

The Honorable Amy L. Comstock
Director
U.S. Office of Government Ethics

Opening Plenary Session

Annual Government Ethics Conference
King of Prussia, Pennsylvania
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INTRODUCTION

Good morning everyone, and welcome to the 12th Annual Government Ethics Conference. Yesterday I had the opportunity to welcome those of you who were here for the pre-conference sessions for new ethics officials and I am delighted to see you back again today.

I want to say first of all thanks to the OGE staff whose planning, hard work and perseverance have once again made this conference possible: Barbara Mullen-Roth, Gwen Cannon-Jenkins, Kaneisha Cunningham, Veda Marshall, and Marilyn Bennett. They have done a wonderful job of bringing together all the myriad details that go into putting on this conference.

One of the great benefits of our annual conference is the opportunity it provides not only to share expertise but to build the professional relationships that are the basis for a cohesive ethics community. So I want to encourage those of you who are new to the program and those of you who are experienced ethics officials, to take this opportunity to meet new colleagues or to re-establish relationships that will be of benefit to you long after this conference has concluded.

OVERVIEW OF THE CONFERENCE

I am very excited about the program that we, as an ethics community, will be putting on this year. We begin today with an excellent array of panel sessions presented by some of our most experienced ethics practitioners. Tomorrow we are trying something a little different. We have a series of plenary sessions featuring some truly outstanding speakers that Barb has told you about. We wanted everyone to be able to hear these speakers and take advantage of a day in which we will all be together.

In addition to the plenary sessions mentioned by Barb, I want to bring to your attention a concurrent session tomorrow afternoon

that will discuss the relationship between ethics officials and offices of Inspectors General from a wide range of perspectives. We are favored to have on the panel Moose Cobb, the Inspector General of NASA, who many of you know from his previous positions at OGE and the White House Counsel's Office; Nikki Tinsley, the Inspector General at EPA, who is very active in the IG community, along with several members of her staff; and Ken Wernick, the Alternate DAEO at EPA, and a long-time, highly respected, ethics official.

I firmly believe that effective ethics program enforcement depends upon having a good working relationship between agency ethics officials and their offices of the Inspector General and as many of you know improving the coordination between these two communities is something that I have been working on personally. This should be a very lively and fruitful session.

So we have a full conference with both dynamic speakers to expand our vision and practical sessions aimed at improving our day to day work.

OGE'S AGENDA

As I think you all know, we are very busy at OGE these days. We have a number of initiatives underway that are intended to support the modernization and improvement of our ethics program. I also think you will agree that these OGE initiatives support goals for the program that we all share in common. I will not go into any specific detail about these initiatives now. You will hear the details later this morning at our OGE Managers Update. But I do want to take a moment to reiterate for you the overall goals underlying these initiatives.

First, we want an ethics program that provides high quality customer service and timely and effective communication. At OGE, we are working constantly to improve our services to our customers, the ethics community. We are using technology, such as the list serve information service and video conferencing, to enhance communications throughout the ethics community. We also very much seek to work in partnership with ethics officials so that new initiatives directly address your needs.

Second, we want an ethics program in which the rules that employees must live by are clear, fair, understandable, and supportable. At OGE, we have been working for the past two years to modernize both the statutory and regulatory framework of our ethics program and make it more responsive to the needs of modern government. Again we have pursued this initiative in partnership

with the ethics community. Your input, for example, on our project to modernize the conflicts laws has been crucial to the continued development of our proposal. We have a ways to go still, but we are making a lot of progress.

Third, we want an ethics program that is credible and effective. At OGE, we have been pursuing a number of initiatives to put "teeth" into the program. These initiatives range from program reviews that do a better job of measuring program effectiveness, to ensuring compliance with ethics agreements. Again cooperation between OGE and ethics officials is the key to success.

Ultimately, we all want an ethics program that encourages and supports highly ethical behavior by government employees and inspires the trust and confidence of the American people. This is a goal that really embraces everything that we do at OGE and that all of you do as ethics officials. We want a program that not only ensures that employees observe certain minimum standards, but also inspires employees to embrace the highest standards of ethical government service.

HOW IT STARTED

Many of you no doubt are aware that later this year we will mark the 25th Anniversary of the Ethics in Government Act which became law on October 26, 1978. The Act pioneered the concept of a separate office specifically charged with setting ethics policy for the entire executive branch. It is interesting to look back at where we were - both OGE and the ethics community - when the modern era of ethics in government began.

In 1979, when it opened for business, the Office of Government Ethics had a staff of 10, under Jack Walter, the first of what have now been six Senate confirmed Directors. Six members of that original OGE staff worked out of a converted conference room at OPM. Later this morning at the Manager's Update you will be hearing from Jane Ley and Jack Covaleski, two members of that original OGE staff. Shortly thereafter, Ed Pratt, Tom Zorn and Jim Parle joined the OGE staff. Within five years, the OGE staff had grown to 24, and included Denise Shelton and Joann Barber, who also continue their service at OGE to this day.

OGE held the first annual government ethics conference in April of 1980. The conference was billed as "the first meeting of all agency ethics officials . . . since passage of the Ethics in Government Act . . . and the first opportunity for the Office of Government Ethics . . . publicly to explain its duties and

functions." A good bit of that conference, which consisted almost exclusively of presentations by OGE staff, was devoted to explaining the requirements of the new public financial disclosure system. The conference was held over two days at the Stouffer's National Center Hotel in Crystal City, Virginia and cost \$30.

The executive branch ethics community was also much smaller then. That 1980 conference was attended by 229 people from 82 agencies. That 229 represented a significant percentage of people working in the ethics field. The DAE0 directory for the next year, 1981, listed 135 agency ethics offices, including the Three Mile Island Commission.

Interestingly, on that 1981 list of ethics officials, there are nine people who continue to serve as agency ethics officials today. Moreover, one person, Bill Gressman, who was an agency ethics official then, is now at OGE.

Charles Atherton was with the Commission on Fine Arts then. He is still there today.

Edward Obloy was with the Defense Mapping Agency then. Today he is with the National Imagery and Mapping Agency which I think is the same agency renamed.

Chris White was with the Federal Trade Commission then. He is still there today.

Charlie Brown was with the Department of Labor then. Now he is with the National Science Foundation.

Rosalind (Lindy) Knapp was with the Department of Transportation then. She is still there today.

Jim Adams was with the VA then and is today.

John Szabo was with the VA then and is with the NRC today.

Mason Tsai was with Interior then and is today.

Jim Engel was with the National Credit Union Administration then and is there today.

I suspect there may be others from the ethics community who were working in the ethics program then. So, my apologies, if I missed anyone.

Certainly the basic elements of our modern ethics program - financial disclosure, regulations, advice, and training - have been in place since the beginning. But over the past 25 years, the ethics program has developed and become much more sophisticated, and much stronger.

Congress separated OGE from OPM in 1989 and OGE has now grown to 80. The professionalism of the ethics community has increased in depth and the number of ethics officials has grown. Further legislative change and a new executive order in the late 80's, with implementing regulations in the 90's, have more or less set the legal framework for the program as we know it today. And where are we today?

WHERE WE ARE TODAY AS A COMMUNITY

Numbers provide a partial answer. Our annual conference has grown and in recent years has averaged 450 participants, with nearly 500 here today. And actually the conference could be much larger if we could accommodate such a group. Today's conference is very much one that involves the participation of people throughout the ethics community.

Our most recent DAEO directory lists 127 agencies and their ethics officials. While some of the smaller agencies may only have a couple of people working in ethics, the larger agencies and Departments have regular ethics offices with a full staff of specialists.

Moreover, while there certainly is turnover in these ethics jobs, as we have just seen, there is a strong cadre of very experienced ethics officials, some of whom have been working in the program for many years. Many of these agency ethics offices have been very innovative in establishing web sites, developing new approaches to training, and implementing efficient systems for their ethics program.

The ethics program has also grown in regional offices throughout the United States and abroad. While it is difficult to get precise numbers, we estimate that more than 8,500 people work in the executive branch ethics program on a full or part-time basis.

But growth in numbers and greater organization tells only part of the story of where we are today as a community. One of the most striking changes that has occurred in the program is its greater reliance upon specialized technical expertise. Twenty-five years ago, ethics officials did not have to wrestle with the kind of

complicated investment vehicles and corporate compensation arrangements that now regularly show up on financial disclosure reports.

Today reviewers need to have a much higher level of technical knowledge of these financial interests in order to do a thorough conflict analysis and work out remedies for potential conflicts. Similarly with other areas such as training, we are making greater use of specialists to develop effective instruments. It is a positive, albeit daunting change for some of us, that there is greater reliance on information technology specialists to add efficiency to our program.

And, in terms of the substance, we all know that the legal framework of laws and regulations is also more comprehensive today, especially in the area of administrative rules which establish standards of behavior for executive branch employees.

But perhaps the most striking contrast to 25 years ago is in the area of public accountability. Today there is a higher level of scrutiny of government employees, especially senior employees, than at any time in the last quarter century. It is evident in the closer attention of public interest groups and, of course, the media. Reporters for the major media, in particular, have become increasingly sophisticated in their understanding of the program, especially in the area of financial disclosure and conflicts of interest. But in the last 25 years we have responded to this increased sophistication with strong ethics programs. We have good financial disclosure systems and, more importantly, strong counseling and training programs. We have learned to meet the challenge of public scrutiny.

WHERE WE ARE GOING

Importance of ethical principles.

But one of the things that I think we have also learned in the past few years is that rules alone are not enough to establish a positive ethical culture in an agency or promote public confidence in the integrity of government. The fact that we have rules that establish a minimum standard of behavior, even when the rules are generally honored by our employees, is not enough, alone, to promote a positive ethical climate in an agency or increase public confidence in our government. We also need ethical principles.

Fortunately, we have a set of general principles, 14 of them, that are stated in a 1989 Presidential executive order, were reissued in a memorandum from President Bush as one of his first

Presidential acts, and are incorporated in our Standards of Conduct.

Of course, as ethics officials you must always honor the rule if the rule has a specific answer to a question. But even when a rule does provide the answer, it is important to take the extra step and explain how the rule is grounded in principle.

We have a gift rule, for example, to uphold the principle that even the appearance of preferential treatment or using one's position for personal gain is not acceptable. We have public financial disclosure so that the American public can assure itself that there is integrity at the highest levels of government, especially in the area of conflicts of interest. So I want to strongly encourage you to make greater use of the ethical principles in your day to day work.

Employees also need to realize that ethical decision making does not stop with the rules. It is a serious concern of mine that employees and even some ethics officials sometimes feel that following the letter of the rule is all they need to do. In fact, our rules are just a minimum standard of behavior. Compliance ensures that an employee won't be disciplined. The rules were never intended to completely replace the exercise of sound judgment.

David Walker, the Comptroller General, emphasized this point in a recent speech at a conference of the Association of Government Accountants. He said that CPA's and other professionals are paid, not just for their knowledge of the rules, but for their judgment as well. Our job as ethics officials is to communicate to employees the need to exercise judgment and to do the "right thing" even when it means going beyond minimum compliance with the rules.

Access and other difficult issues.

A situation that illustrates this point is the issue of access to high level government officials.

We have seen, for example, stories in the press that describe meetings that senior government officials have had with their former clients or colleagues. We know that under our rules, an official is generally not barred from talking with a former client about broad policy matters. And generally there is only a one-year cooling off period for specific party matters. But the distinction between party matters and policy matters often does not resonate with the media or the public and the resulting stories can call into question the official's impartiality.

And, I must say that impartiality in the decision-making process is one of the most important assurances that our ethics program can provide. But, were we to just extend the cooling off period for all employees and their former employers or clients, that would create its own problems and would often unnecessarily impede government officials from doing the work they are here to do.

So, we are left with an issue that, if dealt with properly, involves discretion and judgment and a consideration of general principles of fulfilling the public trust. That is why it is important for ethics programs to have senior people with experience to advise employees, especially high level employees, by providing principled advice on tough questions.

And, as you all know better than I, access is not the only tough issue out there. Other issues, such as the appropriate level of involvement in an outside activity, such as a professional association, or the basis for attending certain after hours events, similarly call for reliance on principle and judgment.

Corporate ethics concerns.

And, this year, unlike many other conferences, just from reading the newspapers we know that we are not the only community that is struggling with the question of the relationship of rules to principles. Nor are we the only ones to express concern that focusing exclusively on compliance with rules can mean that fundamental principles are ignored. As a result of a series of scandals, corporations are facing these questions more directly than they ever have before. I was struck by the comments of the new Chairman of the SEC on this issue that were recently reported in the Washington Post. Mr. Donaldson said:

"I hope to challenge corporate America to look beyond rules, regulations and laws and look to the principles upon which sound business is based. To restore their trust, American investors must see business shift from instantly searching for loopholes and skating up to the line of legally acceptable behavior. They must see a new respect for honesty, integrity, transparency, accountability and for the good of shareholders, not only an obsession with the bottom line at any cost."
[Washington Post, 3/1/03, p. E1]

In a recent article in Chief Legal Officer Magazine, June Eichbaum, a business consultant, made a similar point. She wrote about the importance of remaining grounded in fundamental

principles in the context of the accounting profession. She described with concern a corporate accounting mind set that focuses only on a checklist of rules and allows everything else that is not expressly forbidden.

She argues that we need to restore the elements of context, judgment and fiduciary duty to whether and how transactions need to be disclosed. For Eichbaum the question that needs to be asked is: "Does the overall result violate the accounting principles on which the rule is based; and does the answer or result mislead investors as to a material issue?"

CLOSING

So I want to close with the thought that if some of these issues sound familiar to you, they should. Those of us who work in the government ethics program have been dealing with them for years.

We live today in a time of heightened public expectations. The fact that citizens do expect more of public officials is a good thing. That fact that the public does not accept misconduct and is not complaisant about scandal is a good thing. The fact that they deserve to have impartial decision making on policies that will affect their security and well being cannot be questioned. But that means that we must be constant innovators and do our part to make ethics a part of the culture of our agencies. I believe that we have survived this heightened public scrutiny and will continue to do so, but it takes leadership, skill, vision and a strong dedication to public service.