

OFFICE OF ETHICS NEWSLETTER



JULY 2004



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Farewell Leine

As reported last issue, the Office of Ethics suffered a double loss in March of Dave Spradlin to retirement and Dwaine Grove to promotion. We were still reeling (still are) from the changes when we learned, in early April, that we would have to bear an additional loss – that of our long-time website contractor, Leine Whittington. On June 21, Leine left USDA for a Federal position with the State Department. We all wish her the best and she deserves it.

To say “we will miss Leine” is sort of like Dracula saying, “I really like the nightlife.” Duh! Leine has been as much a factor in the makeup and performance of this office as anyone, save John Surina. She was here at the outset. When most folks think of OE, they think of the OE Website. When you think of the OE Website, you have to think of Leine. The website and all of the great things that USDA has done for the Federal ethics program because of it come with Leine’s smiling picture next to it. It was, is, and (despite



her best attempts to move on) probably will long be, her baby -- and it showed.

Add on top of that her service as fill-in Administrative Assistant. We sought her help in attaining, via contract, an experienced person to serve part-time (with Dwaine, who also was part-time) as Administrative Assistant. After a couple of unsuccessful attempts to find a truly worthy candidate, Leine called up and said she had the perfect person in mind . . . “me.” She didn’t lie.

Already knowing OE, its people, its function, most of our rules (she had to input all of ‘em), and most Mission Area ethics people, Leine not only hit the ground running, but left considerable tread in doing so. Leine, as most of us know, is pure energy. This, matched with her extensive business savvy, quick grasp, creativity, and hyper-organization (had to get that in there, Leine), made the office purr.

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For those of us who know her though, her first professional love is international relations. It's what she went to school for. That's what she's doing now. We wish her well and know we lost her to something really good for her – and that's no real loss. OK, so I really don't believe that statement in the slightest. But, were we lucky enough to have her as part of the OE family for 6 years. No sense being greedy.

Good Luck, Leine.



Tax Preparation Outside Employment

Back when Mike was in college, it seemed voice lessons would be a great complement to his skills. After a few sessions with a voice teacher, however, further lessons were cancelled. As the teacher explained, "I can play on the white keys, and I can play on the black keys, but you sing in the cracks."

Most of the time the "easy" question we get up here in OE is just that sort of issue, not black, not white, just another tough one, "in the cracks." And by the way, it doesn't help when you start out with, "Here's an easy question for you." That's a lie; we don't get easy questions here. If the question were really easy, you'd have already answered it yourself.

Here's a recent "in-the-cracks" question we received from the field. An employee wants to prepare taxes in his outside employment. If there is an audit, what

type of representation issues should he keep in mind? [Note: this discussion only considers 18 U.S.C. § 205; if the employee is paid for the representational services of another, there is another set of issues under 18 U.S.C. § 203.]

OGE Opinion 00x11 provides advice to an employee who does tax preparation on the outside when appearing before the IRS in an audit. It states:

While you may attend the audit and answer direct factual questions, you may not argue any theories or positions as a way of explaining how or why various decisions were made in preparing the return. The latter would be prohibited by section 205 because you would then be representing the taxpayer in the audit.

This is good generally, but leaves some questions unanswered. So here's some more guidance:

1. The employee must not volunteer info, but wait for IRS to ask.
2. If IRS asks how the employee arrived at this figure, he /she can answer, "I totaled the pay stubs." We at OE all agree here.
3. Things get murky if IRS asks "on what basis did you come to the conclusion that totaling the pay stubs was all that was necessary?" Ray thinks the person could answer. The employee would not be "arguing a theory or position as a way of explaining how or why" Mike and Pat think this crosses the line. The IRS does not ask questions in areas where they

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believe the taxpayer is right; usually, these questions involve subjects of legitimate dispute. How could our employee answer such a question of "on what basis he came to a conclusion" without arguing the taxpayers position? We all agree, though, that our employee couldn't volunteer this information. (See more on this below.)

4. Additionally, we also all agree that if the IRS follows that question with a statement like "What bozo in his right mind would conclude that totaling pay stubs was the proper way of determining this figure?" our friend better not respond with "Well, this bozo followed the rules set forth in IRS Decision *&\$#% which, my esteemed nonbozo, you should read some time, if you can read, because it supports everything I did." Should our courteous and erudite tax professional do so, it would be an excellent time to obtain some representational services of his own, in the form of a competent defense counsel.

So, getting back to #3, we at OE are at the "splitting hairs" level. (Ray says he always feels at a disadvantage here.) As we're talking about a criminal statute, we all agree that what this really means is that it probably would be best if our employee would avoid the audit altogether. If he or she must attend, we recommend that leaving out any explanations as to why the taxes were prepared as they were. The danger of slipping into representation is too great.

Ethics Quote of the Day



"..intellectual virtue in the main owes its birth and growth to teaching..., while moral virtue comes about as a result of habit..." **ARISTOTLE, 384-322 BC**



Meet An Ethics Advisor

Name: Caryl J. Butcher
Agency: NRCS

Address: USDA, NRCS
G.W. Carver Center
5601 Sunnyside Ave
Bldg. 2-2277
Beltsville, MD 20705-5474
Telephone:(301) 504-2194
Email: Caryl.Butcher@usda.gov
Website Address:
www.nrcs.usda.gov/Intranet/ethics
Employee Count: 12,107
No. of Confidential Filers: 1, 074

How long have you been in your current position?

About 5 years.

Do you work on the program full time or have you other assignments?

I work full-time on the NRCS Ethics Program with the goal of improving management of private lands through the delivery of high quality services to the public to enable natural resource stewardship.

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The support and success of the NRCS Ethics Program reflects recognition that our efforts are, and must be focused on, meeting this strategic Agency objective.

Where did you work and what did you do prior to your current position?

Prior to my assignment in Ethics, I served as Regional Outreach Specialist and Quality Management Specialist in the Western Region. Before that, I spent years as an Employee Relations Specialist at the NRCS headquarters level, as well as at the Department and Food Nutrition Service.

How did you find your way to ethics?

I was asked to accept the appointment as the Agency Ethics Advisor by a former Chief. My previous work experience, especially the years spent in Employee Relations along with the perspective gained from serving at the regional and headquarters levels, helped prepare me for the job.

Did the program administration/coordination meet your expectations?

Absolutely! The support of Ethics, provided by Chief Knight and our Deputy Ethics Official Dwight Holman, Deputy Chief for Management, has been tremendous. Associate Chief Thomas Weber and they have fully supported the Ethics program and ensured its consideration and integration as part of overall development and delivery of NRCS programs and services. Additionally, NRCS leadership has provided the staff and resources necessary to get the job done. In one year, the NRCS Ethics Staff has increased from just myself to five full-time employees.

Were you surprised to find out what the administration of the ethics program in your agency entails? If so, please identify surprises.

In a way yes, but not really, because my regional experience gave me insight into what it really takes to effectively deliver NRCS programs and services at the local level. NRCS is an agency that partners aggressively, and effective partnerships with non-Federal partners are essential to our success. NRCS leadership has moved to ensure coordination and intergration of ethics guidance along with NRCS program-delivery guidance to help both our employees and partners understand how we can best do this. The current level of support for the ethics program in NRCS reflects leadership's recognition of its role in insuring effective partnerships to deliver high quality services to the public to enable natural resources stewardship on private lands.

AWARDS

At the last forum I received two awards from the Office of Ethics for improvements to the NRCS Ethics Program. I appreciate both the recognition and support provided by Ray and his staff that allowed those improvements to occur. Those improvements in the NRCS program would not have been possible without the tremendous support and inclusion provided by Chief Knight, Associate Chief Weber, and Deputy Chief Holman.

PARTNERSHIPS

I would be interested in working with others to make the improvements recommended by the mission area and agency leaders.

18 U.S.C 208 Violation - Prosecution of former DoD Official

On April 20, 2004, the Office of the United States Attorney for the Eastern District of Virginia announced that Darleen A. Druyun, former Senior Air Force Official, who left to work for Boeing, pled guilty to a charge of conspiracy to commit acts affecting a personal financial interest by negotiating employment. She could receive a maximum sentence of 5 years in prison and a \$250,000 fine.

As set out in the Statement issued by the U.S. Attorney:

Druyun was the Principal Deputy Assistant Secretary of the Air Force for Acquisition and Management from 1993 until her retirement in November 2002. In that position she supervised, directed and oversaw the management of Air Force acquisition programs. This included negotiations in 2002 with the Boeing Company to lease 100 KC 767A tanker aircraft for the Air Force. The total value of this contract was projected to be in the range of \$20 billion. From September 23, 2002 until November 5, 2002, Druyun participated personally and substantially as a government employee overseeing the negotiation of the lease from Boeing while she was at the same time negotiating prospective employment with a senior executive of the Boeing Company. As a result of those negotiations, she accepted a position in January 2003 as Vice-President and Deputy General Manager of the Missile Defense Systems, a business unit of Boeing Integrated Defense Systems.

Interestingly, what probably made this matter worse was the fact that Druyun's daughter, herself an employee of the Boeing Company, contacted a

senior executive of Boeing in September 2002 on her mom's behalf. Via a series of E-mails, the daughter outlined to the Boeing executive her mother's intention to retire from the Air Force and the type of position she wished to accept after retirement. Druyun discussed the E-mails with her daughter who, in turn, relayed the interest in Boeing employment. As a result, the Boeing executive and Druyun met in private at the Orlando Airport on October 17, 2002. At that time, while discussing terms of employment, both parties were aware that Druyun had not disqualified herself from matters involving Boeing. The discussion covered specific Boeing position, salary, bonus and starting date. Also noteworthy was the fact that, at the conclusion of the meeting, the senior executive advised Druyun that, "This meeting really didn't take place." Druyun didn't disqualify herself from matters involving Boeing until November 5, 2002.

After news reports questioned the propriety of her hiring by Boeing, the company retained outside counsel to review the matter. Druyun and the



senior executive agreed to maintain a false story that their initial discussion of potential employment occurred on November 5, 2002, after she disqualified herself from matters involving Boeing. Druyun was terminated by Boeing for cause on November 24, 2003.

Advising the Client



An employee recently wrote us, explaining that she was at a conference for Government employees sponsored by a USDA IT supplier and that participants were given a small computer storage device, containing the presentations, with a retail value of \$60 ("USB drive"). The IT supplier provided her with a letter stating the "value" of the USB drive was \$20. The employee asked whether she might keep the USB drive or alternatively give it to a co-worker. The question provides a good opportunity to review some gift rules.

5 C.F.R. § 2635.202 provides the general rule on gifts to employees". . . [a]n employee shall not, directly or indirectly, solicit or accept a gift: (1) from a prohibited source; or (2) given because of the employee's official position." A prohibited source includes an organization who "is seeking official action by the employee's organization" or "does business or seeks to do business with the employee's organization." *See* 5 C.F.R. § 2635.203(d). In this situation, the general rule applies both because these gifts were given a conference for Government employees **and** because the USDA supplier seeks USDA business.

There are exceptions to the rule. The closest exception here is employees may accept unsolicited gifts having an aggregate **market value** of \$20 or less. *See* 5 C.F.R. § 2635.202(a). The real issue here concerns the meaning of the word "value." The employee considered the question in terms of retail value; the IT supply company representative, however, was almost certainly thinking in terms of what the gift cost him--wholesale value. So which is it?

Fortunately, the term "market value" is defined. 5 C.F.R. § 2635.203(c) defines **market value** as "**the retail cost** the employee would incur to purchase the gift." The section further counsels that if the employee is still uncertain, he or she may estimate the market value by referring to **the retail cost** of similar items of like quality. In this case, after a diligent search of web sites, the employee was convinced that the retail value of this device exceeded \$20.

That directly led to the employee's other question: what action should she take after accepting a tangible prohibited gift. The standards provide guidance in 5 C.F.R. § 2635.205(a)(1). An employee shall "[r]eturn any tangible item to the donor or pay the donor its market value. (And you remember what **market value** is, right?)

I wish the article could continue here that the employee was provided all this information and wrote back **enthusiastically praising our cogent and helpful counsel**. That would not be true. Instead, our advice explained only the general rule and exception, without a paragraph on the definition of value. This led to the employee explaining the rule to the IT vendor, who defended himself by providing a \$20 "estimate," and directly led to having to write a follow-up response clarifying the definition of "market value." Whew. Next time. . . .

WHO IS WHO



IN THE ETHICS COMMUNITY

Office of Ethics

1400 Independence Ave., SW
Room 347-W J.L. Whitten Bldg.
(202) 720-2251

(Services Public Financial Disclosure Filers, DA & Staff
Office Confidential Financial Disclosure Filers, and all
employees in the OSEC, DA, and Staff Offices.)

Designated Agency Ethics Official - **John Surina**
Director - **Ray Sheehan**
Sr. Ethics Specialist - **Mike Edwards**
Sr. Ethics Specialist - **Pat Tippett**
Ethics Specialist - **Lolita Roberson**
Intern - **Brittany Goodman**

Farm & Foreign Agriculture Services

2101 L Street – Room 5800 (Stop 0591)
(202) 418-8972

(Services Farm Service Agency, Foreign Agriculture
Service, Risk Management Agency employees)

Deputy Ethics Official – **John Williams**
Mission Area Ethics Advisor - **Tonya Willis**
Ethics Specialist - **Ellen Pearson**

Field Office

Ethics Specialist - **Patti Hill**
(816) 926-2632

Ethics Specialist - **Noreen Joice**
(816) 823-3144

Food & Nutrition Services

3101 Park Center Drive – Room 618
(703) 305-0986

(Services Food and Nutrition Service employees)
Deputy Ethics Official – **Vacant**
Mission Area Ethics Advisor - **Anita Cunningham**

Food Safety

1400 Independence Ave., SW
Room 407 Cotton Annex Bldg.
(202) 720-5657

(Services Food Safety and Inspection Service employees)

Deputy Ethics Official – **Billy Milton**
Mission Area Ethics Advisor - **Monique Jones**

Marketing & Regulatory Program

1400 Independence Ave., SW
Room 1723 South Building
(202) 720-9858

(Services Agricultural Marketing Service, Animal &
Plant Health Inspection Service, Packers & Stockyards
Administration employees)

Deputy Ethics Official – **William Hudnall**
Deputy Ethics Official – **Kenneth Clayton**
Mission Area Ethics Advisor - **Mary Royster**
Ethics Assistant – **Julie Dunn**

Milk Marketing Administrator

1400 Independence Ave., SW
Room 2752 (Stop 0228)
(202) 720-7258

(Services Milk Marketing Administrator employees)

Deputy Ethics Official – **Not Applicable**
Mission Area Ethics Advisor - **John Riffiee**

National Finance Center

P.O. Box 60,000
New Orleans, LA
(504) 426-0307

(Services National Finance Center and Chief Financial
Officer employees)

Deputy Ethics Official – **Virginia Gaye Cook**
Mission Area Ethics Advisor - **Linda Simmons**
Ethics Assistant - **Dawn Bolden**

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(Continued from Page 7 – Who is Who in the Ethics Community)

Natural Resources & Environment – Forest Service

1621 North Kent Street
Arlington, VA
(703) 605-0856

(Services Forest Service employees)

Deputy Ethics Official – **Chris Pyron**
Mission Area Ethics Advisor - **Lori Delgado**

Natural Resources & Environment – Natural Resources Conservation Service

5601 Sunnyside Avenue
Beltsville, MD
(301) 504-2194

(Service Natural Resources Conservation Service employees)

Deputy Ethics Official – **Dwight Holman**
Mission Area Ethics Advisor - **Caryl Butcher**
Ethics Specialist - **B.J. Scruggs**
Ethics Specialist – **Joseph Cotton**
Ethics Specialist – **Markci Metcalf**
Ethics Assistant - **Debbie Griffin**

Office of the Inspector General

1400 Independence Ave., SW
Room 41-W
(202) 720-9110

(Services Office of the Inspector General employees)

Deputy Ethics Official – **David Gray**
Mission Area Ethics Advisor - **R. Michael Ching**

Research, Education & Economics

5601 Sunnyside Avenue
Beltsville, MD
(301) 504-1442

(Services Agricultural Research Service, Cooperative State Research, Education & Extension Service; Economic Research Service; National Agricultural Statistics Service employees)

Deputy Ethics Official – **James Bradley**
Mission Area Ethics Advisor - **Sue Mutchler**
Ethics Specialist - **Clarice Carter**
Ethics Specialist - **Dwaine Grove**

Ethics Assistant - **Sue Prada**
Ethics Assistant – **Lynn Best**

Rural Development

1400 Independence Avenue
Room 1323 (Stop 0730)
(202) 692-0338

(Services Rural Housing Service, Rural Business Service, Rural Utilities Service employees)

Deputy Ethics Official – **Sherie Hinton Henry**
Mission Area Ethics Advisor - **Ed Peterman**

Field Office

(Service Rural Housing Service – State & Field employees)

Ethics Specialist - **Alice Green** - (314) 335-8564



Ethics Announcements

New Ethics Official

OE

Welcome Brittany Goodman, Summer Intern, to the Office of Ethics. Brittany graduated from the Class of 2004 at Central High School in Capital Heights, Maryland. At Central High, she was enrolled in the French Immersion Humanities, and International Studies Program. She also studied French for 13 years. This fall Brittany will attend the University of Maryland-Eastern Shore – majoring in Mass Communications, Broadcasting-Advertising.

NRCS

Joseph Cotton, Ethics Specialist
Markci Metcalf, Ethics Specialist

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New Employees Ethics Briefing

The Office of Ethics held its **1st** Ethics Briefing for New Departmental Administration and Office Staff employees on July 29, 2004, in room 4916 South



Building. The new employees were briefed on the following topics: 14 Principles of Ethical Conduct, Conflicts of Interest, and Using Government Property & Official Time.

Office of Ethics Goes International



On June 14, the Office of Ethics staff met with Mr. Jose Carlos Azevedo, a member of Brazil's Public Ethics

Committee of the Presidency of the Republic, the country's highest authority on the Brazilian public sector ethics. Mr. Azevedo's visit was through the International Visitor Leadership Program, which is sponsored by the Department of State and administered by the USDA Graduate School. The International Visitor Leadership Program is designed to build mutual understanding between the United States and other nations through carefully designed professional visits to the U.S. for current and emerging foreign leaders. The meeting lasted close to an hour and was enlightening in terms of the similarities of our programs, as well as the differences. Mr. Azevedo learned much about our program, and the Federal Ethics Program in general, by visiting the Office of Ethics website.

Violation of the Ethics Regulations



U.S. Merit Systems Protection Board

The Merit Systems Protection Board (MSPB) has affirmed the removal of an employee, based on sustained charges that the employee violated the general principles of ethical conduct regarding the improper use of nonpublic Government information (5 C.F.R. 2635.101(b)(3)) and the appearance of violating ethical standards (5 C.F.R. 2635.101(b)(14)), and that the employee falsified her financial disclosure report and concealed a financial interest.

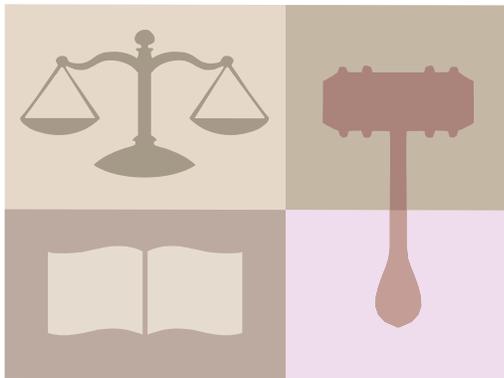
In Suarez v. Department of Housing and Urban Development, a former Department of Housing and Urban Development (HUD) Housing Specialist used proprietary information of the Department to have an intimate friend put a bid on some HUD property. Suarez obtained a \$20,000 loan for the purpose of lending money to her friend for the purchase of the property. Though the friend subsequently died, Ms. Suarez took ownership of the property prior to her death. Suarez was subsequently promoted to a position that required her to submit a financial disclosure report. She did not report ownership in the

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property at issue or the liability she incurred in taking the loan. The MSPB found that Suarez provided nonpublic information that furthered a private interest violating 5 C.F.R. 2635.703(a) and 5 C.F.R. 2635.101(b)(3). Further, the MSPB found that Suarez violated 5 C.F.R. 2635.502 because she provided an interest-free loan to her friend from whom she later purchased the property (prior to the friend's death) for one dollar. The MSPB found this activity created an appearance of a conflict of interest for manipulating the system to purchase indirectly through a friend an investment property she could not have obtained directly for herself. The MSPB also held that Suarez should have disclosed the property ownership and loan in her financial disclosure report (OGE Form 450.) As a result of violating the above referenced ethics regulations and principle, Suarez was removed from Federal service.

The MSPB decision reversed a decision by an Administrative Judge (AJ) overturning the agency removal action. The AJ felt that circumstantial evidence, while convincing, was not enough to prove the offense. In an opinion worth reading, the MSPB noted that the agency was only



required to prove its case by preponderant evidence, that is, by the degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely true than not true. In a case such as this, were there are only two people who were in a position to provide

direct evidence in this case, one of whom is deceased, and the other of whom is the appellant, the agency would have to rely on circumstantial evidence to prove its case. The mere fact that there are no eyewitnesses to some of the crucial events does not, in and of itself, mean that the Board cannot draw whatever inferences the evidence suggests. If the agency provided enough circumstantial evidence to lead the Board to conclude that it is more likely than not that the appellant committed the charged misconduct, this is sufficient to meet the agency's burden of proof, regardless of the absence of any direct evidence.

[OE NOTE: The MSPB decision only addresses removal under the Standards. It is unclear whether or not prosecution is likely or has been declined; however, the facts of the case arguably could provide a basis for criminal prosecution.

The case may be found at:

http://www.mspb.gov/decisions/2004/suarez_ph030253i1.html.