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Government

Ethics Newsgram

Highlights of the Eleventh Annual Government Ethics Conference

Picture-perfect skies and unseasonably warm temperatures provided a pleasurable backdrop for the reprise of the Eleventh Annual Government Ethics Conference held in Virginia Beach from December 4 - 6. They were also a welcome anodyne to recollections of the events of September 11th that precipitated the cancellation of the conference in Norfolk.

Some 445 ethics officials participated in a conference program that was remarkably unaltered from the one originally scheduled to have been delivered in September. Virtually all of the concurrent sessions presented at Virginia Beach were the same as had been offered in Norfolk—a testament to the ethics community's commitment both to the conference and to carrying out business as usual in the wake of September 11th.

Director, Amy Comstock, opened the conference with a speech commending those who were in attendance at Norfolk on September 11th for the "caring and mutual support" shown during those critical hours. She, as well, recalled some of the remarks Judge Gonzales, Counsel to the President, had made in his opening address at the Norfolk conference, noting particularly his "assessment that we are at the beginning of a time of great change in the executive branch ethics program." The Director then elaborated on several themes that are part of her vision for the future of the executive branch ethics program. Chief among them were, change, leadership, and the key role of the agency ethics official in both. The full text of the Director's speech is provided in the Director's Column of this edition (see page 2.)

The two and a half day conference featured some 34 concurrent sessions



"Polar Bear Award" Recipients: John Szabo, John Case and Dave Apol.

covering the waterfront of ethics and related issues. Highlights of various sessions have been provided in several brief articles contained in this edition. In addition, OGE will be posting on our Web site the handouts from many of the concurrent sessions.

Other highlights of the conference included the OGE Manager's Update (see page 11), the presentation of the OGE Distinguished Service Award (see page 10), the annual OGE Program Review Awards (see page 10), a special presentation of a Certificate for Meritorious Achievement to Mr. Bayless Manning (see page 9) and a plenary speech by Virginia Thomas of the Heritage Foundation.

Ms. Thomas' Wednesday morning speech, while decidedly controversial, provoked healthy reflection and elicited productive conversation among conference participants for the remainder of the conference. Citing the need for review and modernization of the existing ethics program, and questioning the extent to which the public at large even cares about ethics in Government provided that Government delivers services efficiently, Ms. Thomas

was critical of the program and at times critical of the Government resources devoted to the program.

In her closing remarks the Director addressed several of the points Ms. Thomas made in her speech. While she agreed that the ethics program needs attention and review, she noted that efficient delivery of services was only part of the expectation that the public has of its Government. She stated her belief that the American public cares equally about a Government that performs fairly and with integrity. To that end, she added,

what we do as public servants is fundamental to a well-functioning Government.

The conference closed with the presentation of one final "award." The "Polar Bear Award" was presented to four brave (or foolhardy) souls who evidently could not leave Virginia Beach without having first availed themselves of all its amenities, including a bath in the brisk waters of the Atlantic. Dave Apol, John Case, John Szabo, and Cary Williams, the OGE Newsgram salutes you!

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Director's Column

(The following is the full text of the Director's Plenary Session Speech presented at the Eleventh Annual Government Ethics Conference in Virginia Beach.)

Good morning, everyone! It is a privilege to be able to welcome you to the 11th Annual Government Ethics Conference. I want to thank all of you for participating and to give a special thanks to those participants who are also serving as moderators and panelists for our concurrent sessions. Your willingness to share your experiences and expertise is what makes this conference valuable to us all.

I would also like to thank Barbara Mullen-Roth, Associate Director for Education and Program Services, and the conference staff, Gwen Cannon-Jenkins, Kaneisha Cunningham, Marilyn Bennett, Veda Marshall, and Denise Shelton. They have worked extremely hard for the past 12 weeks to put this rescheduled conference together. Rescheduling an event of this magnitude in just a matter of weeks is a huge task and I can't thank them enough for all of their excellent work.

Of course, all of us in this room are conscious today of the sad fact that the ethics conference originally scheduled for this year ended abruptly on September 11th. For the benefit of both those who were here that day and those who were not, I want to commend everyone who was in Norfolk on September 11 and 12 for the way that this community responded. While I have known many of you for years as colleagues, in those 24 hours I witnessed such caring and mutual support for each other, that I now know more than ever that the ethics profession attracts very caring and wonderful human beings.

And, for those of us who were in Norfolk that morning, we will always remember Judge Gonzales' speech with great sadness, because that is where we were when the terrorist attacks started. But I do not want our deep feelings about the events of that day and thereafter to overshadow the contents of Judge Gonzales' speech. Needless to say, we did not ask Judge Gonzales to return again this December. But his speech is very much a part of this conference and some of his remarks bear repeating.

Judge Gonzales began by showering great praise on everyone who worked on



the nominee process during the transition. He noted the phenomenal number of nominees who were cleared successfully and recognized that without the people in this room, the White House could not have moved this group nearly as quickly as it did. Beyond the transition, however, Judge Gonzales noted that the executive branch ethics program needs significant improvement and acknowledged that he sees this time as a time of real growth and change in the ethics community. He mentioned, in particular, the need for the financial disclosure requirements to match the reality of people's personal finances and the importance that the conflict of interest requirements not be a trap for the unwary. I am very pleased that he also acknowledged with great confidence that the best ideas for improving the system will come from the people in this room.

I agree with Judge Gonzales' assessment that we are at the beginning of a time of great change in the executive branch ethics program and I find this exciting. As you all know, I came to OGE, having been an OGE customer for years, with a strong belief that the executive branch ethics program needed a lot of change in both its focus and the technicalities. After having been Director for just over one year, I continue to believe that the program needs strengthening.

To put it bluntly, I believe that our rules are often complicated, our systems are at times bureaucratic, and our work is not always closely enough aligned with the ultimate mission of an agency. However, I also firmly believe that in

order to achieve our goal of preventing conflicts of interest and ultimately increasing public confidence in government, we must have a strong executive branch ethics program.

Trying to effect change in the ethics program's focus and implementation is a tall order. We have a number of initiatives under way at OGE now and you will hear about them in detail at this afternoon's manager's update. But in terms of the larger perspective, I want to tell you this morning that in a number of different ways OGE is committed to strengthening and improving itself and the ethics program. As you know, earlier this year we proposed legislation to the Hill that would improve the financial disclosure system. We have also begun a process for a thorough review of the criminal conflict of interest statutes.

I consider this review of the conflict of interest statutes to be one of the most

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Government Ethics Newsgram

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We welcome any news and information related to Government ethics that you wish to bring to the attention of OGE and the executive agencies. We also welcome your candid critiques and suggestions. Quoting or reprinting materials contained in this publication is strongly encouraged and does not require OGE permission.

The Director of the Office of Government Ethics has determined that the publication of this periodical is necessary to the transaction of the public business of OGE, as required by law.

Director's Column *continued from page 2*

important initiatives that OGE is undertaking. The last comprehensive examination of these laws occurred in 1989, and much has changed inside the Government and out since then. There have been sustained Government efforts toward privatization of certain functions; people's personal financial investments are very different; we have seen an increasing reliance on personnel with scientific and technological expertise; and there have been a series of decisions by the courts that have called into question the appropriate scope of certain restrictions on the outside activities of Federal employees. Yet our statutes and regulations have not adapted to this changing Government.

Furthermore, OGE's own experience over the years in applying these laws in a modern context has led us to question whether some of the current restrictions may be unnecessarily broad in light of their original legislative purposes. For example, the anti-representational restrictions in §§ 203 and 205 were intended by Congress primarily to prevent the use of undue influence by Federal employees on behalf of private parties. Yet these statutes currently prohibit conduct that would appear to pose little risk of such influence. For example, a lower graded Department of Transportation employee's communications with the Social Security Administration to help a neighbor negotiate through the benefits application process is essentially benign conduct.

We also believe there may be other areas in which the current laws are actually too narrow to capture real conflicts that are of concern to this Administration and the public, and we would like to explore possible changes in that direction as well.

In addition to this statutory review, we have also committed to an internal review of many of OGE's mandated processes to ensure that they are all as efficient and streamlined as possible.

These various reviews go to the laws and regulations that are the tools of our program. But I also came to this job with a commitment to change the perception of the executive branch ethics program, and bringing about a change in perception is much harder. Which brings us to the issue of leadership.

"Leadership" has become a popular topic when people discuss "ethics," and it should be.

It is extremely important to the executive branch that on Inauguration Day, President Bush issued his memorandum on the importance of abiding by the Standards of Conduct and the 14 Principles that establish our responsibilities as public servants. Study after study provides growing evidence that ethical leadership, and what is euphemistically called "walking the talk" is an absolute "must" for any organization that wishes to have a strong ethics program. If the leadership of an organization does not believe in, and incorporate into its daily work, the values espoused by an organization, no one else in the organization will either. But, what does it mean for leaders to walk the talk in a Government ethics program?

Quite frankly, while it is very important that the President and the Cabinet espouse the ethical principles of the Administration, broad ethical statements do not immediately translate themselves into the daily work of an agency. First, as you all know better than anyone, in the executive branch alone we have as many missions as there are agencies. It continues to amaze me how different the ethics programs can be in the agencies, depending on their issues.

Second, our Government is designed so that its leadership at the highest level turns over every four to eight years. This turnover is very important to our democratic society, but it also strongly impacts the ethics community. Our most visible clients are constantly changing and for the bulk of our workforce of nearly 4 million, the senior leadership can be a fairly fluid group. This is not something that the private sector has to deal with as regularly and predictably and it poses quite a hurdle if you accept the theory that ethically active leadership is a primary facet of an ethical organization.

But this does not excuse us from our responsibility for leadership. So, that brings us to the question of what is leadership in a Government agency? Who are the leaders?

I want to offer you my view that leadership comes in many packages and that in a Government agency, leadership is not just the Secretary and the new group of Senate-confirmed appointees that arrive with a new Administration. Leadership is the most senior career management, and **all** supervisors. It is very important here that I mentioned all supervisors. For the average employee, they are their primary leader.

I believe OGE needs to do more to target this group and this level of leadership. We are working on training targeted towards first line supervisors and their responsibility for the ethics programs. But this shouldn't just be OGE's issue. I would encourage all of you, as you plan your training for the coming year, to consider reaching out to supervisors with specially designed training.

Finally, as DAEOs and ethics officials, we also have to take the responsibility that comes with leadership. It is a fair question, though, to ask what I mean by accepting responsibility for leadership. Accepting responsibility for leadership means working to make it visible that you are incorporating ethical principles, rules, and values into your daily work. How does one, practically, go about incorporating ethical principles into our daily work? For everyone, it means asking the question "does this raise any ethical problems?" Being a leader also involves accepting the responsibility for the agency's mission. It means asking the questions "does this outcome further the mission of the agency," and "is this a good result?" For ethics officials, I think it is especially important to give guidance and advice that takes into account the work of the agency. If someone seeks to do something that is a problem under our ethics rules, don't stop with a "no" answer. It is our job, as ethics officials, to search for solutions to issues that arise in our work that are ethically sound and that advance our agencies' missions, programs, and operations. If we do not integrate our programs into our agencies' missions, our ethics programs will be marginalized and ineffective.

While OGE's leadership and policy making responsibility is essential to steering our decentralized network of agency ethics officials, having a highly placed DAEO and an adequately staffed ethics office in every agency is critical because they are most likely to know best how to tailor ethics rules and policies to the unique needs and concerns of their agency. It has become a standard phrase that I use in describing the executive branch ethics program to say that it is the agency's ethics officials who breath life into the program that OGE oversees.

The vital role of agency ethics officials is one reason why it is so important to me that we expand the use of technology in our business in order to enhance communication within our community. But

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Director's Column *continued from page 3*

increasing our communication is not the only thing that will improve our program. In order to improve our program, I also think we need to admit where it is weak.

As you all probably know, ethics programs have become much more prevalent in the private sector in the last decade. And there is great discussion, among private sector ethics officials, about whether values-based programs, as opposed to the Government's model of a compliance-based program, are actually more effective. For those of you who, like me a year ago, had not focused on this distinction, a compliance-based ethics program has actual rules that must be followed as opposed to educating on values with the belief that those values will be incorporated into an organization and result in the sought after behavior.

Now, I know theorists can disagree on which is a better system, and I can see value in both, but let me tell you a little about why I think we must always have a strong compliance component to our program. We must remember that there are almost 4 million people in the executive branch who speak and act on behalf of the Administration. And, quite frankly, the decision was made, and I agree with it, that with that large and diverse a workforce, set standards are the best assurance that inappropriate behavior will not occur.

But I want to share with you where I believe our compliance-based program falls short. If our ethics programs stop at

compliance, we are not fulfilling our responsibilities as leaders. There can be consequences of a compliance based program that we have to guard against.

First, we have to guard against forgetting the root value of a rule and focusing only on the rule itself. I honestly don't think that we spend enough time talking to our own employees about the root value behind our rules. I have conducted literally hundreds of ethics training classes and I can't tell you that I have done this nearly as often as I should have. In fact, we have a gift rule to avoid the appearance of a bribe or the use of public office for private gain. We require public financial disclosure because it is part of our system that the American public has a right to assure itself that there is personal integrity in the highest levels of Government. But we have a responsibility to explain to people the value behind what may seem to be just a rule and to remind them that the rules are not where ethical decision-making stops. It is a serious concern of mine that employees sometimes feel that minimum standards cover the whole thing. That is wrong. Our rules are just minimum standards of behavior. Compliance ensures that an employee won't be disciplined. These rules were never intended to completely replace executive level decision-making and our own sense of right and wrong. This must still be a part of every decision that we make.

But this possible shortfall in our program brings us back to the importance of the

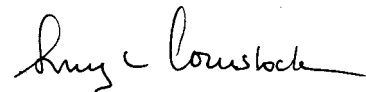
ethics official. Individually, and collectively, it is our job to act as leaders and run our programs in a way that makes sense, both because the program supports the mission and because it is rooted in core values. It is a very lucky employee who has an ethics official who provides honest advice that includes a good legal analysis, along with a strong recommendation based on the work of the agency, and the official's best judgement. This is critical to avoiding issues that may not necessarily be "prohibited" conduct under the ethics rules, but will create the appearance of impropriety for the agency and cause the public to question the integrity of the agency's programs and public service as a whole.

I hope that this conference can make its own contribution as we all work to continually strengthen and improve the executive branch ethics program, and thereby build public confidence in Government.

And, on that note, I thank you for your attention.

I will be happy to answer any questions before we go into the first set of concurrent sessions.

Enjoy the conference!



Amy L. Comstock

Conference Panel on SF 278 & Related Records Access Issues

A conference panel on the SF 278 and related records access issues explained how copies of SF 278 Public Financial Disclosure Reports and certain other "covered records," (such as certificates of divestiture and 18 U.S.C. § 208 waivers), are made available to public requesters in accordance with the special access procedures of the Ethics in Government Act and the Office of Government Ethics executive branch regulations. The panelists also addressed the handling of the other materials in the SF 278 report files, including Privacy Act coverage and regular access requests under the Freedom of Information Act (FOIA) for records other than SF 278s (and other

covered records noted above) in the files, such as review notes, ethics agreements and correspondence. Copies of some of the other file materials are available to the public upon request, but others are not available since they are covered by various FOIA exemptions.

The panelists also conducted a separate computer demonstration on three private Web sites that currently offer online Internet access to completed public financial disclosure reports of certain high-level Federal officials in all three branches of the Federal Government (most extensively, public reports of members of Congress). Two of the sites offer a

warning as to the prohibited uses of 278 reports. The demonstration presented the sites of: (i) the Center for Responsive Politics at <http://www.opensecrets.org/pfds/> (public reports of 2000 election Presidential & Vice Presidential candidates (& then-incumbents) and of members of Congress, with a bypassable "legality warning" on prohibited uses); (ii) the Center for Public Integrity at <http://www.publicintegrity.org/reports/bop2000/pfd.htm> (public SF 278 reports of 2000 Presidential election candidates, with a prohibited uses legal warning); and (iii) APBnews.com at <http://www.apbnews.com/cjsystem/judges/> (certain Federal judges' public reports, no prohibited uses warning). In addition, though not part of the demonstration, certain other Web sites (of news media, etc.) at times include online story-related SF 278 reports.

Conference Panel on Fundraising in the Federal Workplace

Jim Green, Associate General Counsel at the Office of Personnel Management (OPM) and Karen Kline, DAEO at the Federal Mediation and Conciliation Service presented a conference panel addressing issues of fundraising in the Federal workplace. During the session there were a number of very fact-specific questions raised about fundraising both in the context of the Combined Federal Campaign (CFC) and outside of it. Many of these questions involved the application of and the interrelationship between the ethics regulations, the regulations covering the CFC, and the regulations applicable to authorized activities in Federal buildings.

The CFC is the only authorized solicitation of employees in the Federal workplace on behalf of charitable organizations. Only those organizations approved by the Internal Revenue Service under section 501(c)(3) of title 26 of the United States Code can participate in the CFC. The Director of OPM exercises general supervision over all operations of the CFC. Charitable activities other than fundraising, such as food drives and holiday toy drives, are not directly subject to CFC regulations or OPM oversight, but must be consistent with appropriate use of Federal buildings, subject to General Service Administration (GSA) regulations at 41 CFR subpart 102-20. Both fundraising under the CFC and non-CFC charitable activities are subject to general ethics requirements concerning use of Federal equipment, appropriate use of employee time, and appropriate use of positions and titles, as covered by the Misuse of Position and Outside Activities subparts of the Standards of Conduct in 5 CFR part 2635.

Agency ethics officials should review specific questions about appropriate charitable activities. Questions about use of Federal buildings for non-CFC charitable activities should be directed to GSA. OPM can respond to questions about the CFC itself, as well as to questions of whether a charitable event or activity is consistent with the CFC, including special solicitations arising out of natural disasters (see 5 CFR section 950.102(a)).

Set forth below are several general CFC "Do's and Don'ts" that can be of assistance in planning CFC events and activities. If agency ethics officials have specific CFC-related questions, please contact Jim Green at OPM at 202 606-1700, or by e-mail at jsgreen@opm.gov.

True *voluntary giving* is fundamental to Federal fundraising activities, therefore:

DON'T take action that does not allow free choice or that gives the appearance that employees do not have free choice. This includes whether to give through the CFC or not, or whether gifts are confidential.

DON'T allow or condone the solicitation of employees by their supervisors. This does not prohibit agency officials from allowing "kick-off" activities or demonstrating support for the CFC, or prohibit individual supervisors from encouraging general participation.

DON'T allow supervisory inquiries about specific CFC participation. This does not prohibit supervisors from knowing summary information about their organizations.

DON'T set 100% participation goals or establish personal dollar goals or quotas.

DON'T use kick off events to endorse or encourage giving to any specific charity or federation of charities.

DON'T violate the spirit or letter of the Government's encouragement of private volunteer activities by endorsing or encouraging participation on behalf of any specific charity or federation of charities.

DO avoid ethical conflicts with any charity or federation of charities with which an agency official has an affiliation, by not permitting personal solicitation of funds on behalf of such charity(ies) or allowing the use of an official position, title, or authority associated with such position to benefit such charity(ies).

DO be aware of the restrictions on fundraising in the Government-wide ethics regulations and the CFC regulations.

DO allow and participate in special CFC non-solicitation events such as "kick-off" events, victory celebrations, and award activities.

DO allow special CFC events not specifically prohibited by CFC regulations, where approved by an agency head or other appropriate agency official, consistent with agency ethics requirements.

Conference Panel on Book Deals

A conference panel on "Book Deals" provided background on publishing industry practices and reviewed the ethical restrictions that executive branch employees need to keep in mind when they engage in publishing a book.

Nina Graybill, an attorney who represents writers, journalists, small publishers and other media clients, and who also works as a literary agent, talked about publishing industry practices related to book contracts. She discussed compensation arrangements, including customary schedules of advances and the standard percentages for royalties. She also discussed marketing and promotional undertakings.

James O'Sullivan, an OGE attorney, reviewed the ethics requirements that could potentially apply in the context of a book deal. He focused on issues of the timing and type of compensation in terms of the ban on outside earned income for Presidential appointees, the fifteen percent cap on outside earned income for certain noncareer employees and the general ban on compensation for writing that relates to official duties.

The session concluded with a discussion among the panelists and audience of several book deal scenarios.



11th Annual Government Ethics Conference





Conference Panel On Patents, Inventions, and Conflicts of Interest

The patents, inventions and conflicts of interest panel at the recent OGE conference enjoyed lively audience participation. The panel, composed of representatives from the National Institutes of Health and the Department of Defense, addressed various issues involving patents and inventions that may give rise to conflict of interest problems, particularly under 18 U.S.C. sections 208 and 209.

The panel distinguished between patent issues involving technology transfer under the Federal Technology Transfer Act (Act) and patent issues that arise outside of the Act. The Act permits Federal employees to keep a percentage of royalties received through a Cooperative Research and Development Agreement (CRADA) for an invention discovered during official duty time. The royalty payment under the Act is considered as part of the compensation to the Federal employee and,

thus, does not violate 18 U.S.C. section 209.

In the situation where a Government employee invents something on Government time, if the Government does not assert its patent right to the invention, the Government must give that right to the inventor. The Office of Legal Counsel recently opined that if the inventor succeeded in getting a patent for that invention, the royalties from that patent would not constitute a violation of 18 U.S.C. section 209.

The more controversial issues raised during the session included questions of what constitutes a “particular matter,” as well as “personal and substantial participation” under 18 U.S.C. section 208. One example raised involved a scientist’s personal involvement in communications regarding a CRADA when the scientist had a financial tie to the organization interested in pursuing the research

with the Government. In that context, there was substantial disagreement as to when or whether a “particular matter” exists when the researcher is approached about a research project and turns the inquiry over to his or her superiors at the agency to determine whether the agency would want to move forward on the research.

In this same context, the waiver standard under 18 U.S.C. section 208(b)(1) was the subject of discussion among several agency representatives. There was not universal agreement as to what constituted “not so substantial as to be deemed likely to affect the integrity of the services.” As a result of the panel discussion, several participants suggested that there may be a need to reexamine 18 U.S.C. section 208, and the waiver standard, as it applies to scientists, doctors, researchers and inventors, particularly in the context of technology transfer and related activities.

Conference Panel on Science and Financial Interest

A conference panel on “Science and Financial Interest” discussed many of the unique and difficult conflict of interest issues arising from the intersection of Government, academia and industry in the scientific enterprise. The panel consisted of representatives from the American Association for the Advancement of Science (AAAS), the National Science Foundation (NSF), the National Institutes of Health (NIH), the Food and Drug Administration (FDA), and OGE.

One of the principal themes of the session was that ethics officials need to be sensitive to the professional “culture” of scientists. As described by Dr. Stephen Nelson of the AAAS, scientists tend to have a professional self-image as objective truth-seekers, and they may subscribe to a version of scientific ethics based on the premise that public review of one’s work by peers (i.e., other scientists) is

sufficient to cure most conflicts of interest. Consequently, the panel noted that Federal ethics officials who counsel Government scientists may encounter misunderstanding when they first explain the system of Federal ethics regulation, which can require divestiture and curtailment of certain outside professional activities in order to resolve some potential conflicts of interest.

The panel also discussed the increasingly prevalent financial ties between academic institutions and industry in various fields of scientific research. Robin Clay Fritsch of NSF and Karen Santoro of NIH explored many of the types of financial arrangements that are common among research universities that work with industry, including research contracts, consultancies, and even equity ownership (by both the university and the individual researchers). This subject is of particular

concern to Federal ethics officials because a large number of Federal scientists come directly from academia and often bring with them certain financial interests and relationships resulting from industry-funded research.

Finally, the panel discussed ways in which ethics officials could respond to some of these challenges. Jenny Slaughter of FDA discussed FDA’s alternative confidential financial disclosure system for special Government employees (SGEs), which requires, among other things, detailed information about industry funding of research at the universities where the SGEs are employed. Ms. Slaughter also discussed FDA’s efforts to develop a set of written criteria for assessing which kinds and amounts of conflicting financial interests should be waived for the agency’s SGE scientists, pursuant to 18 U.S.C. §§ 208(b)(1) & (3).

Bayless Manning Awarded Certificate of Meritorious Achievement

OGE had both the honor and pleasure of hosting Mr. Bayless Manning at this year's conference and took the opportunity to present him with a Certificate of Meritorious Achievement. As Stuart Rick, OGE Deputy General Counsel, noted in presenting the award, "Few persons have made a greater contribution to the field of Federal conflict of interest law in the past forty or fifty years."

While a faculty member of the Yale Law School in the 1950s, Mr. Manning served as staff director for the highly influential study of Federal conflict of interest law sponsored and published by the Association of the Bar of the City of New York (the Bar). This study, recommending the modernization and rationalization of the then existing patchwork of conflict of interest laws, was pivotal in informing the legislative efforts that led to the comprehensive overhaul of federal conflict of

interest law in 1962. In fact it is still widely consulted and referenced as an important source for understanding the purposes of the 1962 legislation.

In 1961, following the publication of the Bar study, Mr. Manning served as a member of the President's Advisory Panel on Ethics and Conflicts of Interest in Government. As with the prior Bar study, the work of this panel was instrumental to the legislation adopted in 1962.

In 1964, Mr. Manning published a comprehensive treatise on the evolution of the Federal conflict of interest statutes, titled *Federal Conflict of Interest Law*. This seminal work represents the most comprehensive treatment ever given to the pre-1963 statutes and includes extensive analysis of the 1962 legislation. So authoritative is the work that it has been cited by the Supreme Court and the Office of Legal Counsel, as well as OGE, among other authorities.

Stuart Rick aptly summarized Mr. Manning's contributions to the field by stating, "Those of us in the Federal ethics community have you, Mr. Manning, to thank for much of our understanding of the Federal conflict of interest laws." For such historic contributions, Mr. Manning was awarded a Certificate of Meritorious Achievement.

In accepting the award, Mr. Manning praised the Government ethics community by noting, "The work you do is vitally important and wonderful."

Mr. Manning later presented a concurrent session, to a standing-room-only audience, titled, "Interest Conflicts in Perspective." Joined by his colleague, James Jones, another long-time ethics practitioner, Mr. Manning expressed his surprise at being "discovered and dug up." He and Mr. Jones then proceeded to conduct a highly interactive session, challenging the audience not only to think "outside the



conflict of interest structure that has been in place for 40 years," but also to use their personal opinion as a guide in responding to various hypothetical situations.

The issues raised in the session went beyond the current focus of Federal ethics law to include issues of societal cost-benefit analyses, personal accountability, and policy differences versus actual conflicts of interest. To what degree, Mr. Manning asked, should we continue to focus solely on the economic aspect of conflicts and not consider other motivations for human behavior—a timely and salient question given OGE's current efforts to review the conflict of interest statutes. Perhaps, Mr. Manning suggested, the economic interest is the only measurable aspect.

After ninety minutes of animated debate, Mr. Manning closed his session with this bottom line—there are no answers, only better questions.

Newsgram on the Net

OGE is considering whether to publish the Newsgram exclusively in electronic format, accessible via the OGE WEB site. Anyone wishing to comment on this proposed change should email their comments to newsgram@oge.gov.

Barry Aldemeyer Receives Distinguished Service Award

Barry Aldemeyer, Ethics Counsel at the Office of the Comptroller of the Currency (OCC), Department of the Treasury, was selected as the recipient of the fifth annual OGE Distinguished Service Award. The award recognizes the accomplishments of those officials within the ethics community who not only successfully manage and maintain strong ethics programs but who are standard setters for the community as a whole.

Barry Aldemeyer began his work in ethics at the OCC in 1992, when he was asked to create and launch the agency's ethics program. He recalls initially feeling isolated in his new job, noting "There was no one with whom I could discuss the work I was doing." Since those early days, Barry has certainly broken free of the isolation and has established himself as a respected and trusted partner in the ethics community.

As Director, Amy Comstock noted in her remarks, Barry is lauded throughout the Treasury Department for his reasoned thinking, outstanding advice, creative training, constant assistance and overall leadership. Barry's talents and energy are clearly prodigious. The Director went on to highlight Barry's skillful incorporation of technology into the ethics program at



OCC, "Barry uses management tracking systems, an electronic bulletin board, and numerous other systems and procedures to make the Comptroller's program a model ethics program within the executive branch."

OGE's 2000 report to the Comptroller of the Currency perhaps best characterizes Barry's service and the reason for his having been chosen for this year's award: "[Barry]...is a highly experienced ethics counselor who provides exceptional thoroughness in every aspect of the ethics program," the report notes.

In accepting the award, Barry thanked the community, "my many mentors," for their courtesy and helpfulness. "You have helped make these past nine years the most enjoyable of my professional career."

Barry also noted that originally he was to have received the award on the evening of September 11. He poignantly reminded the community of the import of our work in light of, and despite of, the events of that terrible day:

"The everyday work of Government ethics...seems now, like so many of our pre-September 11 concerns, of diminished significance. And yet I believe that the work I do and the work that you do is important, that it is of value, that it makes a difference after September 11 just as it made a difference before. ...We help to maintain a public trust and confidence in the integrity and trustworthiness of our Government; a Government that our citizens are relying on very heavily these days to lead them to safety and ultimately to peace."

OGE extends its warmest congratulations to Barry Aldemeyer for a job well done!

OGE Presents Agency Program Awards

Some 34 agencies, departments, and military installations were recognized with an OGE Program Award at this year's conference. OGE presents these awards annually to those agencies whose ethics programs were reviewed by OGE's Program Review Division during the past fiscal year and whose basic systems were found to be in compliance with OGE requirements, receiving no recommendations for improvement.

In presenting the awards, Jack Covaleski, Deputy Director, Office of Agency Programs remarked that the awards were "a credit to both the ethics

officials who work so diligently, and to agency management who give them the time and the resources to do their job so well." He encouraged each of the recipients to "make the most of [the award]," by organizing a presentation ceremony of the award to the head of the agency. He noted that the CIA had done so last year and had issued a press release, which was picked up by many national newspapers. He added that such ceremonies with agency officials give the ethics program a lot of publicity and that ethics officials truly deserve the credit.

Congratulations to all award recipients!

Civilian Agencies:

Department of Labor
 Department of Veterans Affairs
 U.S. Agency for International Development
 Chemical Safety and Hazard Investigation Board
 Federal Emergency Management Agency
 Federal Housing Finance Board
 Federal Trade Commission
 Inter American Foundation
 National Aeronautics and Space Administration
 • Goddard Space Flight Center
 • Lyndon B. Johnson Space Center

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Agency Program Awards *continued from page 8*

Occupational Safety and Health Review Commission
Postal Rate Commission

Defense Agencies:

Department of Defense
• Armed Forces Information Service

Department of the Air Force
• 311th Human Systems Wing, Brooks AFB
• Air Force Center for Environmental Excellence, Brooks AFB
• 12th Air Force Headquarters, Davis-Monthan AFB
• Warner Robins Air Logistics Center, Robins AFB

• Air Force Reserve Command, Robins AFB

Department of the Army
• US Army Garrison, Aberdeen Proving Grounds (APG)
• US Army Developmental Test Command, APG
• US Army Soldier and Biological Chemical Command, APG
• US Army Center for Health Promotion and Preventive Medicine, APG
• Army Environmental Center, APG
• National Training Center, Fort Irwin

Department of the Navy
• Fleet and Industrial Supply Center, Norfolk Detachment, Philadelphia

• Naval Inventory Control Point, Philadelphia
• Navy Public Works Center, Jacksonville
• Fleet and Industrial Supply Center, Jacksonville
• Engineering Field Activity, Northwest
• Fleet and Industrial Supply Center, Puget Sound
• Naval Surface Warfare Center, Carderock Division, Ship Engineering System, Philadelphia
• Supervisor of Shipbuilding, Conversion and Repair, Jacksonville
• Commander, Navy Region Southeast
• Commander, Navy Region Northwest

OGE Managers' Update

OGE management provided the following programmatic updates to conference participants in Virginia Beach.

Marilyn Glynn, Office of General Counsel

2001 Activities

• OGE certified approximately 570 nominee forms and issued over 250 certificates of divestiture (CDs).

• On July 30, 2001, OGE transmitted to Congress the Administration's proposed legislation to streamline public financial disclosure. As of the date of the conference no congressional action had been taken on this legislation. However, on December 12, 2001, Senator Fred Thompson along with Senators Joseph Lieberman, George Voinovich, Richard Lugar, Richard Durbin, and Daniel Akaka introduced S. 1811, the "Presidential Appointments Improvement Act of 2001." The bill incorporates a substantial portion of the Administration's proposed legislation.

Pending Projects

• OGE is currently undertaking a review of Title 18 criminal conflict of interest statutes.

• The amendments to the 18 U.S.C. §208 exemption regulations are currently under review at the Office of Management and Budget.

• OGE is working with the Office of Legal Counsel to resolve several issues in the draft §207 regulation.

• In light of possible proposed changes to §209, OGE will not be issuing a regulation on section 209, but rather will issue a memorandum providing guidance.

• OGE is currently working with the Department of the Treasury on a proposal to revise section 1043 of the tax code to permit CDs for certain incentive stock options.

• OGE is reviewing both the CD regulation, as well as the blind trust regulation with a view toward simplifying them.

• OGE is undertaking a study of the ethics rules that apply to Government contractors with a view toward proposing possible changes in this area.

• OGE is finalizing its own agency gift acceptance regulation.

• OGE has developed two new intermediate training courses for 2002: one will address section 209, and the other sections 203 and 205.

Jack Covaleski, Office of Agency Programs

• OGE has held one and will be holding two more one day mini-conferences for senior ethics officials from Departments and major agencies to solicit agency views on various initiatives the Office hopes to undertake in the next year, including revision of the training regulation and revision of the criminal statutes.

• OGE has been making efforts to meet with regional ethics counselors not only to discuss our latest projects and the future of the ethics program but also to hear of any issues or concerns they might have. OGE would be happy to participate in any regional meetings agencies might hold.

Program Review

• OGE is reassessing what we do and how we do it. Part of that reassessment includes reevaluating our program review techniques, some of our basic policies and our review scheduling. We are also examining what are effective ways of measuring the success of an ethics program. Consequently, OGE has only issued a six-month program plan of agency reviews for 2002. Sometime

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OGE Managers' Update *continued from page 11*

during the late spring OGE will notify agencies of the program plan for the second half of the year along with any changes in policies and procedures we may be making.

- While the 2001 program plan of agency reviews concentrated on the smaller agencies 2002 will likely see more departmental reviews.

Financial Disclosure

• OGE has received an unusual number of press inquiries about ethics agreements for Presidential appointees to Senate-confirmed positions (PAS). Specifically they have wanted to know if the officials have fulfilled their ethics agreements, whether they are over the 90 day compliance period and whether they have requested an extension. OGE reminds agency ethics officials of the importance of their obligation to follow-up on ethics agreements to ensure they are completed within the 90-day period from the date of confirmation or that an extension is requested.

• OGE has not received approximately 200 of the annual and termination reports due to our Office.

• OGE is currently tracking some 800 individual elements of ethics agreements for approximately 360 appointees. We have also filled over 500 requests from the news media for over 2,000 SF 278 reports of PAS officials.

Education and Program Services

*In January 2002 OGE will be announcing a monthly meeting for new ethics officials. These informal meetings will be conducted by OGE desk officers and will

be designed to provide an initial orientation to the duties of an ethics official and to answer questions. Any and all new ethics officials, including any regional ethics personnel, are encouraged to attend.

• OGE will again be providing training in Washington, DC and in the regions. Intermediate training courses will be offered in Denver and Introductory training courses will be held here in Washington, in Atlanta, San Francisco, Dallas and Chicago. Please make your regional personnel aware of this training as it is scheduled and announced.

Dan Dunning, Office of Administration and Information Management

OGE Technology Initiatives

SF 278 Electronic Filing

• OGE has undertaken a project to automate the SF 278 filing process for Presidential appointees and DAEOs. A working group composed of nine agency representatives, the White House, Senate and OGE staff, with the assistance of Booz Allen Hamilton will be reviewing the present paper process, identifying ways to streamline it, and identifying different ways to automate the streamlined process (including PKI technology). By the end of February the group hopes to have identified an automated process and the technical requirements to implement it.

• In the spring OGE hopes to begin putting the new system in place and to complete that effort on or about October of 2002. OGE hopes to use a significant portion of FY 2003 to fine tune the process and troubleshoot any problems.

Bulletin Board

• OGE hopes to implement in the very near future an electronic bulletin board for the ethics community, pending the resolution of issues such as appropriate disclaimers for its use and the confidentiality of the comments made on it. OGE anticipates starting with a limited access policy (OGE staff and DAEOs only). If this is successful then access will be expanded accordingly.

Video Conferencing

• OGE acquired video conferencing equipment that provides conferencing capabilities via both ISDN (telephone lines) and the Internet. OGE hopes such technology will further enhance our abilities to communicate with the ethics community, to deliver training, and to engage in dialogues with overseas audiences.

Ferne Mosley, Special Assistant to the Director

Training Regulation Revisions

• OGE has been sponsoring focus group meetings with agencies to "brainstorm" on ideas for changes to the training regulation. Discussions to date have included giving agencies more flexibility in their training programs, providing supervisory training, and examining changes to new employee training requirements, as well as the written training materials requirement.

• In addition to the focus group meetings, OGE is seeking input from corporations, non-profit organizations and state and local governments for further ideas on revising the regulation.

• OGE hopes to have a revised proposed regulation out sometime in the summer.