



United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

November 4, 1992

MEMORANDUM FOR DESIGNATED AGENCY ETHICS OFFICIALS AND INSPECTORS
GENERAL

FROM: STEPHEN D. POTTS
DIRECTOR

SUBJECT: Conflict of Interest Prosecutions Survey

This Office has recently completed its survey of conflict of interest prosecutions around the country for the period January 1, 1990 to December 31, 1991. Information on 18 new prosecutions by U.S. Attorneys' offices and the Public Integrity Section was provided to us by the Department of Justice. The attached summarizes the prosecutions reported by the Department and includes updates on two previously reported cases.

Attachment

1990-91 CONFLICT OF INTEREST PROSECUTION SURVEY

I. Update on Cases Previously Reported

1. Defendant Robert L. Hedges was a Colonel in the Air Force who in January of 1984, after deciding to retire, received permission to work in the private sector during his 60 day terminal leave period which was to begin in June 1984. Hedges was Chairman of the Source Selection Evaluation Board with respect to certain computerized data and communications contracts with estimated life-cycle costs of as much as \$5 billion dollars. Sperry Corporation was one of the many bidders on projects for which Hedges was the program manager. In the period just prior to Hedges taking terminal leave, Hedges engaged in a few conversations with the Vice President of Sperry's Federal Projects Operations relating to Hedges post-Government employment plans. Sperry expressed an interest in hiring Hedges, a draft employment contract was exchanged and Hedges accepted a job with Sperry shortly after he began his terminal leave. The Government alleged in its action against Hedges that he participated personally and substantially in programs with a direct and predictable effect on Sperry's financial interests in violation of 18 U.S.C. § 208(a); the Government alleged that Hedges was disqualified under section 208 from working on particular matters in which Sperry had a financial interest because he was negotiating about prospective employment with Sperry. Hedges was found guilty by a jury of violating section 208.

On appeal, Hedges argued that the trial judge had failed to instruct the jury that if the jury were to find that Hedges' actions were taken in reliance upon the advice of the legal counselor at his agency, that the Government would be estopped from imposing liability upon Hedges. The Court of Appeals for the Eleventh Circuit agreed with Hedges and reversed the decision. See *United States v. Hedges*, 912 F.2d 1397 (11th Cir. 1990). Hedges had presented evidence (some of which had been excluded from the jury) which he thought showed that he had received guidance on pre- and post-retirement conflicts of interest from his Standards of Conduct Counselor regarding his prospective employment relationship with Sperry. While the Court of Appeals agreed with the District Court's ruling that section 208 is a strict liability offense, it concluded that the lower court should have allowed Hedges to present his "entrapment by estoppel" defense to the jury. The United States Attorney decided not to reprosecute Hedges after the reversal.

2. Air Force Colonel Eugene Schaltenbrand was convicted in 1989 of violating 18 U.S.C. § 208 and 18 U.S.C. § 207. Schaltenbrand, while working as a Government employee, had met with representatives of Teledyne Brown Engineering regarding an employment opportunity at that company. The employment opportunity related to a project that Schaltenbrand was working on as a Government employee. Schaltenbrand appealed his conviction on the section 208 charge on the basis that his discussions with Teledyne Brown did not constitute "negotiating for employment" under section 208. Schaltenbrand essentially contended that no negotiation had taken place because no offer of employment had been made. The Court of Appeals reviewed the evidence, which showed that the parties had discussed a specific position, the qualifications for the position, and to a limited extent, the degree to which Schaltenbrand fit the qualifications. The Court of Appeals affirmed Schaltenbrand's conviction finding that negotiation had taken place

notwithstanding Schaltenbrand's contention that no offer of employment was made while Schaltenbrand was with the Government

With respect to Schaltenbrand's conviction on the section 207 count, Schaltenbrand convinced the Court of Appeals that there was insufficient evidence that Schaltenbrand was an agent for Teledyne Brown when he appeared at a meeting as an employee of Teledyne Brown after he had terminated his employment with the Government. The Court found that the evidence showed only that Schaltenbrand attended the meeting as an employee of Teledyne Brown and that his only participation in the discussions at the meeting related to delivery schedules. The Court found that the Government offered no proof that Schaltenbrand was authorized to bind Teledyne Brown to any commitments on its behalf.

The Court of Appeals also examined Schaltenbrand's claim that certain evidence that was presented at trial was protected by the attorney-client privilege. Schaltenbrand had approached JAG attorneys at the Air Force regarding the work that he was going to be performing outside the Government. In part because of Schaltenbrand's having filled out a form stating that everything he said was confidential, the Court found that his communications with the JAG officers were protected, notwithstanding the JAG officers' testimony that they had informed Schaltenbrand that they represented the Government and could not represent him in any way. This conclusion of the Court of Appeals did not impact the outcome of the appeal as the Court found that the admission of the privileged testimony was harmless error. *See United States v. Schaltenbrand*, 930 F.2d 1554 (11th Cir. 1991).

II. 1990-1991 Prosecutions

1. The Government brought charges against Jammie Lee Nash, a civilian contract inspector for the Navy employed at the Naval Air Station at Point Mugu, California, and two former contractors, Daniel Lynn Becraft and Eugene Baxter. Nash was responsible for assessing compliance of contractors engaged to paint and repair residential structures at the Naval Air Station. When Baxter, a painting contractor, was unable to fulfill his obligation to paint the residential units in accordance with his contract, Nash arranged, unofficially, for Becraft to take over the project. Pursuant to the new arrangement, Baxter paid most of the money he received from the Navy over to Becraft, and both Baxter and Becraft made separate payments to Nash. Pursuant to plea agreements, Baxter and Becraft both pled guilty to misdemeanor informations charging them with violations of 18 U.S.C. § 209, and agreed to cooperate in the criminal case against Nash. Nash subsequently pled guilty to a felony charge under 18 U.S.C. § 208(a).

2. The defendant, Alfred Truesdell, was employed by the United States Geological Survey. Truesdell arranged to be paid consulting fees without obtaining the consent of his superiors for services rendered to private business interests. The consulting services related to Truesdell's Government work, and Truesdell used Government resources, including computers and employees, to produce the information for which he received consulting fees. The Government alleged that Truesdell was illegally supplementing his Government salary and, furthermore, that he failed to report the consulting fee income on his tax returns. Truesdell pled guilty to a

violation of 18 U.S.C. § 209 and received a sentence of five years' probation, community service and a \$10,000 fine.

3. The defendant, Jose Barua was audited by the Internal Revenue Service for excess deposits of income. Barua offered the IRS agent conducting the audit furniture, equipment and cash to see if the agent could help him with his tax problems. The agent reported Barua's offer to IRS internal security. Subsequent discussions between Barua and the IRS agent, accompanied by payments of \$240 and \$200 in cash to the IRS agent, were monitored by IRS internal security. Barua was charged with bribery under 18 U.S.C. § 201 and pled guilty to a violation of 18 U.S.C. § 203, for compensating a Government employee for representational services with respect to a particular matter in which the United States had a substantial interest. Barua was given a sentence of probation.

4. Donald L. Henderson awarded a \$7,372 contract for vertical blinds for trailers at the San Onofre Recreational Facility in California. Henderson subsequently received a check in the amount of \$1,761.10 from the vendor of the blinds, whose daughter was a close personal friend of Henderson. Henderson was charged in a two-count indictment with bribery under 18 U.S.C. § 201 and supplementation of salary under section 209. The defendant pled guilty to the section 209 count. He was given a 90 days' suspended sentence, was placed on unsupervised probation for a period of 18 months, and ordered to pay restitution in the amount of \$3,761.10.

5. The defendant, Dale Williams, was a staff assistant to Congressman Newt Gingrich in a district office in Georgia whose responsibilities included handling constituent requests. Williams demanded and received a payment of \$300 from a businessman who was seeking a Federal grant to help him start up a business. Williams also demanded a percentage of any grant money awarded to the businessman. Williams told the constituent that he would have to work nights and weekends on his own time to help the constituent and that the money was to compensate him for the work. Williams was indicted for personally seeking payment for official acts in violation of 18 U.S.C. § 201(c) and for demanding compensation for representational services before the United States in violation of 18 U.S.C. section 203.

Williams pled guilty to the section 203 violation and received a probated sentence.

6. The Government brought charges against the General Deputy Assistant Secretary for Public Indian Housing at the Department of Housing and Urban Development (the "Deputy Assistant Secretary") and a private businessman. The Deputy Assistant Secretary was alleged to have used his position to steer a HUD contract to a company owned by the businessman in exchange for the businessman's giving the Deputy Assistant Secretary's wife business advice and employment. Both the Deputy Assistant Secretary and the businessman were indicted for violations of the bribery statute, 18 U.S.C. § 201(b) and (c) and for conspiracy to commit bribery, an offense against the United States under 18 U.S.C. § 371. The Deputy Assistant Secretary was indicted for violating the conflict of interest prohibition of 18 U.S.C. § 208, and the businessman was

alleged to have aided and abetted the Deputy Assistant Secretary's criminal activities in violation of 18 U.S.C. § 2(a) and (b). This case first went to trial in the fall of 1990. After a two month jury trial, the case resulted in a hung-jury of 8-4 for acquittal. The case was retried in January, 1991, and resulted in the acquittal of both defendants on all counts.

7. Amparo B. Bouchey, formerly the Director of the Office of Small and Disadvantaged Business Utilization at the Department of Transportation, was alleged by the Government to have used her position to approve a subcontract arrangement on behalf of a potential business partner, John E. Ricche. Ricche allegedly had agreed to provide Bouchey with future employment and cash. Bouchey was indicted on two counts of bribery under 18 U.S.C. § 201, one count of violation of 18 U.S.C. § 208 conflict of interest, and one count of conspiracy under 18 U.S.C. § 371 to commit multiple violations, including bribery and conflict of interest. Ricche was indicted on one count of bribery of a public official under 18 U.S.C. § 201, and one count of conspiracy under 18 U.S.C. § 371 (bribery of a public official). Ricche pled guilty to the conspiracy charge. Bouchey was convicted by a jury of violating section 208 and conspiracy to commit a section 208 violation, but was acquitted of the other four charges. Bouchey was sentenced to eight months in prison on each guilty finding, to run concurrently, and two years' supervised release and 200 hours of community service. Bouchey appealed her conviction, but the conviction was affirmed. The opinion of the Court of Appeals was unpublished.

8. Syed Zaki Salahuddin was an employee of the National Cancer Institute's Tumor Cell Biology Lab. He ordered \$12,000 in goods and services from Pan Data Systems, Inc., a company co-founded by his wife. She was also employed by and held stock in the company. For this conduct, Salahuddin was charged with violating 18 U.S.C. § 208. Salahuddin also had his house painted and a second mortgage paid off by Pan Data Systems, Inc. Salahuddin waived indictment and entered guilty pleas to one count of accepting an illegal gratuity in violation of 18 U.S.C. § 201(c) and one count of conflict of interest in violation of 18 U.S.C. § 208. Victor Kubli, the President of Pan Data Systems, Inc. was charged and pled guilty to paying an illegal gratuity to Salahuddin under section 201(c).

9. John Gill was a letter carrier for the Postal Service. The Postal Inspection Service received complaints from a customer on Gill's route asserting that Gill was demanding money from people on his route in exchange for delivery of general assistance checks. Surveillance was set up and the customer was taped having a conversation in which Gill suggested that the customer make a "one- time" payment of \$15 to ensure delivery of her checks. Gill accepted the money, which had been marked in advance of its transfer. Gill was indicted under 18 U.S.C. § 201(c)(1)(B) for accepting money in exchange for performing an official duty. After plea negotiations, Gill pled guilty to a superseding information charging violation of 18 U.S.C. § 209, for accepting compensation for official duties from a source other than the Government. Gill was sentenced to three years' probation, with 60 days at a community treatment center.

10. Dennis Wilson, a Department of Energy employee who worked on a contract involving security for the agency was alleged to have sold, through a third party, 576 sheets of cardboard

for targets to the contractor administering the security contract. The proceeds from the sale went first to the third party and then to Wilson. Wilson was charged with violating the conflict of interest prohibitions of 18 U.S.C. § 208(a). The testimony of Wilson and the third party conflicted at trial. Subsequently, the jury found Wilson not guilty of violating 18 U.S.C. § 208(a). Wilson was also indicted for failure to reveal his receipt of income from the sale of the sheets of cardboard on his annual financial disclosure report submitted to the Department of Energy. This count was dropped primarily because Wilson had not received training on how to prepare the report.

11. Defendant Margarita Vallejo Valdes De Torres paid a United States Immigration Official \$100 to furnish her with fraudulent immigration papers. The Government originally charged Torres with bribing a Government official in violation of 18 U.S.C. § 201(b)(1). However, Torres later pled guilty to a misdemeanor violation of 18 U.S.C. § 209(a) for supplementing the salary of a Government official. Defendant Torres was sentenced to time served, placed on unsupervised probation for three years, and deported.

12. A quality assurance representative from the Defense Contract Administration Services Management Area (DCASMA) was introduced by a consultant for a prime contractor for the Department of Defense to two women who were in the process of establishing a fabric manufacturing business with hopes of obtaining Government contracts. The consultant knew that the DCASMA employee worked for the Government because the two had previously worked on the same projects.

In order to perform any Government contracts, the two women needed a quality assurance manual to prove compliance with the Government's quality assurance program. The women, the consultant and the DCASMA employee met several times. The DCASMA employee stated at these meetings that his presence created a conflict of interest. The DCASMA employee attended the meetings and provided the assistance to the women because he intended to be compensated if they received Government contracts. The consultant knew that the DCASMA employee's participation was a conflict of interest, yet he advised the women to hire the Government employee.

Subsequently, the consultant and the DCASMA employee agreed to produce a quality assurance manual for the women. The DCASMA employee spent 40 man-hours producing a quality assurance manual which listed the consultant as the author. In return, the DCASMA employee received \$1,500 in cash. The manual prepared by the DCASMA employee was the same type of manual he inspected in his official capacity for compliance prior to awarding of Government contracts. The consultant presented the manual to Government inspectors.

The DCASMA employee pled guilty to charges of violation of 18 U.S.C. §§ 208 (conflict of interest) and 371 (conspiracy). The consultant pled guilty to a conspiracy charge. The DCASMA employee was sentenced to two years' probation, confined for 30 days, fined \$2,000, and assessed the cost of the confinement. The consultant was sentenced to five years' probation

and a \$1,000 fine. A condition of his probation was that he not participate in any Government contracts.

13. Defendant Frank H. Madison was a Public Affairs Officer for the United States Corps of Engineers, New York District, who provided information, liaison, and assistance concerning off-post U.S. Army housing programs and the sale and acquisition of property for such programs. Madison provided such information to Leonard Conklin, James J. Scanlon and, Dr. Muhammad Ismail to facilitate the sale and development of areas around Fort Drum, New York, for use as off-post housing.

In return for these official acts, Madison demanded payoffs of \$35,000 from Conklin and \$90,000 from Scanlon and Ismail, and a loan of \$25,000 from Caruso Corporation, which bought land from defendants Scanlon and Ismail. Madison did not disclose these payments to the Corps of Engineers. In addition, he did not file tax returns for 1987 or 1988, nor did he pay taxes on the payments or on the legitimate income he received during those years, which included his salary from the Government.

Madison pled guilty to three counts of an indictment charging him with demanding and receiving the gratuity payments from Conklin, Ismail and Scanlon, and Caruso Corporation, in violation of 18 U.S.C. § 201(c)(1)(B). Madison admitted the conduct charged in two other such counts, acknowledging receipt of the full \$150,000 in gratuities. Those two counts, the five lesser misdemeanor charges of receiving unlawful compensation (in violation of 18 U.S.C. § 209), and charges that Madison lied about his income on a loan application and to Agents of the United States Army Criminal Investigation Division were dismissed upon sentencing. Madison also pled guilty to an Information charging him with the tax crime. Madison was sentenced to fifteen (15) months in prison.

Conklin, Scanlon, and Ismail each pled guilty to acceding to the demands of payment to Madison in violation of 18 U.S.C. § 209. Each was sentenced to pay a \$10,000 fine and placed on probation.

14. Richard Whittington, a retired Navy supply officer, was President of Dynlogistics Services, Inc. (DLS) a subsidiary of CFE Services, Inc. (CFE), which in turn was owned by Dynalectron Corporation, a major Department of Defense contractor.

DLS subcontracted work on a Navy contract to CFE. Both contracts were overseen by Clifford C. Lord, a Navy supply officer. The Government alleged that Whittington offered Lord employment and successfully negotiated an arrangement for Lord to work with CFE in return for Lord's assistance on follow-on Department of Defense contracts for DLS. Lord concealed this employment contract from the Navy and, later, Navy investigators.

The Government charged Whittington with participating in a conspiracy (under 18 U.S.C. § 371) to violate the conflict of interest provisions of 18 U.S.C. § 208. Whittington was also charged with obstruction of justice in violation of 18 U.S.C. § 1503, obstruction of an

administrative proceeding under 18 U.S.C. § 1505, and perjury pursuant to 18 U.S.C. § 1623. Whittington was acquitted on the obstruction and perjury charges, but the jury could not reach a verdict on the conspiracy charge. The Government subsequently dismissed the conspiracy charge since the grand jury testimony of a key witness was ruled inadmissible after the witness died after indictment but prior to trial.

Lord was convicted in 1989 of two counts of violating 18 U.S.C. § 208 and one count of obstruction of justice under 18 U.S.C. § 1505. *See United States v. Lord*, 710 F. Supp. 615 (E.D. Va. 1989), *aff'd*, 902 F.2d 1567 (4th Cir. 1990).

15. Dr. Alan E. Beutel, was a SES level Special Assistant for Data Automation (SADA) to the Assistant Secretary of the Navy for Financial Management in the early 1980's. As the principal technical manager in the Department of the Navy for automated data processing (ADP) resources, Beutel was responsible for the management of all non-tactical ADP resources and for rendering final advice to the Assistant Secretary on requests for major ADP systems developments and contracts. While Beutel was advising the Assistant Secretary to approve a contract for shipboard non-tactical ADP equipment with Systems Management American Corporation (SMA), Beutel negotiated a lucrative employment contract with SMA. The ADP contract, known as the SNAP II contract, was worth over \$100 million.

Subsequently, while employed by SMA, Beutel made a representation to the Navy on behalf of SMA on a contract which he worked on while employed by the Navy.

The grand jury indicted Beutel for a conflict of interest violation pursuant to 18 U.S.C. § 208(a) and for violating the post-employment restrictions of 18 U.S.C. § 207(a) and (c). Beutel agreed to enter a plea of guilty to the 18 U.S.C. § 208 charge. Age 61 and suffering from health problems, Beutel was placed on probation for three years and fined \$10,000. The sentence was not under the Guidelines, the conduct having pre-dated their effective date.

16. James Pungello was the supervisor of grand jury reporters in the United States Attorney's Office for the Southern District of New York. In the period 1985 to 1989 Pungello was paid for court reporting transcription services by National Reporting, Inc. ("National"). The work that he was being paid for was work that Pungello should have performed in his capacity as a Government employee. Instead, Pungello assigned work to National and then received payment for providing transcription services to National. Pungello was charged with and pled guilty to a violation of 18 U.S.C. § 209(a) for an illegal supplementation of his Government salary. Pungello was sentenced to two years' probation and resigned from Government service following the plea.

National's contract to provide transcription services was only for transcription services that could not be performed by a court reporter from the United States Attorney's Office. National was aware that Pungello could have performed the transcription services in his capacity as a Government employee. National was charged with and pled guilty to a charge that it had illegally supplemented the salary of a Government employee in violation of 18 U.S.C. § 209(a).

National was sentenced to pay a fine of \$25,000 and to probation for five years. As a result of the case, National lost its contract with the United States Attorney's Office.

Because of the recusal of the United States Attorney's Office for the Southern District of New York, the Pungello and National prosecutions were handled by the Conflict of Interest Crimes Branch of the Public Integrity Section.

17. Peter Walmsley was an electrical engineer employed by the Navy to work on a project to build a trident submarine base at King's Bay, Georgia. Being the only civilian electrical engineer at King's Bay, defendant Walmsley served on every board and panel of the supervising agency, OICC-TRIDENT, that reviewed bids on all projects having a major electrical supply, transmission or use component.

Two private electrical contractors were continuously successful in submitting bids which met project specifications and consistently met prices just below the confidential estimates prepared by OICC-TRIDENT review committees. These same contractors, having obtained a number of contracts, were consistently able to obtain OICC-Trident review committee recommendations for cost-increasing change orders. Completely aside from their Government work, the principal owners of these two companies began exploring a potential joint venture in the outfitting and sale of power yachts. It was later discovered that Walmsley was the originator, driving force and silent third partner in this joint venture, which once up and running, would provide Walmsley with his next position as the King's Bay construction project wound down to completion.

While employed with OICC-TRIDENT program, Walmsley procured material, equipment, and labor in the names of the contractors and directed construction work on the yachts. He stored high-value equipment for the yachts in his personal garage and certain materials from the venture were used for various repair and remodeling projects in his home. Defendant Walmsley held the only key to the completed yachts. His wife, under her maiden name, was on the payroll of one of the contractors. Walmsley's family had exclusive use of a van owned by one of the contractors.

Defendant Walmsley never recused himself from direct participation in OICC-TRIDENT contracts involving either of these two contractors and never disclosed his or his wife's financial interest in businesses holding Government contracts.

Walmsley was indicted on two counts of violating 18 U.S.C. § 208 and was convicted on both counts. No information on Walmsley's sentencing was provided.

18. Eugene Howell was an Acting Supervisory Deputy U.S. Marshal from April 1986 to October 1988. In that capacity, he reviewed and approved vouchers submitted by Lyons International Security, Inc., a contractor with the United States Marshal's Office in Los Angeles. During the same time period, Howell received over \$12,500 in money and other things of value from Lyons Security and its owner Joseph Rydzewski. Howell was indicted on two counts of

accepting gratuities and one count of conflict of interest under 18 U.S.C § 208. Howell pled guilty to the conflict of interest that arose from his reviewing Lyons' billings while simultaneously being employed by Lyons. Taking into consideration Howell's age (71), he was sentenced to one year probation and a \$500 fine.