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Government

# Ethics Newsgram

## Annual Ethics Conference

Approximately 460 ethics officials attended this year's Eighth Annual Government Ethics Conference, in Williamsburg, Virginia, September 14-17. This year's conference commemorated the 20th anniversary of the Ethics in Government Act of 1978.

This year's conference featured three outstanding guest speakers. Paul C. Light, Director of the Public Policy Program at The Pew Charitable Trusts in Philadelphia, spoke on the need for ethics officials to show commitment to public service and presented a hopeful vision for Government. Elaine Kaplan, Special Counsel of the U.S. Office of Special Counsel (OSC), described the different responsibilities of the OSC and shared the goals that her office is striving to achieve. The final speaker of the conference was Norman Augustine, Chairman of the Executive Committee of Lockheed Martin and a member of the faculty of the Princeton University School of Engineering and Applied Science. Mr. Augustine spoke about the lack of understanding between industry and government and about the important role ethics officials have in building awareness and understanding throughout their agencies.

As in other years, conference participants were free to select from a variety of sessions during each of the five 90-minute concurrent sessions. Some of the sessions this year included "Innovations in Training," "Endorsements in an Age of Public-Private Partnerships," "Volunteerism in the Workplace," "Managing Ethics Records," and "Street Smart Ethics." In addition, introductory track courses were offered on conflicting financial interests, new ethics official orientation, and analyzing seeking employment situations.



In celebration of the 20th anniversary of the Ethics in Government Act of 1978, several special features were added to the conference. Vice President Al Gore, former President George Bush, and Supreme Court Justice Sandra Day O'Connor spoke at the conference via videotaped messages, welcoming ethics officials and congratulating them on their commitment to ethics. In addition, a special plenary session entitled "Reflections, Perspectives, and Projections," with the former Directors of the Office of Government Ethics (OGE), provided an opportunity for the audience to learn about the development of OGE as an agency, from its inception in 1979 to the present.

Mr. Potts presented the second annual Distinguished Service Award to James H. Thessin, Designated Agency Ethics Official at the Department of State, in recognition of his dedicated work which

has contributed to the success of the executive branch ethics program. (See separate article.) OGE also presented awards to departments, agencies, and military installations for outstanding achievement in developing and managing strong ethics programs.

## James Thessin Receives Distinguished Service Award

Department of State  
DAEO

James Thessin, Designated Agency Ethics Official (DAEO) at the Department of State (State), received OGE's second annual Distinguished Service Award, at the Eighth Annual Government Ethics Conference, in recognition of his demonstrated long-term commitment to and accomplishment within a worldwide ethics program. The award is presented annually to an ethics official who has not only successfully managed a strong ethics program within his or her department or agency, but who has also contributed to overall ethics policy development.

In 1986, when Mr. Thessin began working in ethics at State, he inherited an ethics program that was "not exactly a model program." An OGE program review report that was issued prior to Mr. Thessin's tenure contained five pages of recommendations and asked that a new DAEO be named.

After Mr. Thessin was named the new DAEO in 1990, he diligently sought resources, engaging over 250 senior  
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## Director's Column

One of the highlights of this year's annual ethics conference was the plenary session that brought together on the same stage the former directors of the Office of Government Ethics. I was truly honored to be a part of this event and to share in the reflections that my predecessors had on their time in office and the challenges that they faced.

It was especially striking to hear the story of the establishment of OGE and to realize how far both the Office and the executive branch ethics program have come in the 20 years since the enactment of the Ethics in Government Act of 1978. OGE's first director, Bernie Wruble, recounted how a new program had to be created nearly from scratch under crushing time constraints. Bernie recalled



those first 100 days during which he and his staff of eight struggled through a three-foot snowfall to work on new regulations when the rest of the Government was virtually shut down. He stressed the importance of establishing a culture of helpfulness, fairness and balance in a new office that was implementing a law that had generated anxiety in some quarters because of its post-employment and financial disclosure provisions.

I was also struck by the sense of fragility that surrounded the Office in those early days. OGE's second director, Jack Walter, recounted his uncertainty about retaining his position during a Presidential transition. Ultimately, Jack was asked to stay on and he helped to establish the role of OGE in certifying nominee reports during the confirmation process.

As the Office and the program began to establish deeper roots in the mid-80's, new concerns emerged. Dave Scott also remembered his uncertainty that he would survive as OGE's third director after making a series of sensitive calls affecting very senior Government officials. Dave underscored a number of vulnerabilities and pitfalls that the Office faced in those days: the lack of a natural power base on the Hill, the risk of having the program become a paper exercise, and the danger of being pushed into an extreme position by political zealots.

Dave Martin recalled that his time in office was marked by intense scrutiny from the Hill and the media. During one four-month

period, Dave made more than 25 visits to the Hill. He also found himself and the Office under the constant, bright lights of media coverage. But despite partisan attacks, Dave saw to it that the Office remained nonpartisan throughout his term.

During Judge Frank Nebeker's tenure, OGE went through a crucial reauthorization and saw its stature and stability enhanced when it was established as a separate agency. I was particularly pleased to hear Judge Nebeker's response to the question of what advice he would give a future OGE director. His answer was "trust the staff." I received the same good advice when I came on board as director, and I can say that I have been truly blessed by having a dedicated staff of highly motivated professional people.

I was disappointed that one former director was unable to attend the session. My friend and former colleague, Don Campbell, had to remain with his family because of an injury suffered by his mother. Don twice served as acting director and his good judgment kept OGE on a steady course during those transition periods.

The panel provided a fascinating and valuable overview of the past 20 years of OGE and the ethics program. There is a strength that comes from knowing where we have been. It helps us to better understand who we are and where we are going. It helps us to appreciate that adversity can stimulate us to advance. And it helps us to keep our perspective amidst an ethical crisis and to realize that such a crisis can energize us to strengthen the program now and in the future.



## 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 as well as your candid critiques and suggestions. Quoting or reprinting materials contained in this publication is strongly encouraged and may be done without seeking 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.

### OGE's Former and Current Directors

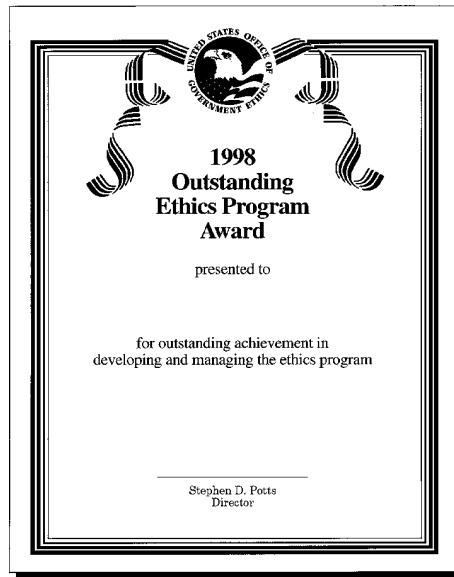
Bernhardt Wruble (interim)	01/79-10/79
J. Jackson Walter	10/79-08/82
David R. Scott (acting)	08/82-08/83
David H. Martin	08/83-08/87
Donald E. Campbell (acting)	08/87-12/87
Judge Frank Q. Nebeker	12/87-10/89
Donald E. Campbell (acting)	11/89-07/90
Stephen D. Potts	08/90-present

# Ethics Programs Recognized

During the first day of the Eighth Annual Ethics Conference, OGE presented awards to 39 departments, agencies, and military installations for outstanding achievement in developing and managing their ethics programs. These awards are a credit to both the ethics officials who work so diligently and to the agencies which give them the time and the resources to administer their ethics program, sending the message to employees that ethics is important. Awards are presented to agencies whose ethics programs have been reviewed by OGE's Program Review Division during the past fiscal year, if the resulting program report contained no recommendations to the agency.

Congratulations to all of the recipients:

American Battle Monuments Commission  
Assassination Records Review Board  
Department of Education  
Department of Energy  
Federal Communications Commission  
Federal Deposit Insurance Corporation  
Federal Maritime Commission  
General Services Administration  
International Boundary and Water Commission, U.S. and Mexico, U.S. Section  
International Joint Commission  
International Trade Commission  
National Science Foundation  
National Security Council



Office of Personnel Management  
Office of Thrift Supervision  
Overseas Private Investment Corporation  
U.S. Arms Control and Disarmament Agency

Department of Defense  
• Defense Logistics Agency  
• Department of Defense Dependent Schools  
• Department of Defense Dependent Elementary and Secondary Schools

Department of the Air Force  
• 1st Fighter Wing, Langley AFB, VA  
• Headquarters Air Combat Command, Langley AFB, VA  
• 37th Training Wing, Lackland AFB, TX  
• 21st Space Wing, Peterson AFB, CO

Department of the Army  
• Headquarters, U.S. Army Europe and 7th Army, Heidelberg, Germany  
• Headquarters, U.S. Army V Corps, Heidelberg, Germany  
• Headquarters, U.S. Army Materiel Command, VA  
• 5th Special Forces Group (Airborne), Fort Campbell, KY  
• Madigan Army Medical Center, TX  
• 101st Airborne Division (Air Assault) and Fort Campbell, KY  
• 160th Special Operations Aviation Regiment (Airborne), Fort Campbell, KY  
• U.S. Army Air Defense Artillery Center and Fort Bliss, TX  
• U.S. Army Contracting Command, Heidelberg, Germany  
• U.S. Army Field Artillery Center and Fort Sill, OK

Department of the Navy  
• Department of the Navy, Military Sealift Command, VA  
• Headquarters, U.S. Marine Corps, VA  
• Marine Corps Air Station, El Toro, CA  
• Marine Corps Combat Development Command, VA  
• Marine Corps Logistics Base, Barstow, CA

## Distinguished Service Award Continued from page 1

officers at embassies and posts throughout the world to staff the program. A new office was set up at headquarters to focus specifically on ethics and personnel issues. Mr. Thessin increased staff to render advice and counsel, and set up a financial disclosure staff at headquarters. He also worked with other foreign affairs agencies to overcome the peculiar obstacles to ethics training posed by worldwide employment.

Despite his many duties, Mr. Thessin provides daily leadership to State's ethics program. He has put discipline into the ethics program and developed sound procedures for vetting nominees. Mr. Thessin's staff reviews about 80 nominee

statements annually of new ambassadors with many financial interests and difficult and varied conflicts issues to be resolved. This task becomes especially daunting in transition years. It is a tribute to Mr. Thessin's sage counsel that so few ethical problems have occurred at State under his tenure. He has truly made State's program a model program in the executive branch, and one that other foreign affairs agencies around the world can emulate.

Mr. Thessin received a Doctor of Laws degree, cum laude, from Harvard Law School in 1974. He has served as Counsel to the Senate Foreign Relations Committee and as a senior litigation attorney with the Nuclear Regulatory Commission.

Mr. Thessin began working at State in 1982. He has been the Deputy Legal Adviser for State since 1990, providing legal advice on contracting, legislation, diplomatic immunity, and personnel issues. Mr. Thessin has won a number of awards from State, including the Distinguished Performance Award, the Meritorious Presidential Rank Award, and the Distinguished Presidential Rank Award.

Mr. Thessin proudly accepted the award as "a representative of a large number of public officials who serve the public good." Further, he hoped that this award would "inspire us all to make Government work better."

# U.S. Office of Government Ethics

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# Staff Directory





# MSPB Decision Applies Standards of Conduct

The Merit Systems Protection Board (MSPB) recently issued a decision which applied the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. part 2635.

In *Mann v. Department of Health and Human Services*, 78 M.S.P.R. 1 (1998) (*Mann*), the employee had been removed for using a Federal Express envelope and airbill that contained the agency's Federal Express account number in an unsuccessful attempt to send personal documents. She also attempted to conceal her use of the material by using a name by which she was not known at

work and by using other incorrect information in preparing the airbill.

The employee was charged, among other things, with a violation of 5 C.F.R. § 2635.702 (use of public office for private gain). The MSPB, however, concluded that this charge could not be sustained because the agency had not shown any private gain by the employee. The package was returned to the agency without being delivered, and there was no evidence that the agency was billed for the transaction. The MSPB noted that the agency would not have been required to show gain if it had charged the employee with "attempted" use of public office for private gain or with creating the appearance of using public office for private gain.

The *Mann* decision seems to contradict an earlier MSPB decision on this issue. In *Lappin v. Department of Justice*, 24 M.S.P.R. 195 (1984) (*Lappin*), the MSPB held that a charge of use of public office for private gain "may properly be sustained without a specific finding of financial gain to the [employee]." The *Lappin* decision went on to explain that "[t]he thrust of the

charge is not that [the employee] gained financially from his business relationships ... but that he improperly entered into such relationships for personal gain." The *Mann* decision makes no reference to *Lappin*, leaving the two cases difficult to reconcile.

Also in the *Mann* decision, the MSPB sustained a finding of the Administrative Judge that the employee's dishonest conduct violated the general principle at 5 C.F.R. § 2635.101(b)(1), which provides that "[p]ublic service is a public trust, requiring employees to place loyalty to the Constitution, the laws and ethical principles above private gain." The MSPB reasoned that by "intentionally entering incorrect information on the airbill, apparently in an attempt to avoid detection, the [employee] did not place loyalty to ethical principles above her interest in private gain."

## Federal Travel Notes

The General Services Administration (GSA) recently published amendments to the Federal Travel Regulation (FTR) which add a new Chapter 300 containing general guidance on the use of the FTR and agency reporting requirements. The amendments also revise Chapter 301 which deals with temporary duty travel allowances. Both chapters are written in the "plain language" style of regulation writing. The final rule was published on April 1, 1998 (63 Federal Register 15950-15983) and



became effective on July 1, 1998. A notice containing corrections to the final rule was published on June 30, 1998 (63 Federal Register 35537-35539). GSA plans to follow up with revisions of the remaining chapters of the FTR in plain language format.

GSA has also issued a standard form which may be used for the semiannual report of payments accepted from a non-Federal source pursuant to the authority of 31 U.S.C. § 1353. Use of Standard Form 326 (SF 326) is not mandatory; agencies may continue to submit reports in the format provided by regulation at 41 C.F.R. § 304-1.9. The SF 326 may be downloaded from the GSA Web site at <http://gsa.gov/forms/>.

## Sanjour Decision

The United States district court for the District of Columbia has issued its decision in *Sanjour v. Environmental Protection Agency*. The court declared unconstitutional under the First Amendment, and permanently enjoined enforcement of, the provision in the Standards of Ethical Conduct at 5 C.F.R. 2635.807(a) that prohibits an employee's acceptance of travel expense reimbursements in connection with "teaching, speaking, or writing [that] relates to ... the employee's official duties," insofar as the prohibition applies to employees "who work below the grade level of senior executive service." The decision is reported at 7 F. Supp. 2d 14 (D.D.C. 1998).

OGE plans to issue a DAEOgram addressing in more detail these recent developments in the *Sanjour* litigation. The Office will also amend section 2635.807(a) to bring it into compliance with the district court ruling and will provide agencies with copies of the regulation and accompanying guidance.

## OGE Issues Advisory Letters

The Office of Government Ethics (OGE) has provided the Government Printing Office (GPO) with materials to update the *Informal Advisory Letters and Memoranda and Formal Opinions of the United States Office of Government Ethics*. These new materials include letters and memoranda issued by OGE in 1997 and a new index covering guidance issued from 1990 through 1997. The 1997 advisory letters may be purchased from the GPO bookstore or through the Superintendent of Documents.

In addition, the 1997 guidance is currently available for viewing or downloading on the OGE Web site at [www.usoge.gov/opinions/opinlib.html](http://www.usoge.gov/opinions/opinlib.html). The on-line search capability for this guidance is not yet available. The 1997 letters will also be included in the next issue of the Ethics CD-ROM. Ordering information for the Ethics CD-ROM may be obtained from the OGE Web site.

OGE will also soon place its informal advisory letters for the first half of 1998 on its Web site. OGE plans to continue to make its advisory letters available on its Web site on a semiannual basis.

## Ethics News Briefs

### First Round Paperwork Notice for a Proposed New OGE Customer Service Survey

OGE has published an initial notice of its forthcoming request to the Office of Management and Budget for clearance under the Paperwork Reduction Act of a new public financial disclosure access customer service survey. The survey would seek to measure the satisfaction of those who seek copies of SF 278 public reports from OGE. See 63 Federal Register 33668 (June 19, 1998).

### Second Round Paperwork Notice for Updated Qualified Trust Model Certificates and Draft Documents

OGE has published its second round paperwork notice to announce its request to the Office of Management and Budget for renewal and clearance under the Paperwork Reduction Act of 12 Ethics in Government Act updated model qualified blind and diversified trust certificates and draft documents (including a new set of model qualified trust communications).

See 63 Federal Register 45817-45819 (August 27, 1998).

### Regulatory Removal of Honoraria Rules

OGE has published a final rule which removes obsolete executive branch regulatory provisions implementing the statutory honorarium bar, which is no longer legally operative. See 63 Federal Register 43067-43069 (August 12, 1998).



### Update to Agency Supplemental Standards Rulemakings

With OGE's concurrence and co-signature, the following agencies have issued, for codification in title 5 of the Code of Federal Regulations, interim or final supplemental standards of ethical conduct for their employees:

- ◆ Department of the Interior (corrections to interim rule) — 63 Federal Register

18501 (April 15, 1998) & 20447 (April 24, 1998); and final rule (adopting the interim rule as final with certain changes — 63 Federal Register 34258-34259 (June 24, 1998) (also revising the Department's residual employee responsibilities and conduct regulation).

- ◆ Federal Trade Commission (final rule amendment) — 63 Federal Register 43069-43070 (August 12, 1998).

issues peculiar to the U.S. Government structure.

Consultations with visiting delegation members sometimes continue beyond a formal OGE briefing, once they return to their own countries and begin developing ethics systems. OGE will consult on an informal basis in order to clarify and elaborate on information presented during briefings, and on occasion, to comment on specific initiatives a country might be developing.

Such consultations are mutually informative and productive. OGE benefits from learning about the experience of other countries in combating corruption as a means of evaluating the effectiveness of the programs we administer. At the same time, OGE is afforded the opportunity to provide an important service to foreign governments by helping them create honest and transparent governmental processes.

In FY 1998, OGE hosted over 130 visitors from more than 25 countries, including Japan, Russia, South Africa, Australia, Argentina, Kenya, Italy, Senegal, China, Ukraine, Zimbabwe, Latvia, Uganda, Macedonia, and Poland.

OGE's international outreach effort complements a number of recent and far reaching anticorruption efforts within the international community. The Organization of American States completed the Inter-American Convention Against Corruption in March of 1996. The Organization for Economic Cooperation and Development signed a treaty in November of 1997 outlawing the bribing of foreign government officials. OGE continues to monitor these developments in order to better understand issues of international corruption as a part of the assistance this Office provides.

## Outreach Program Provides Valuable Service

Governments around the world are increasingly viewing official corruption as one of the most important national problems facing their societies. Pushed largely by high profile scandals and public opinion polls showing a growing distrust of Government, more countries than ever are showing an interest in learning about systems of government ethics as a means of combating corruption.

Most governments, especially among newly democratizing countries, have minimal understanding of how a system of government ethics functions. OGE frequently receives requests from such governments for assistance in designing their own ethics programs. In collaboration with U.S. foreign policy agencies, OGE has developed an international outreach program designed to introduce visiting foreign delegations to the executive branch system of Government ethics in the U.S.

OGE welcomes such delegations by providing general briefings about the responsibilities this Office has for preventing conflicts of interest, and for issuing and interpreting the Standards of Ethical Conduct. In the briefings, OGE staff describe the various programmatic functions within the Office and how those separate components and programs interrelate in support of OGE's mission. OGE also describes how the Office fits within the structure of the executive branch ethics program and its relationship to agency ethics offices and other agencies with ethics-related authorities.

Because anticorruption strategies must be rooted in the particular country context in which they are to be implemented, These briefings avoid advocating specific measures or strategies to combat corruption. Instead, OGE describes the individual components of the executive branch ethics program, such as financial disclosure and advice and counseling, and it explains how those components work in the context of

# Minor Amendments Proposed

OGE recently proposed minor amendments to selected provisions of the Standards of Ethical Conduct. The amendments would codify some of the interpretative advice that OGE has provided on the application of the rule.

The first installment of these amendments concerns subpart B (Gifts From Outside Sources). It was published at 63 Fed. Reg. 41476-41477 (August 4, 1998). The amendments would clarify that the restriction on gifts given "because of official position" at § 2635.203(e) was intended to apply only where such gifts would not have been solicited, offered, or given if the employee had not held the *status, authority or duties* associated with his Federal position (rather than based on the mere happenstance that the recipient was a Government employee). The amendments would also emphasize in § 2635.204 that gifts accepted under an exception will not be deemed to violate the general appearance principle. Finally, the amendments would specify that the exception at § 2635.204(a) for gifts aggregating \$20 or less per occasion was intended to permit gifts worth \$20 or less *per source* per occasion.

The other installment of proposed minor amendments to the standards would affect subpart F (Seeking Other Employment) and subpart H (Outside Activities). It was published at 63 Fed. Reg. 45415-45417 (August 26, 1998). The amendments to subpart F propose to codify OGE advice that its coverage extends to "personal and substantial participation" in a particular matter, where that matter would have a "direct and predictable" effect on the financial interests of a prospective employer. This is in keeping with our

advice that the scope of coverage for 18 U.S.C. § 208 applies in subpart F, both for the restrictions from § 208 on negotiating for employment and for the restrictions from Executive Order 12674 on seeking employment.

The amendment to subpart H would clarify the meaning of "receive" as used in the ban on outside compensation for teaching, speaking or writing that relates to official duties. It was intended to specifically

include compensation that is deferred to the future for activities that are performed while an employee, and compensation that is paid in advance to an employee for activities to be performed in the future.

OGE will be analyzing any comments received on these two proposed rulemakings, which were due on October 5 and October 26, respectively. OGE will finalize the amendments as soon as possible.

## Special Director's Message

The ethics community bids a fond farewell to Gabriele J. Paone, Deputy Designated Ethics Official at the U.S. Department of the Interior (DOI), who will retire in December 1998. Gabe has worked for DOI since August of 1965. Since 1981, Gabe has been responsible for the overall management of DOI's ethics Program.

Gabe's ethics career includes an impressive list of accomplishments: testifying before Congressional committees on ethics matters involving DOI officials; serving as Department spokesperson to the media on ethics matters; representing DOI's Human Resources community before Congress and other Federal, State, and local government agencies; contributing articles to the *Government Ethics Newsgram*; and assisting the Department of Justice and other Federal agencies in the development of their ethics programs and ethics educational materials.

For more than 15 years, Gabe has been DOI's point of contact for the White House

Presidential appointees who require Senate confirmation. Gabe continues to serve as a liaison to the White House and to the appropriate Senate confirmation committees.

In July of 1982, Gabe was awarded DOI's Meritorious Service award for his work in revising the DOI's Employee Ethics and Conduct Program. In 1992 he was awarded DOI's Distinguished Service award for his work in the field of ethics and audit coordination. As Acting Deputy Assistant Secretary—Human Resources from March to September 1997, he performed the duties of that office while simultaneously overseeing the ethics program.

Gabe, for all that you have accomplished in support and development of the ethics program at the Department of the Interior and for providing an example of leadership throughout the executive branch ethics program, thank you, and best wishes in your retirement.

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