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The articles accuse scientists of using taxpayer dollars to test items on which they held the patent and were receiving “royalties”. Pretty clear conflict of interest? Not so fast. Though the appearances look bad for the scientists; on further review, it looks worse for the reporters.

Reporters following the story could not get past the word “royalties”; leading readers to think that payments were paid directly to the scientists from non-Federal sources—normally a conflicts problem. Yet, royalties” paid under the Federal Technology Transfer Act of 1986, 15 U.S.C. §§ 3701-3717 (FTTA), are perfectly legal because they are paid to the agencies, not the scientists.

This appears to have been what was occurring in the agencies. However, not mentioning the Technology Transfer Act in the articles is a large omission on the part of the media. We’ll try to fill you in.

While government owns the rights to inventions made by Federal employees performing official duties, the FTTA requires Federal laboratories to seek opportunities to transfer technology to industry, universities, and state and local governments. Government agencies then share with the employee the “royalties” that the government receives from licensing the employee’s invention to non-Federal entities. Essentially, payment to the scientist is not from an outside party, but from the agency—like a performance bonus. Hence, no conflicting financial interests exist. Granted, a few reporters noted that the payments were legal; but did not explain any further. Admittedly, there is an appearance of conflict here and agencies should be sensitive to that appearance. However, the true problem appears to be that the reporters failed to research the FTTA and beat up on federal agencies implementing the law. Oh well, the founding Fathers only implemented laws assuring freedom of the press, not accuracy in the press.



Anyone who saw the 1993 movie *The Fugitive*, recalls how Marshall Sam Gerard (Tommy Lee Jones) responded to Dr. Richard Kimball’s (Harrison Ford) protestation of innocence—“I don’t care.” In the “Ethics Biz,” we occasionally see an employee “step in it” by acting officially on matters in which he or she has a financial interest—say, contracting with a company owned by the employee’s spouse; or awarding a grant to someone who has offered the employee a job. The result, of course, is referral to the Inspector General for investigation. Upon learning of the referral, the employee naturally may offer a rationale to excuse the potential violation. While we ethics folks are a caring lot, when statutes are involved, remember: “The law doesn’t care.” My favorite excuse is: “I didn’t profit. I even lost money.” This excuse presents an intriguing application to public service of the well-known playground basketball principle of “no harm; no foul.” What this really means, however, is debatable. It could be sheer arrogance, as in “If I wanted to violate the law, I would’ve made a profit.” Or, it could mean the hope for self-improvement, as in “give me a second chance and I’ll make out like a bandit.” Either way: “The law doesn’t care.” However, the more frequent response is either: “I didn’t intend to violate the law” or, “I participated, but I recommended against [insert your financial interest here].” This response is sound; understandable; and completely irrelevant. Here’s why. Most conflict statutes [18 U.S.C. 202-209] originated between 1853 and 1872. Before that time, there were bribery statutes which, like 18 U.S.C. 201, prohibited giving something of value to a public official for a specific act. Conviction usually required a corrupt intent—difficult to prove. Moreover,

amidst the graft of the “Spoils System” of the mid-1800s, Congress had to address several scandals wherein public officials misused their official position for personal benefit, but did not accept bribes.

As a result, Congress enacted laws prohibiting actions which, under specific circumstances, *appeared* corrupt. Rationale: Most people faced with the same circumstances, would do the corrupt thing. Now, merely taking a specific non-corrupt action under certain circumstances constituted the offense—irrespective of corrupt intent, or intent to do the right thing. In short, lack of corrupt intent is irrelevant.

Employees and ethics advisors are stuck with the laws as written. When it comes to excuses for actions that violate the conflict statutes, remember Marshall Sam Gerard: “The law doesn’t care.”



HONORS in DA



Unsung Hero Award

Ray Sheehan received the Unsung Hero Award on May 3, 2005 during Public Service Recognition Week, for the many hours that he spends serving in the Office of Ethics.

The Patriot Award

John Surina was presented with the Patriot Award by the Committee for Support of the Guard and Reserve on behalf of the Department of Defense in a ceremony at the office of the Assistant Secretary for Administration. The Patriot Award recognizes employers for having employment policies and practices that are supportive of their employees’ participation in the National Guard and Reserve.

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Outstanding Career Armed Services Attorney Award

That support was exemplified in our own Reservist, Commander Mike Edwards, Judge Advocate General's Corps, U.S. Navy Reserve who this year has been awarded the Outstanding Career Armed Services Attorney Award by the Judge Advocates Association and, last week, the Rear Admiral Hugh H. Howell, Jr. Award of Excellence for senior officers--the highest award available to honor Navy Reserve Judge Advocates. Mike credited John Surina and the Office of Ethics for allowing him the extra time to carry out his Reserve duties.

Well done Mike and John!!!

Summer Interns

Adam Dean is a new summer intern at FFAS. He is a senior at The University of Pennsylvania with a combined major in Philosophy and Political Science. Adam is on the Dean's List, and is ecstatic to be with Ethics. He is hoping to have a future with us as well. Great start Adam! *****



Brittany Goodman is back in Office of Ethics this summer. She is a sophomore at The University of

Maryland- Eastern Shore. "I am majoring in Mass Communications-Television broadcasting. I plan to one day become a program director for a kids television show." , Ms Goodman said.



THANKS Pat Tippett for creating the Great Zamboni Fedora



THE GREAT ZAMBONI

The Great Zamboni made his first appearance at the 2005 Annual Ethics Retreat. He and his side kick, Spotless the Ethics Dog, have agreed to doing a regular column in the Ethics Newsletter answering pressing ethics



Questions:
Does the Foreign Gifts and Decorations Act apply extra-terrestrially? If so, would there be any difference between Plutonians and those outside our solar system.

Great Zamboni Speaks:
In the narrow context of the Foreign Gifts and Decorations Act, much depends upon the definition of "foreign." The Act infers an earthly jurisdiction through the use of "nation," but does not specifically limit its application to terrestrial entities. However, the Federal government has long recognized that laws may apply beyond our atmosphere: In 1798, long before Roswell, Congress passed the Alien and Sedition Acts. As the Acts were largely aimed at the French, the connection is fairly clear. In intervening centuries we have had the Alien Registration Act, Alien Enemies Act, Alien Species Act, Elian Gonzalez . . . the list is endless. As for Pluto, the Great Zamboni believes that the Act would cover all interplanetary affairs, including . . . Plutonic Relations.



As an aside, the Office of Ethics recently advised that travel from Mars to a location outside the solar system, without an intervening stop on the earth, would be acceptable under the Act.

Leave soon.



YOUR LETTERS AND COMMENTS

I'm an assistant ethics counselor with the DOI's Fish and Wildlife Service. When notifying employees of training options this year, I sent out a link to your site (among others). I began receiving feedback from employees who'd opted to use your modules -- very positive feedback! So, although I'd already met my annual training requirement, I logged on to see what the buzz was about. All I can say is: Well done! The touches of humor are just right, and the scenarios interesting and informative without being complex. Wish ours was that good! Kerry Kelly

Greetings!
I am writing to express my gratitude for the information that is available through your website. I am in the process of developing a course for my agency and I found your site very helpful.
Michele Mont,
Human Resources
Penna. Turnpike Commission

Contact us at:

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**Mission Area Ethics Advisors
It is time to Commence
identification of employees
required to file the annual
OGE-450 or other alternate
report.**