down will foster a culture of ethics and promote accountability, respect and transparency throughout the Department. (Secretary of Defense, 2016)

Recently, the GAO noted that the DOD had yet to completely address the 2008 recommendations to “develop a department-wide values-based ethics program, which would emphasize ethical principles and decision-making to foster an ethical culture and achieve high standards of conduct” (GAO, 2015).



1. Better Buying Power

Better Buying Power (BBP) 3.0 is the most recent revised initiative from Under Secretary of Defense for Acquisition, Technology, and Logistics Frank Kendall, in the “continuing effort to increase the productivity, efficiency, and effectiveness of the Department of Defense’s many acquisition, technology, and logistics efforts” (Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics [OUSD(AT&L)], 2015). An area of focus is to improve the professionalism exhibited by DA personnel by not only establishing higher standards for key leadership, but also establishing stronger professional qualification requirements (OUSD[AT&L], 2015). Professionalism, as defined by the GAO, “relates to the values, ethics, standards, code of conduct, skills, and attributes of the military workforce” (GAO, 2015).

The BBP website states that “it is the duty of the acquisition workforce to conduct itself with excellence, responsibility, integrity, and accountability” (OUSD[AT&L], n.d.). By utilizing the leader-led idea of VBDM, key leaders will have to continually engage in ethics and integrity conversations with their employees as they are looked to for guidance. The VBDM model discussed next could be applied as a tool in the leader-based ethical training. In enforcing a culture shift towards increased ethical standards and VBDM, professionals should be encouraged and supported when making decisions based upon the values and needs of the stockholders.

2. VBDM Model

According to the DOD, the stockholders are the American people, and keeping their trust and support is a priority. This is achieved by instilling the DOD core values of leadership, professionalism, and technical know-how provided through professional development, leadership, and technical training. The DOD expects its employees to reinforce additional values of duty, integrity, ethics, honor, courage, and loyalty (DOD, n.d.). As ethical violations and mistakes continue to be a problem, DA leaders are expected to enforce VBDM.

Utilizing the findings by Iltis (2005), VBDM can be organized through ethics and integrity by ensuring that the mission matches the agency values as well as compliance



with law and standards. The first step should be for leaders to establish an organizational mission that includes integrity, morals, and obligations by keeping ethics in mind. The leaders are expected to help shift the culture to ensure decisions made by the DA employee are done with the commitment of differentiating between compliance and possible ethical dilemmas. Their feedback can gain better insight to standards and values needed for mission development. Feasibility and law standards have to be taken into account as VBDM is utilizing the employee's character when making decisions and will still need to follow regulations. The next step is to ensure the organizational mission is integrated into all areas of the decision-making process. Ethical dilemmas can occur in any area at any time. Success cannot happen if there is not full organizational commitment to values and integrity. The next step is to prepare for a conflicting decision of values. A comparison should be done of different options by identifying potential violations and values maintained with the combined probability of staying within the mission. Finally, deciding on the best course of action should be done with leader approval and guidance. Adhering to the mission, the commitment to making the ethical decision, can ensure organization integrity remains intact (Iltis, 2005).

If the goal is creating an ethical culture, utilizing the VBDM model by leaders and continuing to communicate its importance can ensure the DA is maintaining its ethical standards. Figure 2 illustrates our proposal for a new, original VBDM model to be utilized in leader ethical training. A VBDM oversight committee, to be appointed no lower than at the General or Flag Officer level with core leaders, may provide guidance to fellow leaders for optimal understanding and integration of VBDM. Appointment considerations should be given to those with the highest known integrity and morals as demonstrated through prior performance evaluations, mission success, training, and surveys, and without sustained grievances.



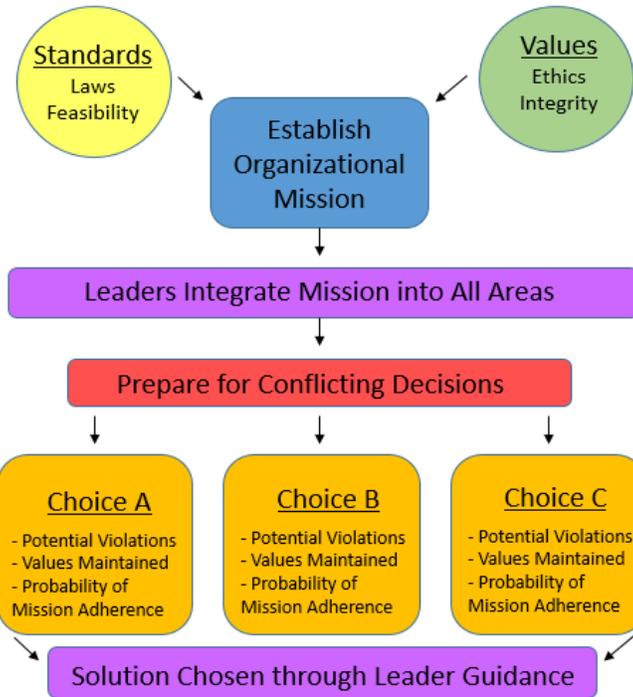


Figure 2. Proposed VBDM Model

F. COMPLIANCE-BASED DECISION-MAKING

Compliance-based decisions conform to a set of rules to guide the decision-making process. In compliance-based decisions, ethical rules are clearly defined, which leaves little room for interpretation by leadership. With a compliance-based ethics system, “the only principle that matters is the one that the organization deems valid” (Davis, n.d.). Given the complexity of writing laws and policies to address every ethical scenario, in situations of legal and regulatory ambiguity or gray areas, compliance-based decision-making provides for a narrow decision-making framework. Teaching ethics should “stress the importance of context and circumstances” (Major, 2014, p. 60), as well as moral principles, not mere compliance with ethics laws.

Compliance-based decision-making is reactive. Rules are created and implemented after an ethical violation or the appearance of an ethical violation occurs. On the other hand, VBDM is proactive. It provides leaders with an ethical framework from which to base their decisions that includes integrity, morals, and obligations.



VBDM ethics programs can build on compliance ethics programs by adding the previously stated VBDM principles where rules are ambiguous.

G. MORAL COURAGE

It is DA policy to encourage employees to carry out their missions consistent with the restrictions imposed by ethical laws and regulations. With potential adverse impact to promotions or potential retaliatory treatment, do DA personnel have the moral courage to make decisions that may not be in agreement with senior leadership?

Moral courage is depicted by someone who

strives to do the right thing, by drawing upon personal, professional, and organizational moral principles and, despite the potential threat to self, goes beyond compliance to achieve a moral action, engaging in a response that is based on virtuous motives. (Bjorn, 2011)

Deciding to take an ethical stance when faced with an ethical challenge or dilemma takes a great deal of moral courage. The potential for retaliation from leadership affects people's willingness to report unethical behavior. ADRP 1 states that leaders are required to "lead by example and demonstrate courage by doing what is right despite risk, uncertainty, and fear; we candidly express our professional judgment to subordinates, peers, and superiors" (DA, 2015, p. [2-6]).

The following are cases from the DOD's *Encyclopedia of Ethical Failure* that demonstrate acts of moral courage to stop unethical behavior by leadership:

- A supervising attorney received a Letter of Caution for improperly requesting a subordinate paralegal to perform a personal service. The supervisor, an ethics attorney, requested the subordinate paralegal pick up her child from daycare on her way home from work. The paralegal told investigators that, notwithstanding an emergency, she felt uncomfortable doing so given the appearance it might generate in the workplace. 5 C.F.R. 2635.705 governs use of official time and 5 C.F.R. 2635.702 prohibits the use of private office for public gain.
- Military officials discovered that a General was misusing Government personnel, improperly accepting gifts of services from subordinates, and misusing his position. The General used his enlisted aides to help host unofficial functions at his headquarters, provide driving lessons to a family member, and to feed a friend's cat.



- A military service Chief Master Sergeant abused her authority and improperly used a government vehicle when she employed a government vehicle and three non-commissioned officers under her supervision to move personal property in a government rental vehicle. The soldiers helped her for three hours. The Chief Master Sergeant was given a verbal warning and advised of the improper use of government vehicles and the abuse of authority.
- A GS-12 Recreation Program Manager who supervised approximately 75 civilian and military subordinates was removed from his position for several ethical violations, including the failure to avoid the appearance of impropriety. The employee moved into visitors' quarters on a military installation where he stayed for six months without paying full price for his room by pressuring his subordinate to acquiesce to his payment arrangements. He also authorized an employee to make a \$400 agency expenditure to purchase workout clothing for one MWR fitness instructor. (DOD, 2015)

DA leadership makes a multitude of decisions on a daily basis. While conducting research for this project, other than annual ethics training courses, we were unable to determine if there were management and oversight mechanisms in place to help mitigate/manage risks of unethical decision-making.

H. ETHICS OVERSIGHT AND MANAGEMENT

Ethical tones are established by senior leadership. Compared to developing the physical, intellectual, and moral aspects of leadership, “The moral aspect of leadership—personally understanding, embracing, and inculcating ethical conduct in others—is far more difficult to develop in leaders and can be far more time consuming” (Thomas, n.d.). According to an article in *Forbes*, “egregious acts of dishonesty that destroy careers (and in many cases have destroyed entire organizations in their aftermath) have been generally executed by people who hold the most senior roles in their firm” (Zenger, 2012). Zenger lists eight situations that create unethical behavior in senior leadership. Of the eight situations, the most relevant issue regarding ethics and leadership is that DA senior leaders possess a great deal of power and control over subordinates. The fear of retaliation reduced people’s willingness to report ethical misconduct.



To evaluate the DOD's ethical climate, in 2012, the DOD conducted a survey to assess ethical perceptions. As reported by the GAO (2015), the following survey findings were reflected in the DOD's ethics report:

- Employees believe that the DOD rewards unethical behavior to an extent that is well above average;
- Employees fear retribution for reporting managerial/commander misconduct to an extent that is well above average; and
- The number of employees who acknowledge regularly receiving ethics information and training is comparatively low. (p. 13)

Only 23% of DOD employees responded to the 2012 survey. Given the low response rate, "it is possible that the survey results represent only the opinions of those employees who responded to the survey and do not represent the opinions of all employees" (GAO, 2015, p. 13).

The DOD, as directed by the NDAA, identified processes and procedures the DA can implement for oversight and management of ethical issues. The DA issued Army Directive 2013-29 (Army Command Climate Assessment) that directs Army organizations to use the "Defense Equal Opportunity Management Institute Organizational Climate Survey for the survey component of their command climate assessments" (Secretary of the Army, 2013). Regulations require command climate surveys to be conducted annually. The survey results provide anonymous feedback to leadership regarding shared perceptions and assess whether employees share the same values as the DA. The NDAA does not clarify who should be required to take the survey, how to monitor the results, or require leaders to disclose whether or not they have completed the assessments. Due to these issues, the GAO reports that the DA has not complied with all of the NDAA requirements (GAO, 2015).

Failure to conduct annual command climate assessments makes it difficult to determine the effectiveness of ethics training courses because of the lack of a baseline to establish performance metrics that address ethics issues. The GAO (2015) also noted that

by using performance metrics, decision-makers can obtain feedback for improving both policy and operational effectiveness. Additionally, by tracking and developing a baseline for all measures, agencies can better



evaluate progress made and whether or not goals are being achieved—thus providing valuable information for oversight by identifying areas of program risk and their causes to decision makers. (p. 31)

1. Leadership Role in Ethics

Leaders are expected to work with their employees and support them in all capacities, but what happens if leaders are not making decisions based on values and integrity? In the *Army Officers' Professional Ethic—Past, Present, And Future Leaders*, Moten (2010) observed that the “Army’s history demonstrates an evolving articulation of the professional ethic, and each year brings more and more research about the values and virtues of professional military service” (p. 21). He also notes that “policy choices by civilian leaders [can] lie outside the scope of the professional military ethic” (Moten, 2010, p. 17). Emphasizing the values and ethics of the DOD is considered a core part of a leader’s duty, whether that leader is civilian or military.

Moten (2010) references situations that call into question the ethical behavior of senior leaders. In 2006, many in the military saw then Secretary of Defense Donald Rumsfeld’s requirement to interview potential flag officers as a way to politicize the senior officer corps. In response, recently retired Army and Marine Corp generals called for his resignation, noting that allowing the secretary of defense to interview flag officers “threatened the public trust in the military’s apolitical and nonpartisan ethic of service as well as the principle of civilian control” (Moten, 2010, p. 17). Moten (2010) also referenced the following 2008 report:

Numerous retired officer-commentators on television news programs had parroted without attribution “talking points” provided by the DOD. Some of these former officers, most of them former generals, also had fiduciary ties to defense industries with contracts in support of the war effort. Those ties had also gone undisclosed. In November 2009, the DOD and the U.S. Senate launched probes into the Pentagon’s employment of 158 retired flag officers as advisers and senior mentors, many of whom were also employed by corporations in the defense industry, raising questions of conflicts of interest. The palpable sense that those retired officers had sold their professionalism to the highest bidder cast an ethical shadow over all the military services. (pp. 17-18)



Leaders are expected to conduct themselves in an exemplary manner that can be admired and followed. Discord and ill-will among civilian and military leaders could hinder the teamwork needed to provide appropriate guidance in ethical VBDM, which is a priority to the DOD. To maintain the public trust, leaders are required to work together in maintaining the core values and ethical standards of the DOD.

2. Bathsheba Syndrome

What is the cause of moral and ethical failure among senior leaders? Ludwig and Longenecker (1993) coined the term *Bathsheba syndrome* that illustrates ethical failures as told in the biblical story of King David and Bathsheba. By all accounts, King David was an influential leader and was depicted as having high moral and ethical standards. Still, King David was one of the first recorded ethical failures “when the good and successful King David of Israel, believing he could cover up his impropriety, took Bathsheba to his bed while her husband was off in battle” (Ludwig & Longenecker, 1993). As King David rose from humble beginnings to prominence, his downward spiral was the result of a “lack of preparedness in dealing with personal and organizational success” and the advantages that come with achieving that success (Ludwig & Longenecker, 1993).

Ludwig & Longenecker (1993) list four potential reasons why successful leaders engage in unethical behavior:

- Success can lead to complacent behavior where leaders lose strategic focus and begin to focus on personal gains.
- Leaders often have access to information and people that others do not.
- Leaders often have unrestrained command and control of resources.
- Success often leads to an inflated self-confidence in one’s ability to influence outcomes. (Ludwig & Longenecker, 1993)

Increased control of resources combined with decreased management and oversight leads to a lack of accountability for unethical behavior. Leaders’ ethical violations set a tone for the organizations they are leading. “Leaders at all levels must foster a culture of ethics within their organization by setting the example in their own



conduct and by making VBDM central to all aspects of the Departments activities” (Secretary of Defense, 2016).

Ludwig & Longenecker (1993) state the potential impact to individuals and organizations when leaders fail to model ethical behavior:

- Leaders are in their positions to focus on doing what is right for their organization's short-term and long-term success. This cannot happen if they are not where they are supposed to be, doing what they are supposed to be doing.
- There will always be temptations that come in a variety of shapes and forms that will tempt leaders to make decisions they know they should not make. With success will come additional ethical trials.
- Perpetrating an unethical act is a personal, conscious choice on the part of the leader that frequently places a greater emphasis on personal gratification rather than on the organization's needs.
- It is difficult if not impossible to partake in unethical behavior without implicating and/or involving others in the organization.
- Attempts to cover-up unethical practices can have dire organizational consequences including innocent people getting hurt, power being abused, trust being violated, other individuals being corrupted, and the diversion of needed resources.
- Not getting caught initially can produce self-delusion and increase the likelihood of future unethical behavior.
- Getting caught can destroy the leader, the organization, innocent people, and everything the leader has spent his/her life working for. (Ludwig & Longenecker, 1993, pp.272-272)



IV. ANALYSIS AND DATA

At any given time, there are several ongoing investigations by government watchdog organizations like the DODIG, GAO, DOJ, and other organizations regarding allegations of ethical violations. Ethical violations can be reported through a number of methods, including the DODIG hotline, Army's Judge Advocate General (JAG), Board of Ethics and Government Accountability (BEGA), and the Office of Government Ethics (OGE). On-going ethical failures by DA personnel were examined to assess whether training classes, designed to teach ethics, result in DA personnel learning and then applying those ethical principles.

Given the complexity of writing laws and policies to address every ethical scenario, in situations of legal/regulatory ambiguity or gray areas, the question of "can I" or "should I proceed" goes beyond merely the question of whether ethics can be taught and brings into examination morals, values, and integrity. Section A examines GAO ethics reports for the DOD and includes a comparison between ethics and compliance with laws in the decision-making process. Section B examines the DA mandatory annual ethics training with the SWOT analysis.

A. PRIMARY RESEARCH

The primary question to be analyzed is this: Are prescribed business practices within the DA adequate to ensure decision-making reflects ethical standards, and are those practices in keeping with the DA's and the DOD's standards of conduct?

1. GAO Ethics Reports

The research analysis focused on GAO reports regarding issues with ethics training and procedures. Additionally, we attempted to determine trends from FY 2000 to FY 2015 through ethical violation case reports. The trends to be determined were whether the violations were committed by senior leaders or subordinates, civilian or military, and if the violations were blatant or situations where the law or regulations were ambiguous.



a. GAO Report FPCD-83-22

The GAO's February 1983 report, FPCD-83-22, was conducted based on congressional request for an assessment of the Ethics in Government Act of 1978. Public Law 95-521, enacted October 26, 1978, mandated annual filing of financial disclosure forms and established the OGE with the mission to create policies geared towards preventing conflicts of interest. The report indicated that senior leaders felt the requirement to file annual financial disclosure forms created a barrier in recruiting, hiring, and retaining highly qualified people from industry because they would have to divest themselves of their financial interest to avoid conflicts of interests. The act does not require "federal officials or nominees to divest themselves of financial interests to avoid a conflict of interest or an appearance of such a conflict" (GAO, 1983, p. 3), but to take what that person deems to be an "appropriate action." According to the report,

Title V of the act expanded the postemployment restrictions of the existing criminal conflict-of-interest statute. Title IV of the act established OGE to provide overall direction of executive branch policies related to preventing conflicts of interest by executive branch employees. Title I of the act established public financial disclosure requirements for high-level officials in the legislative branch. Title III of the act established public financial disclosure requirements for officials and certain employees in the judicial branch. (GAO, 1983, p. 4)

b. GAO Report 05-341

The GAO's April 2005 report, *Opportunities Exist to Strengthen Safeguards for Procurement Integrity* (GAO-05-341), was undertaken to assess the "DOD's efforts to train and counsel its workforce, to raise awareness of ethics rules and standards as well as DOD measures of the effectiveness of these efforts" (GAO, 2005). In this report, the GAO reviewed ethics programs at three DA locations: Headquarters Department of the Army, Washington, DC; Army Materiel Command (AMC), Fort Belvoir, VA; and AMC, Communications-Electronic Command, Fort Monmouth, NJ. The GAO reported that although some form of ethics training was performed, it varied by organization because each organization's standards regarding who was required to take ethics training and



what topics would be addressed was not uniform. Due to variations in ethics training within the DOD, the GAO (2005) noted that the

DOD lacks the knowledge needed to determine whether local efforts are meeting the objectives of its ethics program—in large part because the DOD does not systematically capture information on the quality and content of the training, counseling or employee activity as they relate to ethics rules and restriction. ... Instead, DOD evaluates its ethics program in terms of process indicators—such as the number of people filing financial disclosure forms, the number of ethics officials providing training and counseling services, and the amount of time ethics officials spend on such activities—which do not provide metrics to assess the effectiveness of local training and counseling efforts. (GAO, 2005)

c. GAO Report 15-711

In light of many high profile ethical violations, in 2014 Congress requested that the GAO conduct an investigation of the military's ethics training programs. The GAO's September 2015 report, *Military Personnel: Additional Steps Are Needed to Strengthen DOD's Oversight of Ethics and Professionalism Issues* (GAO-15-711), noted that "in 2014, [the] DOD reported that about 146,000 department personnel received annual ethics training, [estimating] that this represents about 5 percent of DOD's total workforce." (GAO, 2015. P.14). The GAO reported that the "DOD has not fully addressed a 2008 internal recommendation to develop a department-wide values-based ethics program, which would emphasize ethical principles and decision-making to foster an ethical culture and achieve high standards of conduct" (GAO, 2015).

The GAO's report also stated that because of inconsistent methods of collected misconduct reports, the DOD lacked the ability to assess trends in unethical behavior. The GAO recommended that the DOD develop performance metrics and assess or amend training and guidance, along with identifying ethics and professionalism issues (GAO, 2015).

2. Comparison between Values-Based Ethics and Compliance with Ethics Laws in the Decision-Making Process

Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. 2635; DOD Supplemental Regulation, 5 C.F.R. 3601; and *Joint Ethics Regulation*, DOD



5500.07-R (Secretary of Defense, 2011) establish a basic ethical obligation regarding how federal employees should conduct business to maintain public trust in DA operations. Ethics training courses are geared towards teaching compliance with ethics laws. The required teaching objectives were designed to emphasize ethical rules-based compliance. Although compliance is necessary to create a framework for decisions or actions that are deemed unethical, learning ethical values and integrity is also important to build an ethical culture.

The OGE published a *Compilation of Federal Ethics Laws* that included 104 pages of laws and statutes. Although there are 104 pages of ethics laws and statutes that are geared towards compliance, ethical behavior centered on compliance with a set of laws alone does not ensure ethical decisions. Ethical behavior goes beyond compliance with laws and statutes because DA personnel can behave legally, but their actions may be deemed unethical based on individual values. As indicated in previous sections, compliance with ethics laws has very little chance of changing behavior, especially when ethics laws are ambiguous or absent. In comparison, values-based ethical decisions based on integrity, honesty, loyalty, and respect establish a foundation that will help leaders, when faced with temptations as King David was, to make decisions by focusing on organizational strategic goals and not on personal gains.

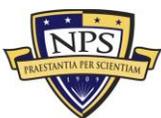
B. SECONDARY RESEARCH

This is the secondary research question to be analyzed: Is the DA-mandated annual ethics training consistent with federal guidelines?

1. Department of the Army Mandatory Annual Ethics Training

The training to be analyzed is the *Headquarters Department of the Army (HQDA) Office of the General Counsel (OGC) Ethics Training 2015* in-person training template (see Appendix B). The DA requires one hour of mandatory annual ethics training.

In accordance with the JER and other federal regulations, DA personnel are required to conduct business with honesty and integrity in a manner that upholds the public's trust. To meet that standard, the DOD requires military departments to conduct



mandatory annual ethics training. The DA utilizes sample ethics training slides prepared by the DOD SOCO as a framework for establishing ethics training objectives. Army command ethics counselors or the OGC can modify the sample slides to meet their particular training objective. Figure 3 depicts the flow down ethics training requirement.

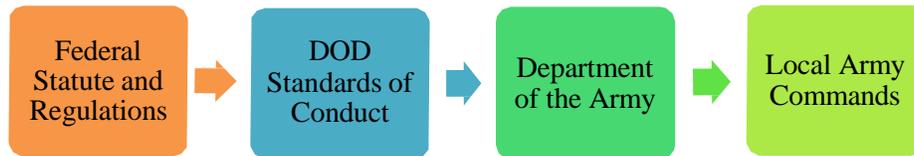


Figure 3. Flow Down of Ethics Training Objectives

2. SWOT Analysis

A GAO investigation revealed that the

DOD lacks the knowledge needed to determine whether local efforts are meeting the objectives of its ethics program—in a large part because the DOD does not systematically capture information on the quality and content of the training and counseling or employee activity as they relate to ethics rules and restrictions. (GAO, 2005)

The lack of metrics to determine the effectiveness of ethics training may result in a higher risk of ethical violations going undetected.

In an effort to determine training adequacy, a SWOT analysis of HQDA training was conducted to determine if the training objectives address the fourteen principles in 5 C.F.R. 2635.101(b)—Basic Obligation of Public Service, ethical restrictions stated in the OGE standards of conduct, the decision-making model in the JER, and the complexity of the training modules.



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V. FINDINGS AND RESULTS

We found that despite GAO ethics recommendations, changes to ethics training, decision-making methods, and ethics procedural issues have not been addressed by the DA. Mandatory ethics training was found to be inadequate, as it does not cover all the standards of conduct or provide training on decision-making when an ethical situation may be unclear. Further results are detailed in the following sections.

A. PRIMARY RESEARCH

Analysis results are discussed from the primary research question: Are prescribed business practices within the DA adequate to ensure that decision-making reflects ethical standards and are those practices in keeping with the DA and DOD's standards of conduct?

1. Findings Related to GAO Reports and Ethical Violations

A continual problem is that some violation reporting agencies are not compiling and turning over their incident reports to the GAO. GAO-05-341 found that "ethics officials did not know about 53 reported allegations of potential misconduct referred to IG offices" (GAO, 2005). The GAO is aware that the "DOD also lacks adequate information on the number and status of allegations of potential misconduct related to conflict-of-interest and procurement integrity rules" (GAO, 2005).

The only collection of adjudicated ethical violation reports is found in the *Encyclopedia of Ethical Failure* by the SOCO. The encyclopedia did not provide a meaningful way to research trends in violations. Instead, only a small percentage of DOD-wide scenarios are cataloged by the type of blatant violation that occurred, and they do not always include detailed information such as the timeline or location. We found 36 DA cases in total listed within the encyclopedia. A timeline could not be established for the DA cases as all offense dates were not listed. Additionally, the encyclopedia did not state how far back in history the authors researched for the case compilation. Out of the 36 cases, two were special in that one case involved military, civilian, leader, and



subordinate violators, and the other involved a civilian leader and civilian subordinate violator. Out of the 34 remaining cases, 24 were by members of the military (21 leaders and three subordinates) and 10 involved civilians (five leaders and five subordinates) (Standards of Conduct Office, 2015).

We were not able to compile a full list of DA violations. It was not possible to create a trend report for FY2000 to FY2015 to categorize violations as civilian versus military, leaders versus subordinates, or blatant violations versus unclear situations due to time constraints. Access to a comprehensive list of DA violation reports was not readily available. We do believe this would be beneficial information in pinpointing causes and types of frequent violators, as the GAO looks for possible metrics. Nevertheless, based on the encyclopedia results, it would appear that more military/leaders than civilian/subordinates are committing ethical violations.

2. Findings Related to Compliance with Ethics Laws

Compliance with regulations does not ensure or insulate DA personnel, especially leadership, from making unethical decisions. Regulations are established typically after the discovery of an ethical violation. Although the OGE published a 104-page *Compilation of Federal Ethics Laws*, because ethics are based on values, it is impossible to create regulations that address every scenario that may be encountered by DA personnel.

Establishing an ethical work environment requires going beyond mere compliance with regulations. Leadership must shape an environment that reinforces ethical accountability and integrity because even the perception of unethical behavior erodes the public trust in the DA's ability to be fair and impartial. Leaders should set the tone for the organization by resisting the Bathsheba syndrome, or focusing on personal gains with an inflated self-confidence in the ability to influence outcomes.

The literature review conducted for this project suggests that one-directional ethics compliance training courses conducted by the DA are the least effective because compliance-based training does not improve moral reasoning.



B. SECONDARY RESEARCH

In this section, analysis results are discussed from the secondary research question: Is the DA mandated annual ethics training consistent with federal guidelines?

1. Findings Related to Training Consistency

With the ability for local Army commands to tailor ethics training to their specific needs, the GAO found that “training and counseling efforts varied in the content of ethics information provided, who is required to attend training and counseling, and how often the training and counseling is provided” (GAO, 2005). No known catalog of the DA’s annual ethics training exists; true consistency could not be measured. Recently, the DA’s ethics training also included an online PowerPoint presentation with an assessment at the end and is now transitioning to one hour of in-person training with no assessment as the mandatory ethics training requirement. As changes are often made to the presentation templates, it could be said that the DA annual ethics training is not consistent.

2. Findings Related to Training Adequacy

Utilizing the SWOT analysis, we determined the following regarding the adequacy of the DA annual ethics training:

Strengths: The training lists the 14 principles in 5 C.F.R. 2635.101(b)–Basic Obligation of Public Service. It also covers most of the ethical restrictions stated in the OGE standards of conduct, including the less defined contractor issues. All personnel must complete yearly training.

Weaknesses: There is a lack of clarification or explanation on all ethics regulations. No ethical decision-making concepts from the JER are included. With no assessment at the end of training, there is no challenge or real proof of concept knowledge provided to the GAO. Not all areas of the OGE standards of conduct are included in the training template.

Opportunities: An opportunity exists to adopt decision-making concepts into training, specifically the ethical VBDM model, to achieve desired cultural changes in the



DOD. There is also an opportunity to conform the DA ethics training to compile metrics and ensure consistency throughout the department.

Threats: The budget and bureaucratic constraints can make it difficult to address areas needing improvement in ethics training. There is also a shortage of qualified ethics trainers. Additionally, the DA can teach ethics, but those training courses may not influence morality, integrity, or personal ethics.



VI. RECOMMENDATIONS AND CONCLUSION

Ethics is a core value to the DA. Despite current efforts, ethical violations continue to occur. In-depth research to identify important factors, such as the possible areas where the majority of violations occur, is vital in order to predict and prevent unethical situations. Also, not only has training been found inadequate, but the DA may not yet have the personnel with all the skill sets necessary for coordinating some of the changes suggested, such as VBDM adaptation or peer-to-peer training. The leaders chosen to aid in the ethics culture change should be appointed no lower than at the General or Flag Officer level. Appointment considerations should be given to those with the highest known integrity and morals, as demonstrated through prior performance evaluations, mission success, training, and surveys, and without sustained grievances. To address ethical violations and to ensure that future leaders are taught and comply with their ethical responsibilities and standards of conduct, we recommend that the DA institute the following changes:

- All departments and agencies should strictly enforce the Codes of Ethics.
- Leadership should set an example by creating a culture that supports and encourages ethical behavior.
- Ethics officials should conduct peer-to-peer, scenario-based ethics training courses.
- To measure the effectiveness of training courses, ethics officials should create a matrix that tracks the type of ethics training provided to those who have committed ethical violations.
- The DA should establish a working group to assist ethics counselors with developing values-based ethics strategies.
- In addition to mandatory ethics training, the DA should reward and support personnel who have the moral courage to report ethical violations.
- The Center for Army Profession and Ethic (CAPE) has developed a Senior Leader Educational Guidance package to be used at the Army War College (AWC), Command and General Staff College (CGSC), Warrant Officer Senior Staff Course (WOSSC), and the U.S. Army Sergeants Major Academy. These courses should be consulted in developing DA ethics training and leadership skills, as ethics and decision-making



concepts are discussed and emphasis is placed on collaborative engagement.¹

- Alleged irregularities should be promptly investigated and prosecuted where warranted, or other disciplinary actions should be taken.
- The DA should create a full, detailed compilation of violations by departments, providing researchable metrics to be created, captured, documented, and tracked.
- The DA should mandate that a quarterly report of ethical violations from all agencies to be given to the GAO for its compilation.
- The DA should adapt and include the VBDM model into annual ethics training.
- Training should include a more rigorous concept assessment with VBDM scenarios. The results of this assessment should be reported on employees' performance records.

¹ The CAPE's "*Commander's Guidance for Senior Leader Ethics Education*" Advance Sheet CGSL-EE-AS02 with course information can be found at <http://cape.army.mil/tsp/slegp/0%20Senior%20Leader%20Educational%20Guidance%20Advance%20Sheet/0%20COMMANDERS%20GUIDANCE%20FOR%20SENIOR%20LEADER%20ETHICS%20EDUCATION%20Block%20Advance%20Sheet%20v5.pdf>



APPENDIX A. FOURTEEN PRINCIPLES IN 5 C.F.R. 2635.101(B)– BASIC OBLIGATION OF PUBLIC SERVICE (BASIC OBLIGATION OF PUBLIC SERVICE, 2015)

2635.101(b) *General principles.* The following general principles apply to every employee and may form the basis for the standards contained in this part. Where a situation is not covered by the standards set forth in this part, employees shall apply the principles set forth in this section in determining whether their conduct is proper.

- (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 nonpublic Government information or allow the improper use of such information to further any private interest.
- (4) An employee shall not, except as permitted by subpart B of this part, 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, national 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 set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.



**APPENDIX B. HEADQUARTERS DEPARTMENT OF THE
ARMY IN-PERSON MANDATORY ANNUAL ETHICS TRAINING
2015 (OFFICE OF THE ARMY GENERAL COUNSEL, 2015)**



HQDA
Office of the General Counsel

**ETHICS TRAINING
2015**

Contact: usarmy.pentagon.hqda-ogc.mbx.ef@mail.mil

1



ASK BEFORE YOU ACT

- Reliance on a written opinion from an Ethics Counselor, after full disclosure by you, is valuable, and will provide a safe harbor for administrative adverse actions.
- First Caveat: There is no attorney-client privilege between you and your Army Ethics Counselor.
- Second Caveat: Only the Department of Justice decides who will, or will not, be prosecuted for criminal violations of these laws.
- HQDA personnel may seek Ethics assistance from the following personnel:

2





CONTACT OGC E&F

Phone: 703-695-4296

E-Mail: usarmy.pentagon.hqda-ogc.mbx.ef@mail.mil



Mark Vetter (Ethics)

- Official Speaking Invites
- Support to NFEs
- Gifts
 - Gifts to Individuals
 - WAGs
 - Gifts to the Army
- GO Nominations
- Use of Position/Title

Peggy Balnes (Ethics)

- Conferences
- Travel
- 1353 Travel Gifts
- Political Activities
- Fundraising
- Endorsements
- Outside Activities

John Kent (Ethics)

- Financial Disclosure (278 and 450 reviews)
- Training
- Travel
- Post Government Employment
- Conflicts
- CASA Program
- Special Gov't Employees

Jude Soundar (Financial Disclosure Mgmt (FDM) System & Conferences)

- Electronic filing of OGE 278 and OGE 450

OTJAG

Art Kaff (OTJAG Ethics)

- All ethics matters for HQDA ARSTAF
- Call 571-256-2907

3



WHY DO YOU HAVE TO TAKE THIS TRAINING?



- Compliance with the ethics rules is a minimum obligation that all federal employees accept as a condition of employment.
- If you are a financial disclosure report filer, your position likely involves the exercise of discretion in sensitive areas, such as aspects of pre and post award contracting, or award and administration of grants or other similar activities.
- Because it is so important to maintain public trust in our programs and operations, and the integrity of our procurements, you have been identified, based on your duties, as a Public or Confidential Financial Disclosure Filer. (5 C.F.R. 2634)
- **As a Financial Disclosure Filer, one hour of annual ethics training is mandatory.** (5 C.F.R. 2638.701)

4





ETHICAL DECISION MAKING



- Law & Rules – “*Can I take an action?*”
 - An Ethics opinion will provide legal conclusions
 - Interpretive guidance for legal nuances
- Values & Judgment – “*Should I take an action?*”
 - Ethics opinion may provide considerations or risk analysis
 - But subjective judgment is required to determine the propriety of the proposed action
 - Non-legal considerations:
 - Public Perception / Optics
 - Potential Congressional / Media Interest
 - What are the benefits to the Army? What are the Risks?

5



14 Principles of Ethical Conduct When in doubt, follow these guiding principles



- | | |
|--|---|
| <ol style="list-style-type: none"> 1. Place public service above private gain 2. Financial interests cannot conflict with official duties 3. Do not use non-public information for private gain 4. No gifts from prohibited sources 5. Employees must put forth honest effort in performance of duties 6. No unauthorized promises purporting to bind the government 7. Do not use public office for private gain | <ol style="list-style-type: none"> 8. Act impartially and no preferential treatment 9. Protect and conserve government property and only use it for authorized purposes 10. No outside employment or job hunting that conflicts with Federal job 11. Obligated to disclose waste, fraud, and abuse 12. Satisfy financial obligations in good faith 13. Uphold EEO laws and regulations 14. Avoid appearance of unethical conduct violating the law or ethics regulations |
|--|---|

6





Gifts From Prohibited Sources



- Ethical Principals
 - Public service is a public trust. 5 C.F.R. 2635.101(a)(1).
 - An employee shall not (unless an exception applies) SOLICIT or ACCEPT any gift or other item of monetary value from:
 - any person or entity seeking official action from or doing business with the Army (e.g., a DoD contractor);
 - or whose interests may be substantially affected by the performance or non performance of the employee's duties. 5 C.F.R. 2635.101(a)(4) (e.g., a private organization seeking logistical support from the Army).

7



Gifts From Prohibited Sources



One scenario - NO FREE RIDE!!!

- A common question is whether employees can ride with a contractor to and from meetings.
 - Free rides may be a gift.
 - E.g., under a fixed-price contract where there are no provisions for direct reimbursement of contractor transportation expenses, the free ride from the contractor employee is a gift!
- You must then determine whether a gift exception applies.
 - **\$20/\$50 Rule.** You may accept an **UNSOLICITED** gift valued at \$20 or less, per source per occasion, provided that you do not accept more than \$50 of gifts from that source per calendar year.
 - **This rule runs to the "source," not the person.** If 3 people, all from Company X, give you gifts valued at \$20 (\$20+\$20+\$20=\$60) within a calendar year, you violated the \$50 yearly cap when you accepted the last \$20 gift!

8





Gifts From Prohibited Sources



GOOD NEWS – RIGHT?

- So you can accept the ride from the Pentagon to the Contractor's office space in Rosslyn for a meeting because the value is under \$20. Save your heels from hot footing it to the Pentagon Bus area.

BUT WAIT . . .

- What if you are now in the middle of a source selection, and the Contractor is competing for the follow-on acquisition? The ride is still under \$20 ... But *should* you accept the gift?

8



Gifts From Prohibited Sources



- **Ethical Principle:** Employees shall act impartially and not give preferential treatment to any private organization or individual. 5 C.F.R. 2635.101(8).
- Accepting the free ride when there is an on-going source selection affecting the contractor **MAY** create the appearance that you are providing preferential treatment, and should be avoided.
- Government officials should **always consider the surrounding circumstances** to avoid the appearance of a conflict of interest.
- Remember, it is **NEVER inappropriate (and is frequently prudent)** for an employee to decline a gift offered by a prohibited source or because of the employee's official position. 5 C.F.R. 2635.204

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Soliciting Outside Gifts



- **Example:** A Vice Admiral held a golf tournament and improperly solicited DoD contractors for items to give as prizes to participants. [DoD Standards of Conduct Office Encyclopedia of Ethical Failure]
- **Rule:** *"Department of Defense personnel shall not solicit, fundraise for, or otherwise request or encourage the offer of a gift."* [DoD 7000.14-R, Volume 12, Section 300502]
- **Rule:** *Executive Branch employees may not solicit gifts from agency contractors, or gifts that would be given because of their official position.* [5 CFR 2635.202(a)(1)]
- **Rule:** *"You may not solicit outside sources for contributions for your party. This includes funds, food, and items."* [Dec 2012 DoD Standards of Conduct Office memo on holiday parties]



Taking gifts from subordinates



- **Example:** Gift of \$10.75 bottle of wine to boss found to be improper. [TJAG Opinion 1999/84]
- **Rule:** *An Executive Branch employee may accept the following from a subordinate on occasional basis (e.g., birthday, Boss' Day):*
 - *Item(s) worth \$10 or less (not cash),*
 - *Food and/or beverage that is shared in office,*
 - *Hospitality provided at his or her home,*
 - *An item customarily given when receiving hospitality from a superior (e.g., you may give a bottle of wine to your boss when your boss invites you to dinner).* [5 CFR 2635.304(a)]
- **Different rules for gifts on special infrequent occasions**, such as marriage, having a baby, or the end of the superior-subordinate relationship through retirement, transfer, etc. [5 CFR 2635.304(b); JER 2-203]





Coercing \$\$\$ from Subordinates



- **Example:** The Director in a government organization retired, and the staff was told they must contribute \$25 for the retirement party. The Deputy Director was promoted to Director, and the staff was told they must contribute \$25 for the promotion party. The third in charge was then promoted to Deputy Director, and when his promotion party was being planned, someone called the Ethics Office, and disciplinary action was initiated. [DoD Standards of Conduct Office Encyclopedia of Ethical Failure]
- **Rule:** *"[A]n official superior shall not coerce the offering of a gift from a subordinate."* [5 CFR 2635.302(c) & .304(c)(Example 5)]



Official Action Benefiting Spouse



- **Example:** The wife of an SES employee at NASA owned a business. The wife wanted NASA to purchase services from her company. The SES asked a NASA colleague to approve spending \$20,000 on a project that his wife's company was connected to. The SES also drafted a sole source contract that would be awarded to his wife's company and pressured other NASA employees to approve it.
 - The employee pled guilty to a conflict of interest violation. [2009 Office of Government Ethics Prosecution Survey]
- **Rule:** *An Executive Branch employee may not participate personally and substantially in any particular government matter in which his or her spouse has a financial interest.* [18 USC 208(a)]





Job hunting where you shouldn't



- **Example:** A Navy Captain was Program Manager for an anti-submarine procurement program. He began to negotiate for a post-government job with a company that wanted some business from that procurement program. He invited the company to send employees to the Program headquarters & he discussed with other Navy employees how the company could assist in the program.
 - The employee pled guilty to a conflict of interest violation. [2010 Office of Government Ethics Prosecution Survey]
- **Rule:** *An Executive Branch employee may not participate personally and substantially in a particular government matter, if he or she is negotiating for employment with a company that has a financial interest in the matter. [18 USC 208(a)]*



Helping subordinate get a job



- **Example:** A Department of the Interior (DOI) employee was close to retirement, so he and his supervisor created a plan to help him work as a DOI contractor after he retired. The employee created the Statement of Work for a contractor position that he would compete for. After he retired, he applied for the contractor position and was selected. He got the highest score of all applicants.
 - The employee pled guilty to a conflict of interest violation. [2008 Office of Government Ethics Prosecution Survey]
- **Rule:** *An Executive Branch employee may not participate personally and substantially in any particular government matter in which he or she has a financial interest. [18 USC 208(a)]*





Owing Stock in a Company



- **Example:** A National Security Council employee participated in an official matter involving a petroleum company at a time when he owned stock in that company. Conflict of interest charges were brought. [DoD/GC-SOCO Encyclopedia of Ethical Failure]
- **Rule:** *An Executive Branch employee may not participate personally and substantially in a particular government matter (such as a government contract) that affects the financial interests of a company, if he or she (or his or her spouse or minor child) owns stock in the company.* [18 USC 208(a); 5 CFR 2640.103(b)]
- **Exception:** You may participate in a government matter if you, your spouse & your minor children together own less than \$15,000 of stock in all companies involved in the matter. [5 CFR 2640.202(a)]



Extra Payment for Official Duty



- **Example:** Assistant Director at the National Science Foundation gave four speeches as part of his official duties (three at universities and one for a professional society). He accepted a total of \$4,900 from these organizations for giving the speeches.
 - The employee pled guilty to a conflict of interest violation. [1998 Office of Government Ethics Prosecution Survey]
- **Rule:** *An Executive Branch employee may not accept additional compensation from a source outside the Government for the performance of his or her official duties.* [18 USC 209]





Post-Government Employment



- **Example:** An Air Force Colonel, the Vice Commander at Eielson Air Force Base, oversaw a \$70 million project to build military family housing at the base. He retired and went to work for the construction contractor for the project. On two occasions, he contacted the AF on behalf of the contractor (to expedite a late contract payment and to complain about the AF's warranty claims).
 - The Colonel pled guilty to a conflict of interest violation. [1998 Office of Government Ethics Prosecution Survey]
- **Rule:** *If an Executive Branch employee participates personally and substantially in a particular government matter (e.g., a gov't contract), he or she is prohibited for life from representing any non-government party before the US regarding the same matter.* [18 USC 207(a)(1)]



MISUSE OF RESOURCES



Army COL was scheduled to go TDY and asked one of her employees to make a reservation for her mother on the same flight. When she was told that such action would be illegal, she responded that it was "alright" and that she had asked employee as a "personal favor." After even more people counseled her on the illegality of her actions, the COL attempted to stop the employee from making the flight reservation, but it was too late.

- What were the violations? . . .

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MISUSE OF RESOURCES



- **Ethical Principle:** Employees shall protect and conserve Federal resources and shall not use them for other than authorized activities. (Also an ethical standard at 5 C.F.R. 2635.704)
- Government resources include:
 - Real or personal property
 - Anything purchased with Government funds, including the services of contractor personnel
 - Office supplies, equipment, mail, vehicles
 - Government records
 - **An employee's or contractor's time and efforts.**
- Here, the COL misused a government resource – her employee – for the COL's personal benefit.

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Misuse of government vehicle



- **Example:** A CIA employee used a government vehicle to transport himself and three other CIA employees to the funeral of the son of another CIA employee. The CIA employee was not authorized to be the official agency representative at the funeral. The round trip was 200 miles.
 - The Comptroller General (CG) ruled that the vehicle was not used for "official purposes." [CG Decision B-275365, 17 Dec 96]
- **Rule:** *Government vehicles may be used only for "official purposes."* [31 USC 1344(a)(1); DoD 4500.38-R; AR 58-1]



Subordinates & Personal Errands



- **Example:** An Army General Officer made his staff work at a private charity event, provide free driving lessons, and feed a friend's cats. [Washington Post, 14 Jun 13]
- **Rule:** *A supervisor may not direct or ask subordinates to use official time to do his or her personal errands.* [5 CFR 2635.705(b); JER 3-303b]
- **Rule:** *A supervisor may not direct or ask subordinates to use personal time to do his or her personal errands.* [5 CFR 2635.702(a); JER 3-303b]



Events – Official or Personal?



- **Example:** An Army Colonel hosted a barbeque at his quarters to welcome new staff members to his division. He tasked subordinates to purchase food and beverages during duty hours, and to use a government vehicle to transport government tables and benches to his home for the event.
 - The investigation concluded that the event was unofficial (and constituted a misuse of government resources) since the event was advertised as a Block Party, attendance was voluntary, and the event was not considered a place of duty. [DoD Standards of Conduct Office Encyclopedia of Ethical Failure]
- **Rule:** *Government time and property must be used for official purposes only.* [5 CFR 2635.704 & .705]



Endorsement Issues



- Official Endorsements are Prohibited (*almost always*)
- **Rule:** *“Endorsement of a non-Federal entity, event, product, service, or enterprise may be neither stated nor implied by DoD or DoD employees in their official capacities and titles, positions, or organization names may not be used to suggest official endorsement or preferential treatment of any non-Federal entity” (JER 3-209)*

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ENDORSEMENT ISSUES



- Why are endorsements PROHIBITED??
 - They state or suggest official certification or approval.
 - They portray the item or event as public rather than commercial.
 - They represent preferential treatment.
 - They may improperly coerce DoD personnel.

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Endorsements

- **Explicit endorsement.** E.g., you cannot announce to the public in your official capacity that you think Soldiers should support a particular charity; nor can you publically state that a particular contractor makes the best rockets.
- **Implied endorsement.**
 - Serving as an Honorary Chairman for a NFE event when such role is connected to your official position.
 - Serving as a NFE board member in your official capacity (*unless authorized by a specific statute*).
 - Presenting an NFE an award when such presentation is connected to your official position.
 - Expressing support for a program or charity while in uniform or while being identified as an Army official.

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Endorsement Examples

- **Example:** The "ALS Ice Bucket Challenge." Even if a worthy charitable cause, it would be improper for senior Army officers to post their participation while in uniform on the internet as doing would suggest an endorsement of the charity in their official capacity.
- **Example:** An Air Force officer appeared in an advertisement in the monthly magazine of a non-profit association of acquisition professionals. The ad featured a color picture of the AF officer in uniform, and a quotation that read: "Over the past 25 years, my _____ membership kept me up-to-date on current issues and gave me an ever expanding network of contracting professionals. It's a key part of any professional's success."
 - The officer was found to have violated the ban on official endorsements. [Air Force TJAG Opinion 2000/20]





Contractor Issues



- It's that time again. Your office's current contract for support services is about to expire, and your office is working to award a follow-on contract. The solicitation is on the street and you anxiously await proposals.
- As the current contract is winding down, this is a great opportunity to give certificates of appreciation to contractor employees who went above and beyond what was required in the performance work statement.
- This is a good idea... Right?



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Contractor Issues



- NO! . . . It's not a good idea. You are not allowed to give awards or recognition certificates to contractors anymore.
- Here's why . . . (and it is not because we don't like contractors or think they are trying to do anything wrong!)



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Contractor Issues



- **Ethical Principle:** Employees shall act impartially and not give preferential treatment to any private organization or individual.
- **It is a misuse of position to endorse non-Federal entities (NFEs), to include contractors. 5 C.F.R. 2635.701-702**
 - *An employee shall not use his Government position or title in any manner that could reasonably be construed to imply the agency sanctions or endorses the employee's personal activities or those of another.*
 - Likewise, employees shall not endorse any product, service, or enterprise of a NFE.

21



Contractor issues



- Giving an award or certificate of commendation to contractor employees during an on-going source selection creates an appearance that we may favor the incumbent contractor over its competitors.
- ***This perception concern outweighs any desire to show appreciation to a contractor for a job well done.***
- The following is an example of an award that created a very awkward situation...

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Contractor Issues



- Example: A Defense Agency recognized a contracted supplier with a Vendor Excellence award in the category of "outstanding special group-owned small business."
- 5 months later...
- GSA official pled guilty to charges stemming from a conspiracy to overcharge the agency for supplies. Who was the conspiracy with? None other than the same company that received the Vendor Excellence award. The company reportedly paid gratuities totaling \$25,000 for meals and entertainment to the GSA official and his spouse. It also offered the GSA official a job. In exchange for these perks, the GSA official "invited" the company to overcharge for its supplies.
- An extreme example of Awards to Contractors gone awry. (Did you spot the criminal conflict of interest? (Bribery, 18 U.S.C. 201)

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CONTRACTOR ISSUES



RECENT RULE CHANGE!

- Revised DoDI 1400.25-V451, November 4, 2013, states:
 - *"Awards, award programs, ceremonies, or receptions to acknowledge contributions by organizations or companies having a commercial or profit-making relationship with DoD must not be established." See paragraph 3(h).*
 - *"To avoid issues in connection with contractual relationships and obligations, actual or perceived conflicts of interest, and actual or perceived acts of favoritism, persons, organizations, or companies having a commercial or profit-making relationship with DoD or with a DoD Component will not be granted recognition." See Enclosure 3, paragraph 11(b)(2).*

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CONTRACTOR ISSUES



In the old days...

- We were allowed to present contractor employees with letters of commendation IF ok'd by the contracting officer.
- Because of an actual or perceived implied endorsement or favoritism created by such recognition, we may no longer make such presentations to contractors.
 - So, no more award ceremonies to recognize both Government and Contractor employee contributions. Government employees may still be presented awards IAW personnel laws.
 - No more gifts to contractors, even if paid for with your own personal funds, to publically recognize a job well done (includes commander coins!).

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Contractor Issues



So ... what is permitted?

- Can you buy the contractor employee a gift during the holiday season?
 - Yes if a personal gift, not an award for a job well done...
 - Will the contractor employee's employer allow acceptance of the gift? Ask the contracting officer if the contractor employee can accept a gift.
 - Use common sense - make sure the gift is appropriate.
- Can you write a letter of recommendation for a contractor employee?
 - Yes, but there are restrictions. You may, per 5 C.F.R. 2635.702(b), sign a letter of recommendation for a contractor employee (not the contractor employer) using your official title and DoD letterhead, but only if it is in response to a request for an employment recommendation or character reference based upon your personal knowledge of the ability or character of the contractor employee with whom you have dealt with in the course of your Federal employment. Coordinate with your EC.

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Contractor Issues



- You can provide past performance feedback, positive or negative, coordinated with the Contracting Officer (CO) or the Contracting Officer's Representative (COR). You may also provide feedback on past performance questionnaires provided you clear your responses through the CO or COR.
- Bottom Line: It is the contractor's (and not your) responsibility to monitor contractor employee performance and award accordingly.

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Contractor Issues



- Government employees must understand the arms-length nature of the relationship between the government and the contractor/contractor employees. The desire to treat the contractor as part of the team is understandable, but not always appropriate under the Standards of Conduct.
- Unduly close personal relationships with contractor employees can create the appearance of favoritism, and may call into question the integrity of the procurement process.
- Be mindful that contractor employees are not subject to the same ethics laws and regulations as Government employees, and are not accountable to taxpayers in the way that we are.

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Contractor Issues



- **Do** let the contractor supervise its employees.
- **Do** respect the employer-employee relationship between a contractor and its employees.
- **Do** ensure that contractors in the workplace are clearly identified, and clearly identify themselves as such to others. This will help prevent inadvertent mistakes.



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CONTRACTOR ISSUES



- **Do not** become so involved in contractor operations as to shift the risk of performance from the contractor back to the Government.
- Avoid participating in the selecting or recruiting of contractor personnel.
- **Do not** misuse Government resources by misusing contractor time or ordering work to be performed that is outside the scope of the contract.

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ETHICS AND OFFICE PARTIES



Mary's office wants to celebrate the holidays with good cheer for all!

- The first thing she did was send out the invitation announcing that the office holiday party will be held 19 Dec from 10:00 to 4:00, and all are invited! She used the general office distribution list, which includes contractor personnel.
- Mary also wants to have lots of food. She needs to hold fundraisers to defray the costs. She's got some great ideas. First, she's going to hold a bake sale near the Metro entrance to the Pentagon where there is the most foot traffic.
- Then Mary is going to ask the local baker to donate cakes since Federal workers are so deserving.
- Any issues raised by Mary's party plans?

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Ethics and Office Parties



Ethical Principles to consider:

- Public Service is a Public Trust!
- Employees shall not solicit gifts, and may only accept gifts if an exemption or exception applies.
- Employees shall not use public office for private gain.
- Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.

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ETHICS AND OFFICE PARTIES



Let's break this party down.

- The first thing Mary did was send out the invitation announcing that the office holiday party will be held in the Director's Suite, December 19th, from 10:00 to 4:00, and all are invited! She used the general office distribution list, which includes contractor personnel.
- Common sense and good judgment are essential when party planning.
- An all day party seems a bit excessive and may very well violate 5 C.F.R. 2635.704, which requires employees to protect and conserve Government property, including employee time. How would having a six hour party during the duty day look to the reasonable taxpayer?

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ETHICS AND OFFICE PARTIES



- Next, Mary sent the announcement to everyone in the office, including contractors.
- Note the Government *may not reimburse a contractor for its employees' morale and welfare expenses (i.e., we cannot pay contractors for attending a party, even if it is our party).*
- Consult with the Contracting Officer to ensure that attendance is not precluded by the terms of the contract.
- The contractor decides whether to let its employees attend and forego payment for their time, or insist that they continue to work.
- Consider a disclaimer on party announcements: "Contractor employee participation and attendance at these events are subject to the terms and conditions of the contract, and the contractor employee's company policies. The Government may not reimburse a contractor for its employees' morale and welfare expenses."

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Fundraising and Office Parties



- Mary plans to fundraise by holding a bake sale near the Metro entrance to the Pentagon. Is this location acceptable?
- Fundraising is permitted by organizations composed primarily of DoD employees or their dependents *when fundraising among their own members for the benefit of welfare funds for their own members or their dependents when approved by the Agency Director, after consultation with a Agency's Ethics Counselor.* See JER 3-210.a(6).
- Mary cannot set up the bake sale near the Metro entrance to the Pentagon because that area is traveled by all building occupants. She must conduct the fundraising within her own organization for the benefit of her own office members. A bake sale in the organization's suite or conference room would be a permissible fundraising location.

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GIFTS AND OFFICE PARTIES



- Solicitation of Gifts is Prohibited!
- Mary plans to ask the local baker to donate cakes since Federal workers are so deserving. Uh Oh...
- This is an improper solicitation of a gift. We can never, ever, solicit gifts from non-Federal entities!



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ATTENTION ALL FDR FILERS!



- DoD Financial Disclosure Filers (450 and 278) must obtain written approval from supervisor before engaging in a business activity or compensated outside employment with a prohibited source.
 - Off-duty consulting for DoD Contractor.
 - Adjunct professor at local university.
 - Fiduciary position with private organization that conducts business with or seeks support from DoD (e.g., AUSA, AAAA, Signal Assn.; but not local school board, soccer club, or homeowners assn.)
 - Attach written approval to current FDR in FDM.

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ATTENTION 278 FILERS!



- Starting on 1 Jan 16, Form 278 filers will fill out a new 278 form in FDM – the OGE Form 278e
 - This form will collect the same information as the current 278 form, but when printed out the information will be lumped separately under filer, spouse, or dependent children.
 - To further streamline the printed version of the 278e, sections with no filer data will be omitted from the printed report.
 - Although the 278e will collect the same information, 278 filers will see some differences in the way they prepare their 278e's in FDM.
- **Personal Mortgage** – GOs and PAS officials must report their personal residence mortgage under the liabilities section of 278 report.
 - But SES and Schedule C filers ONLY report if residence generates rent.

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ATTENTION 278 FILERS!

➤ **Periodic Transaction Reports (278-T)** – All 278 filers must report purchases, sales, or exchanges greater than \$1000 of:

- ↙ Stocks
- ↙ Bonds
- ↙ Commodities futures
- ↙ Any other form of security (*but not mutual funds*)

Must report for spouse, dependent child, and any security where employee is owner or partial owner. Due w/in 30 days of actual notice or 45 days of transaction.

➤ **3-Day Employment Negotiation Notice** – All OGE 278 filers must submit a "notification statement" within 3 days of negotiation with any NFE for future employment OR compensation. Template is available. Includes recusal provisions.

❖ Beware: "Negotiation" is defined broadly! Contact your EC.

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