

MEMORANDUM

January 22, 1997

To: File No. 3.1.6

From: Brian E. Rosen
Designated Agency Ethics Officer

Subject: Ethics Advice to David Marwell Regarding Outside Consulting Work

David Marwell was recently approached by a California-based law firm and asked to consult on a case involving Nazi-era records. The offer and substance of the work are in no way related to his current position, and no conflict of interest is present. The United States is not a party to the legal proceedings at issue and David would perform all of the work on his own time.

After reviewing the applicable statutes and regulations and consulting with our desk officer at the Office of Government Ethics, I have advised David that nothing prohibits him from performing the consulting work that he has been offered. However, I also informed him that he may be limited in the fee he accepts for this work by § 2635.804, which restricts outside earned income for covered noncareer employees to fifteen percent of the annual rate of basic pay for level II of the Executive Schedule. Covered noncareer employees are defined in § 2636.303(a) and it is unclear to me whether David is covered by this provision.

David subsequently informed me that he has not decided whether he will accept the work or accept a fee if he does accept the work. For this reason, he instructed me not to pursue further research on this issue at this time. I asked him to keep me informed of his subsequent decisions regarding this work and I will follow up if necessary.