



# Federal Employees News Digest

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## INSIGHT

BY MIKE CAUSEY

### Fighting Words

When it comes to unarmed combat, the ability to fight without weapons, various parts of the world claim either to be the birthplace of a particular martial art or the place where it was perfected.



These centers of fighting include China, Japan, Korea, Nepal, Okinawa, India, Brazil and Washington, D.C.

Washington D.C.?

Say what?

Different places (Korea and Okinawa) claim to have invented or perfected karate. Japan is famous for aikido. There is also judo (which has been mastered by Russian Prime Minister Vladimir Putin), bando and many other systems. Brazil has its own style, there is an Israeli fighting form that specializes in elbows, and there are martial arts based on the movements of grasshoppers, tigers and farm implements.

All of the above proud cultures have given the world efficient ways to pound an opponent to jelly. Often this is preceeded by polite rituals in which the combatants salute each other, the audience, the ref and then assume the position. And this is all great. Chop on!

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## White House Slow to Resolve Whistleblower Cases, Group Says

President Barack Obama pledged during his campaign to protect federal whistleblowers who risk losing their jobs to disclose findings of waste, fraud and abuse in the course of their work.

But according to one environmental and government watchdog group—Public Employees for Environmental Responsibility (PEER)—three months into the new administration, federal employees continue to “face blackballing and career derailment for reporting problems.”

“[T]he reality of retaliation inside the agencies remains unchanged,” PEER said in a release last week. “Nor has the Obama administration ended Bush-era prosecutions of civil servants who blew the whistle.”

“This is why we put out the release—[if it were] late January and February, that’s one thing,” Jeff Ruch, executive director of PEER, told *FEND*. “But now we’re in mid-April and we are sort of asking, ‘Where’s the beef?’”

“We don’t understand this—maybe there aren’t enough appointees in place, or these matters haven’t risen to the top,” Ruch said. “But soon in some of these cases the administration will be on the other side of us in administrative fora or courtrooms, defending actions taken by their predecessors.”

“We’d like to see the administration resolve the cases in litigation,” Ruch said. “That would be a big change.”

In the release, PEER highlighted the case of William Knox, a Park Service safety officer who worked at an agency

facility in Harper’s Ferry, Md., and who blew the whistle on a dangerous and unresolved asbestos problem on the site. Knox suffered retaliation for his efforts—a finding upheld in two rulings in federal appeals court—yet the agency has yet to rectify the matter.

“Bill Knox is the poster child for mistreatment of whistleblowers,” said PEER Senior Counsel Paula Dinerstein, who recently filed a new complaint charging that Knox has been blackballed and abused by the agency. “Rampant retaliation is still occurring within the federal service and is unlikely to stop unless the Obama administration makes it a priority.”

The release highlighted another high-profile retaliation case—that of former U.S. Park Police Chief Teresa Chambers, whom the Bush administration fired in 2004 after she too frankly discussed her agency’s problems with Congress and the media.

Ruch reminded *FEND* that Chambers’ appeal for reinstatement had been championed by Rep. Rahm Emanuel, D-Ill., when he was in Congress.

Ruch noted that despite Emanuel’s appointment as White House chief of staff, “the position that the administration has expressed is that they will not reinstate her.”

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## INSIGHT by Mike Causey

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But when it comes to developing the most deadly weaponless form of attack, it is we Americans—specifically those of us who live in the Potomac River Valley—who get the prize.

It may surprise you to learn that there is more fighting going on in Washington, D.C., than in any other place in the country. Maybe even the world. And a lot of it is because people outside of D.C.—people like you—send us these people who either are—or soon become—fierce fighters. Not with swords, sticks, feet, fists or elbows. But with their mouths.

Confused?

First, consider this:

In the early days of the republic, members of the House of Representatives and the Senate were not above hitting each other over the head with a cane or spittoon. Fists worked, too. And of course, there was the odd duel. Some were held in the dueling grounds in nearby Bladensburg, Md., others across the Potomac River in Virginia.

During a duel, people could be cut or shot, but not killed, and honor was satisfied. At other times, death was the outcome, as in the case of Vice President Aaron Burr killing Treasury Secretary Alexander Hamilton; and the guy future President Andrew Jackson shot and killed. Political correctness was different in those days.

Congress was an all-guy thing, and many felt that it was perfectly acceptable (indeed necessary) to deck a colleague from time to time. Thanks to political correctness, that is a thing of the past. (Although one prominent Republican senator carried a gun to work for years, and more recently, a Democratic senator was stopped by security because he didn't realize he had not removed his piece from his briefcase.)

But until not too long ago, a fight meant, well, a fight.

During World War II, the U.S. government commissioned a series of films (seven) titled "Why We Fight." The object was to explain to the American public why, after sitting out the first part of the

war—when much of Europe and Asia were gobbled up—we decided to get involved. Pearl Harbor was enough for many people, but the government wanted to be sure all (or at least most) of us were on the same page.

By all accounts, the series—by famed director Frank Capra—did its job very well. An estimated 54 million people (our population then was about 120 million) saw the series in theaters or from movie projectors set up in factories and public meeting places.

Times have changed, and now I think we are at the point when we in Washington owe it to the rest of the nation to explain not only why we fight, but how we fight and what we consider to be fighting.

The good/bad old days when senators and representatives caned each other from time to time have gone. Somebody almost slugged somebody a few years back, but cooler heads prevailed.

In some martial arts, people fight almost exclusively with their feet. Or hands. One technique uses mostly elbows. Another concentrates on joints (that is, your joints) to win the match. They have been developed in Asia and other places.

But Washington, D.C., where the most recent martial art has been developed and perfected, we use only our mouths. Our vocal cords. And our rapier-like wit.

Here in D.C., when we say fight, we mean talk. As in blah, blah, blah ...

Think of how many times during the last presidential campaign both the major candidates said they would "fight" this, or "fight" to oppose that. The tough talk—as in threatening to talk tough—was directed at you, and against whomever or whatever they thought you didn't like. Like higher taxes. Or excessive government spending.

I doubt there is anybody who has been elected to Congress since the early days of the republic who hasn't pledged to fight for you, or for something.

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Ruch compared the early months of the Obama administration to those of the Clinton administration, and found Obama lacking on the issue of whistleblower protection. Although Ruch said that only "some" Clinton appointees—he offered the example of Energy Secretary Hazel O'Leary—"reversed a number of pending personnel actions" early in that administration, he said that at times those appointees, importantly, did stop "retaliation in its tracks."

"What's very serious about the current situation—and the reason we are very concerned and think that it might be a broader problem—is that we are not seeing any reversals anywhere," Ruch said.

"We haven't seen one example here. I can understand why it wouldn't be universal, but you would think somebody—say, Secretary of Labor Hilda Solis, or the new secretary of Interior—would step in on one of these cases, but we haven't seen any action on any of them.

"Then there was the whistleblower package that was in the House version of the stimulus bill," Ruch said. "It was

taken out with either the support or the concurrence of the White House. So we are not seeing a lot of follow-up on the rhetoric."

In addition to speedy and fair resolution to existing retaliation cases, Ruch said the White House urgently needs to fill several positions relevant to the problem.

"We would really like to see the administration make some appointments to a number of currently vacant slots that affect how whistleblower laws are administered," he said.

For example, Ruch noted that the Office of Special Counsel slot remains open, and that there now is one—and soon will be two—MSPB slots open.

For more, go to: [www.peer.org/news/news\\_id.php?row\\_id=1179](http://www.peer.org/news/news_id.php?row_id=1179). 

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## Report: Few Interns Are Converted to Employees

Just a fraction of the thousands of student interns who entered the federal workforce in 2007 were converted to full-time civil servants, a rate well below that of private-sector interns, according to a report by the Partnership for Public Service (PPS).

The report, released April 7, looked at two main paid programs—the Student Career Experience Program (SCEP) and the Student Temporary Experience Program (STEP). It also examined the significant gap between the private and federal sectors in intern conversion rates. Private employers report converting more than half of their interns, compared to federal agencies, which converted less than 7 percent.

In 2007, federal agencies employed 59,510 interns through the two paid programs, but only 3,939—6.6 percent—of those student interns were hired (converted) into permanent jobs, the report found.

"Our examination found a decen-

tralized, fractured and hard-to-navigate system that detracts from the long-term, strategic use of highly qualified, motivated student interns as a talent pool for future job openings," the report said.

The difference between the two sectors in the percentage of interns is not related to either the quality of the interns or the percentage of permanent jobs that need to be filled, the report said, noting that there are institutional differences between the private and public sectors.

Private businesses, such as financial institutions, routinely make strategic use of student internships because they know they offer a low-cost way to recruit entry-level talent. On the other hand, few federal agencies demonstrate a similar strategic view of student internships. As a result, agencies lose out on highly capable college graduates just when the issues confronting government are becoming more complex, the report said.

The report noted that another part of the problem is the design of the internship efforts. The large majority of the 59,510 student interns in 2007—about 45,000—were enrolled in STEP, which is not designed for student conversion to permanent government employment. Only SCEP offers a built-in mechanism that makes it relatively easy for federal agencies to offer permanent employment to interns, the report said.

SCEP interns were concentrated in DoD and a handful of other agencies, the report said. Just six agencies—The Departments of Agriculture, Air Force, Army, Navy, Interior and NASA—account for more than 75 percent of all students hired as SCEP interns, despite making up only 40 percent of the overall federal workforce, the report said.

Additionally, thousands of other student interns who work in the federal government each year as unpaid volunteers—or who work in federal agencies but are paid by third-party organizations—are ineli-

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### INSIGHT by Mike Causey

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They must think we like fighters. Or at least that we worship people who say they either have been—or currently are—fighting on our behalf. Even if all they ever do is talk.

And it is only going to get worse (or better, if you like lip fighters).

To see how your favorite politician fares in the war of words, google him or her using their name and references to "fighting" or "fight." You may be surprised.

Is there anything that can reverse the trend where words speak louder than actions? Two possible solutions:

- a) Bring back dueling (at least on Capitol Hill), or
- b) Assume the position.

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gible for the same conversion to permanent employment available to interns under SCEP.

PPS recommended that the government prioritize student internships as key talent sources for entry-level jobs, and make greater use of SCEP instead of STEP.

PPS also suggested that the government:

- Use the internship programs to attract targeted populations—Hispanic-Americans, who are under-represented in the federal workforce, and students who have skill sets in mission-critical occupations such as engineering, the sciences and information technology.
- Give agencies and managers greater flexibility to hire students from all internship programs who have demonstrated their capabilities.
- Collect data that enables a clear evaluation of all intern programs.

“The time has come for our federal government to end its benign neglect of student internship programs, and use this valuable resource to hire talented young professionals,” PPS said.

To see more, go to: <http://ourpublic-service.org/OPS/publications/viewcontentdetails.php?id=133>. ☕

## Thrift Savings Plan Share Prices (As of FEND's deadline)

FUNDS	APRIL 14	MONTH AGO	YEAR AGO
G Fund	12.8344	12.8037	12.4000
F Fund	12.6707	12.4488	12.2200
C Fund	9.8130	8.8033	15.0700
S Fund	11.7276	10.2591	18.0800
I Fund	13.1278	11.2559	22.8300
<b>Lifecycle Funds</b>			
L Income	12.7468	12.3858	13.3700
L 2010	13.7047	13.1752	15.1200
L 2020	12.4889	11.5371	15.8800
L 2030	12.1580	11.0668	16.4100
L 2040	11.9327	10.7253	17.0200

For rates of return and other TSP info, go to: [www.FederalDaily.com/financial/TSP.htm](http://www.FederalDaily.com/financial/TSP.htm)

## Intel Employees Report Higher Job Satisfaction

Employees in the Intelligence Community (IC) were more satisfied with their jobs compared to job satisfaction ratings reported by all federal workers, according to a survey released April 9 by the Office of the Director of National Intelligence (ODNI).

The “2008 IC Employee Climate

Survey” was conducted last fall among civilian and military employees in all IC federal components, including ODNI, which oversees the 16 federal intelligence organizations. While results for individual agencies are classified, Director of National Intelligence Dennis C. Blair wants agency heads to publicize results among their employees and develop improvement plans.

“Our employees enjoy their work and realize how important it is to national security,” said IC Chief Human Capital Officer Ronald P. Sanders, who works in ODNI. “This news is heartening, but we know there is room for improvement—and we’ve taken decisive steps to tackle many of the challenges identified in the latest annual survey.”

According to non-classified parts of the report, 73 percent of IC survey respondents last year said they were satisfied with their jobs, a showing that was relatively unchanged from 2007. The Federal Human Capital Survey, which surveys all federal employees, said 68 percent of all federal workers felt that way in 2008. In addition, a large majority of IC employees, 67 percent, said their talent was put to good use, and that supervisors supported their professional development. That is up 2 percent from 2007. Fewer—60 percent—of workers across the entire federal government shared that view.

### Survey Items/Most Favorable Responses

	IC 2008	Change Since 2007	Federal Government 2008
The people I work with cooperate to get the job done.	89%		84%
The work I do is important.	88%		91%
I know how my work relates to the agency's goals and priorities.	88%	+1	84%
I am treated respectfully without regard to my race, gender, age, disability, etc.	85%	-1	86%
My supervisor supports my need to balance work and family issues.	85%	-1	75%
Employees in my work unit share job knowledge with each other.	84%	+1	76%
More experienced employees share their knowledge and experience.	82%		--
I like the kind of work I do.	82%	+1	84%
Our missions depends on IC agencies sharing knowledge and collaborating.	82%	-2	--
I am held accountable for achieving results.	81%	--	82%

Source: [www.dni.gov/reports/IC-Survey\\_2008.pdf](http://www.dni.gov/reports/IC-Survey_2008.pdf)

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# What the 2009 Stimulus Plan Does for Feds and Retirees

The recent passage of the American Recovery and Reinvestment Act of 2009 should result in many federal employees and retirees both having some extra spending money and benefiting from some new tax credits or deductions during 2009. This column discusses the main features of the Act and what they mean to employees and retirees.

The “Making Work Pay” tax credit, for example, will put more cash into the pockets of many employees—a result of less federal income tax being withheld from paychecks. For 2009 and 2010, the Act provides a refundable tax credit of up to \$400 for single individuals, and up to \$800 for married couples filing joint returns.

Payroll offices are currently using revised federal tax withholding tables applicable for the rest of 2009. The tables reflect a payroll tax credit of 6.2 percent of earned income. Most federal employees will see on average \$18 to \$40 more in their biweekly paychecks. The credit has a “phase out,” which means single individuals with salaries in excess of \$75,000 or married couples with salaries in excess of \$150,000 will see little—if any—changes in their net paychecks.

The “economic recovery payment” will result in a one-time payment of \$250 to retirees, disabled individuals, Supplemental Security Income (SSI) recipients receiving benefits from the Social Security Administration (SSA), disabled veterans receiving benefits from the Department of Veterans Affairs, and Railroad Retirement beneficiaries. Unlike the 2008 economic stimulus payment program, the IRS will not make these payments. SSA will begin sending the \$250 payments to eligible recipients starting in late May 2009. No action is required for eligible recipients to request this payment. Additional information may be obtained on SSA’s Web site at [www.socialsecurity.gov](http://www.socialsecurity.gov).

Throughout the remainder of 2009, the Act allows for a deduction for state and local sales and excise taxes paid for the purchase of a new car, light truck, motor home or motorcycle. The deduction is an “above the line” deduction, meaning that the deduction is available regardless of whether a taxpayer itemizes deductions on Schedule A.

The state and local sales tax deduction applies to purchases of new vehicles costing less than \$49,500 that occurred between Feb. 17 and Dec. 31, 2009. Taxpayers who claim state and local sales taxes as an itemized deduction cannot also claim the sales tax paid for a vehicle as an above the line deduction. The deduction phases out during 2009 for individuals with adjusted gross incomes (AGI) between \$125,000 and \$135,000, and between \$250,000 and \$260,000



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for married couples filing jointly.

Under the Act, individuals who buy their first home are eligible for a new tax credit. The maximum credit of \$8,000 is for individuals who purchase their first principal residence. This includes a house, condominium or mobile home purchased between Jan. 1 and Nov. 30, 2009. The credit is also available for individuals who have not bought a home in the past three years. Unlike the tax credit for first-time homebuyers who purchased their first home between April 9 and Dec. 31, 2008, this credit does not have to be repaid provided that the home is not sold for at least 36 months. But the 2009 first-time homebuyers’

tax credit phases out for individuals with AGI between \$75,000 and \$95,000 and for married joint filers with AGI between \$150,000 and \$170,000.

The Act also provides some tax relief for the cost of higher education. The American Opportunity education tax credit replaces what is currently known as the Hope Scholarship tax credit. The credit would give a \$2,500 partially refundable tax credit that can be used during each of a student’s four years of college.

The new credit applies to higher education expenses paid during 2009 and 2010. Eligible individuals will not benefit from the credit until they file their 2009 and 2010 income taxes. After 2010, the law reverts to the current Hope Scholarship tax credit unless Congress extends the new credit.

Parents of college students can make tax-free withdrawals from “529” college savings plans in 2009 and 2010 to pay for computers and computer-related technology. Before this change, parents could make tax-free withdrawals from 529 plans to buy computers—but only if a college required their students to purchase computers.

The Act also gives relief to taxpayers who are affected by the alternative minimum tax (AMT). The AMT exemption increases to \$46,700 for individuals—up from \$46,200 in 2008; and to \$70,950 for married couples—up from \$69,950 during 2008. Without this relief, 30.3 million taxpayers would owe AMT in 2009. With this relief, the number falls to 4.6 million, according to Roberton Williams, senior fellow at the Tax Policy Center.

*Tax and Legal Advice Disclaimer: Please note that Multi-Financial Securities Corp. nor any of its agents or representatives give legal or tax advice. For complete details, readers should consult with their tax advisor or attorney.*

# Interior Department Educator Loses Removal Appeal

**D**ennis Hubbard was removed for cause after working for about 30 years in a federal teaching position at a high school on the Pine Ridge Indian Reservation in South Dakota. His work at the school was administered by the Bureau of Indian Education, a unit of the Department of the Interior.

The agency made Hubbard's removal official on May 20, 2007, based on—according to official records in the case—“off-duty criminal conduct.”

Hubbard appealed to the Merit Systems Protection Board (MSPB). The appellant argued that he had been fired in part due to age discrimination—and that he had been improperly and illegally denied civil service job protections guaranteed by 25 U.S.C. § 2012(e).

The agency answered Hubbard's filing with a counter-charge: it claimed that MSPB should reject Hubbard's appeal due to MSPB's “lack of subject matter jurisdiction” under a different section of the same law.

Specifically, the agency argued, 25 U.S.C. § 2012(a) requires that any federal employees appointed to an “education position” at the agency after Nov. 1, 1979, “shall be excepted from the civil service rules governing the removal of federal employees,” documents said.

Accordingly, the administrative judge (AJ) with MSPB who handled the case ordered the parties to submit additional evidence regarding the details of Hubbard's job status—especially as to when the appellant was hired.

Hubbard offered as evidence a single Standard Form 50 (SF-50) showing that he began working for the agency on Aug. 26, 1978. But the agency offered the AJ additional documentation that backed its claim that Hubbard did not enjoy civil service protections because he had been hired after 1979. Specifically, the agency submitted several additional SF-50s indicating that Hubbard had worked on a temporary basis for at least the first two years of the period. These temporary assignments—as shown on one form—ended on May 30, 1980, due to “a lack of work.”

According to the agency, it was not until three months later—at the close of the summer of 1980—that Hubbard was hired as a “contract educator” under the terms of 25 U.S.C. § 2012(p).

The AJ in the case was moved by the agency's evidence to dismiss Hubbard's appeal: it appeared the appellant's permanent appointment began well after the 1979 deadline, thereby excluding him from civil service protection.

Hubbard appealed yet again, to the U.S. Court of Appeals for the Federal Circuit. In this appeal, the appellant did not dispute that his contract began too late to avoid exclusion from protection—as the court stated, he fell “within the class of individuals that Congress has excluded from the coverage of those provisions of the Civil Service Reform Act of 1978.” Rather, Hubbard claimed only that he should not have been removed on the merits of the case.

The appeals court, however, ruled that under the 1979 deadline specified by law, the court did not have jurisdiction over the appellant's claims—and the court therefore upheld MSPB's denial of his appeal.

*(Hubbard v. MSPB and the Department of the Interior, U.S. Court of Appeals for the Federal Circuit, Docket No. 2009-3021, 4/6/09)*

## Postal Employee Wins Demotion Appeal

Gregg Giannantonio, an employee of the Postal Service, won a recent appeal of his demotion at the agency.

Giannantonio had worked as an EAS-21 Arizona District Manager of Statistical Programs when, a few years ago, he was demoted to EAS-17 Customer Services Analyst on a charge of “failure to meet the duties and responsibilities of [his] position.”

Giannantonio filed an appeal with the Merit Systems Protection Board (MSPB), arguing, according to official documents in the case, that the Postal Service had forfeited its case because the agency “had denied him due process because the deciding official engaged in prohibited *ex parte* communications” (communications with one party without notice to the other).

An administrative judge (AJ) with the MSPB did not fully agree with the appellant's argument—but nonetheless the AJ did find, in part, in the appellant's favor.

The AJ ruled that the Postal Service's deciding official “failed to consider specific mitigating factors and his penalty determination far exceeded the bounds of reasonableness.” The AJ ruled that although the charge was sustained, the punishment exceeded any “reasonable penalty.” The AJ ordered the agency, at a maximum, to issue a letter of warning instead.

The agency appealed the AJ's ruling—and Giannantonio answered with a counter-appeal. Next, the full MSPB considered the case.

The full board ruled even more definitively for the appellant. The board found that, under a key precedent case, *Stone v. Federal Deposit Insurance Corp.* (1999), if the deciding official had engaged in prohibited *ex parte* communication and thereby denied the appellant due process, the AJ should simply have reversed the agency's decision—without offering any “alternative finding.”

Furthermore, in the current case the full board noted that the AJ's erroneously applied “alternative finding” only reinforced the appellant's case that he should not have been demoted. “Here, the AJ's alternative finding was actually a contradictory finding on the merits,” the board wrote.

In its final ruling, the full board ordered the Postal Service to reverse the demotion—and calculate and provide Giannantonio with appropriate back pay, interest and benefits.

*(Giannantonio v. Postal Service, MSPB Docket No. DE-0752-08-0191-I-1, 4/9/09)*

# Was IRS Employee Unfairly Removed in Altered Documents Case?

I worked for the IRS, calculating and collecting money that trust funds owe to the government,” said Ginger Johnson,\* a longtime IRS employee. “I enjoyed doing a highly specialized job—making precise judgments to ensure the law is followed properly.

“There’s no room for sloppy work at my post,” she continued. “And I was never accused of any—until one day, out of the blue, managers accused me of altering dates on documents to cover up delays.

“Next thing you know, they fired me!” she said. “I am appealing these false charges.”

“Ms. Johnson is wrong,” responded Courtney Neneh, a lawyer for IRS. “She was indeed late on time-sensitive work, potentially costing taxpayers thousands of dollars—and she falsified date stamps to cover it up. She had to be dismissed.”

**FACTS:** Ginger Johnson worked for the IRS for many years, most recently with the Technical Services Division of the IRS in Salt Lake City, Utah. Technical Services is responsible for calculating tax debts and penalties for many cases involving trust funds.

Johnson was responsible for a certain subtype of trust fund—and was the “only employee in her unit,” according to official documents in the case, who was qualified and responsible for “a specific subset” of these funds.

An appeals officer working for the IRS Appeals Division on Nov. 4, 2005, forwarded Johnson five cases to process on a deadline. The officer marked the file, in his own handwriting, “11/4/05.” An employee in Johnson’s office marked them again upon receipt “NOV-10-2005.” And, according to official documents in the case, Johnson herself first saw the documents that very day.

Specifically, “the Automated Trust Fund Recovery computer system reflected that [Johnson] accessed the account of the employer for whom the five individual taxpayers worked at 12:27 p.m. that same day,” documents said.

Johnson subsequently worked at various times on the cases at issue, and she completed her work on them, according to records, on Dec. 6 and Dec. 9—and immediately forwarded her findings to another IRS office for action. But—because the document originally had been received on Nov. 4—she was late in forwarding her work.

“The Technical Services Division must complete its assessments within 30 days of their having been signed by the Appeals Division in order for the IRS to collect the appropriate penalties from the taxpayers,” the document said. Johnson’s “assessments on the five cases at issue were therefore 2 and 5 days late, respectively.”

Yet the documents, upon their arrival at the subsequent

IRS office, no longer reflected this tardiness on their cover sheet. Their original receipt date had been hand-altered—a numeral “1” had been added, changing the date from “11/4/05” to “11/14/05.”

An IRS employee noticed the alteration, and it was referred to the Treasury Inspector General for Tax Administration (TIGTA). Special agents with TIGTA “then conducted an investigation to determine whether [Johnson] had altered the dates on the forms.”

In their investigation, agents reported that there had been a death in Johnson’s family, and that she had been away from the office off and on for several days afterward. They alleged that, because these breaks in her work prevented her from finishing on time, she “altered documents to conceal a mistake.”

Johnson denied the charges, alleging that the evidence was only circumstantial, and that someone else had altered the documents. But the IRS removed her, stating in the removal documents that she had broken IRS rules and had broken the law by “falsifying or destroying documents to conceal mistakes made by an employee with respect to a matter involving a taxpayer or taxpayer representative.”

Johnson appealed the case to the Merit Systems Protection Board.

### Was Johnson unfairly removed from her job?

**DECISION:** At a hearing, Johnson told an administrative judge (AJ) that—contrary to the records, which she said were falsified—she had not even seen the documents in question until Dec. 6, 2005. Specifically, she noted, “other employees in her office sometimes worked on the type of trust fund cases at issue” and may have picked up the case and altered the documents.

But the AJ in the case stated he believed the electronic record, which showed Johnson first had accessed the documents in question on Nov. 10, 2005, “a little over an hour” after their receipt at her office. The AJ upheld her removal.

Johnson appealed again, directly to the U.S. Court of Appeals for the Federal Circuit. The court considered her argument, but found against her.

“It is not unreasonable to infer from that circumstantial evidence that [Johnson] altered the forms,” the court wrote, referring to a precedent (*Beverly v. Postal Service*, 1990). Direct evidence of her conduct is not necessary.” The appellant’s removal, the court ruled, stands.

(*U.S. Court of Appeals for the Federal Circuit, Docket No. 2009-3042, 4/1/09*)

\*Names and dialogue are fictitious, but details are based on a real case.

continued from page 4

IC workers were also expressed satisfaction with the top brass within their agencies: 63 percent of IC employees said they had confidence in their supervisors and senior leaders, while 59 percent of all federal workers surveyed felt that way in 2008, ODNI said. The report noted that 85 percent of the IC workers surveyed said they thought their supervisors supported their efforts to balance work vs. family time, compared to 75 percent of federal workers across all agencies.

There were negative aspects of the survey. Only 36 percent of IC employees said it was easy to collaborate with IC colleagues outside of their home agencies. And only 30 percent said steps were taken within an employee's work unit to deal with poor performers who could not or would not improve.

ODNI said it has implemented several initiatives to deal

with such issues—for example, the Civilian Joint Duty Program that allows employees to rotate through assignments across the 16 intel agencies. Another is the National Intelligence Civilian Compensation Program, announced last year, which is designed to reward superior performance and boost the recruitment and retention of civilian employees.

Pay is still an issue, according to the survey, which noted that less than a fifth (19 percent) of IC workers felt they are fairly compensated compared to the private sector. And, 29 percent of IC workers surveyed felt that pay raises were based on performance, compared to 26 percent of all federal workers surveyed, the report said.

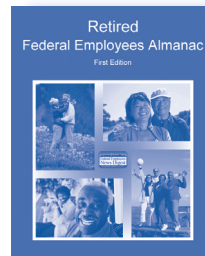
To see more, go to: [www.dni.gov/press\\_releases/20090409\\_release.pdf](http://www.dni.gov/press_releases/20090409_release.pdf).

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