



United States
Office of Government Ethics
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MEMORANDUM

TO: Designated Agency Ethics Officials and Inspectors General

FROM: Marilyn L. Glynn
Acting Director

SUBJECT: 2003 Conflict of Interest Prosecution Survey

This Office has completed its annual survey of prosecutions involving the conflict of interest criminal statutes (18 U.S.C. §§ 202-209) for the period January 1, 2003, through December 31, 2003. Information on 10 new prosecutions by U.S. Attorneys' offices and the Public Integrity Section of the Department of Justice's Criminal Division was provided to us with the assistance of the Executive Office for United States Attorneys in the Department of Justice. Summaries of the prosecutions reported to this Office for past years can be found on our web site at www.usoge.gov under "Laws and Regulations."

2003 CONFLICT OF INTEREST PROSECUTION SURVEY

1. United States v. Thomas Muro. Muro was an Acting Supervisor District Adjudications Officer and the District Adjudications Officer for the U.S. Immigration and Naturalization Service (INS) in Sacramento, California. Ahmed Abdelwahhab was an immigration consultant with a private company, Gateway Express. Abdelwahhab assisted immigrants with the process of becoming citizens and did substantial business with the Sacramento INS office.

Abdelwahhab gave to Muro the following items: a dozen cases of wine and champagne and a cash gift at his wedding; a complimentary casino room at South Lake Tahoe; and monthly parking in Sacramento at a below market rate. In exchange for these gifts, Muro provided expedited service and special assistance to Abdelwahhab on immigration matters.

Muro pleaded guilty to 3 misdemeanor counts of violating 18 U.S.C. § 209(a), receiving compensation from a private party for services rendered to the U.S. He was sentenced to 36 months probation, a \$75.00 special assessment, and home detention for 90 consecutive days. An appeal is pending. Because Muro waived appeal in his plea agreement, the Government will be moving to dismiss the appeal.

The Eastern District of California handled the prosecution.

2. United States v. Pablo F. Galvez. Galvez was a rating assistant technician with the San Diego office of the Department of Veteran's Affairs (VA). His duties included gathering evidence and information regarding each claimant's case and submitting the claim to the rating board for a determination of benefits. Between April 2000 and May 2003, Galvez assisted certain veterans in expediting their disability benefits claims through the VA and allowed veterans to submit inflated claims to the VA. In exchange for this assistance, he received approximately \$4,500 in cash payments from these claimants.

Galvez pleaded guilty to one felony count of a violation of 18 U.S.C. § 209(a), unlawfully accepting supplementation of his Government salary. He was sentenced to four years supervised probation, a \$10,000.00 fine, a \$100.00 special assessment, and 120 hours of community service as part of special conditions of probation. (Probation will terminate early if he pays the total fine and completes the community service before four years has elapsed.)

The Southern District of California handled the prosecution.

3. [Case 3] [The Government employee] was an active duty Coast Guard captain until July 31, 2000, when he retired. As a Coast Guard officer, he worked extensively in the field of Loran technology. Loran is a low frequency system that is used for aircraft navigation. Loran is distinct from the Global Positioning System (GPS).

Since 1998, the U.S. Department of Transportation (DOT) has funded research intended to determine whether the Loran and GPS systems could be integrated using "Loran-C" technology. DOT assigned research funds through the Federal Aviation Administration (FAA) to, among others, the Coast Guard. The FAA hired a private consulting company, [Company A], to oversee the Loran-C project.

In or about March 2000, while still on active duty, [the Coast Guard officer] contacted [Company A] concerning future employment/consulting opportunities after his retirement from the Coast Guard. Around May 2000, while still in contact with [Company A] about employment opportunities, [he] drafted a statement of work relating to the Loran-C project.

After his retirement from the Coast Guard, he formed [an LLC]. He then entered into a consulting arrangement with [Company B], which had been hired as a subcontractor to work on the Loran-C project. He agreed to provide consulting services to [Company B] in connection with the Loran-C project.

As part of his work for [Company B], he communicated regularly with FAA personnel and Coast Guard personnel concerning the Loran-C project. The conversations included an e-mail to Government employees in which he urged the Government employees to purchase equipment that he needed for the project. Between the time of [his] retirement from the Coast Guard and early 2003, [Company B] paid [the LLC] at least \$392,000 for its services in connection with the Loran-C project.

The Government maintained that [the Coast Guard officer] violated 18 U.S.C. § 208(a) by negotiating future employment with [Company A] while drafting the statement of work on a project that was overseen by [Company A]. The Government also maintained that he violated 18 U.S.C. § 207(a)(1) by making a communication to Government personnel with the intent to influence them concerning a matter over which he had exercised personal and substantial responsibility while a Coast Guard officer.

The Department of Justice entered into a settlement agreement with [the Coast Guard officer]. He paid a civil penalty of \$25,000, without admitting liability.

The District of Connecticut handled the prosecution.

4. United States v. John Fredrick, Jr. Fredrick was employed by the Department of the Navy as a Construction Representative in the Office of the Resident Officer in Charge of Construction. In June 1998 Fredrick had become the Construction Representative on two Dames and Moore, Inc. (DMI) contracts with the Navy. Fredrick was responsible for conducting inspections to ensure that DMI was in compliance with the contract specifications.

Fredrick also owned a business, Ha-Y-N Contractors (Ha-Y-N). While he was an inspector on the DMI contracts, Fredrick approached DMI's project manager and asked if there was a way he could make extra money. DMI's project manager then hired Ha-Y-N as a

subcontractor on one of the projects Fredrick was overseeing for the Navy. Fredrick did not tell his supervisors that his company had been hired as a subcontractor on a job he was inspecting.

Between June 1998 and January 1999 Ha-Y-N received approximately \$26,000 in payments from DMI under the subcontract. Fredrick submitted invoices to the DMI project manager for work Ha-Y-N allegedly did for DMI. He gave a portion of the payments he received from DMI to DMI's project manager. Fredrick admitted that he knew his being paid as a subcontractor was a clear conflict of interest and that the kickbacks to the project manager were a reward for being awarded the subcontract.

Fredrick pleaded guilty to one count of violating 18 U.S.C. § 208, which bars an employee from taking official action in matters affecting certain personal or organizational financial interests, and one count of violating 41 U.S.C. § 53 (the Anti-Kickback Act of 1986). He was sentenced to 3 years probation on each count, 6 months home detention with electronic monitoring, 100 hours of community service, a \$10,000.00 fine, and a \$200.00 special assessment.

The District of Hawaii handled the prosecution.

5. United States v. Demetris Johnson. Johnson was employed in the administrative office of the U.S. Department of the Interior's Geological Survey. Her official responsibilities included purchasing office supplies and services using a government-issued credit card. Between October 2000 and March 2001, Johnson received approximately \$500.00 in retail gift cards from a vendor because she ordered supplies for the Government from his company.

Johnson pleaded guilty to one misdemeanor count of violating 18 U.S.C. § 209, unlawfully accepting supplementation of her Government salary. She was sentenced to two years of supervised probation, 100 hours of community service, and a \$25.00 special assessment.

The Public Integrity Section of the Criminal Division of the Department of Justice handled the prosecution.

6. United States v. Shanda Turner. Turner was employed as a purchasing agent in the administrative office of the U.S. Department of Agriculture. Her official responsibilities included purchasing office supplies and services using a Government-issued credit card. In or about July 2000, Turner received a \$500 retail gift card from a vendor because she ordered supplies for the Government from his company.

Turner pleaded guilty to one misdemeanor count of violating 18 U.S.C. § 209, unlawfully accepting supplementation of her government salary. She was sentenced to one year of supervised probation, a \$500.00 fine, 10 hours of community service and a \$25.00 special assessment.

The Public Integrity Section of the Criminal Division of the Department of Justice handled the prosecution.

7. *United States v. Jenny Wu; United States v. Hsin Hui Hsu.* Hsin Hui Hsu worked as an agricultural economist for the U.S. Department of Agriculture. His official duties included inviting groups of Chinese nationals with expertise in agriculture to the U.S. to meet with officials at the USDA. Beginning in late 1999, Hsu conspired with visa brokers based in California and China to locate Chinese nationals who were willing to pay to come to the U.S. and who were not eligible to receive visas. The Chinese nationals would pay approximately \$10,000 each to the visa brokers, who then provided their names and bogus biographical information to Hsu. Hsu wrote letters on USDA letterhead to be presented to U.S. consulates in China, stating that the Chinese nationals were agricultural specialists invited to the United States for official meetings. Hsu knew when he drafted the letters that the Chinese nationals in question were not agricultural specialists and that the meetings would not take place.

Also as part of the scheme, Hsu drafted and signed letters from his wife, Jenny Wu, on behalf of her company, Strathmore Enterprises. These letters purported to confirm invitations to the Chinese nationals. Hsu showed several of these letters to Wu. Wu deposited in Strathmore Enterprises accounts the fees paid to Hsu for his role in the conspiracy. As a result of this scheme, 99 Chinese nationals received non-immigrant visas to enter the United States. Hsu and Wu received approximately \$82,000.00 for their role in this scheme.

Wu pleaded guilty to one count of aiding and abetting an unlawful conflict of interest in violation of 18 U.S.C. §§ 208 and 2. She was sentenced to two years probation, 100 hours of community service, and a \$25.00 special assessment. Although Hsu, the Government employee, was not charged with a violation of 18 U.S.C. § 208, he was charged with one count of conspiring to commit visa fraud in violation of 18 U.S.C. §§ 371 and 1546. The outcome of his case is pending.

The Public Integrity Section of the Criminal Division of the Department of Justice handled the prosecution.

8. [Case 8] As Chief of Staff for the President's Critical Infrastructure Protection Board (PCIPB) in the Office of Homeland Security, [the Government employee] was responsible for the establishment and management of the Board, including matters of personnel, budget, and administration. Beginning in December 2001 and continuing through July 2002, [he] recommended and participated in the proposed procurement of a support contract for the Board in the amount of approximately \$600,000. The PCIPB and the Office of Administration in the Executive Office of the President initially designed the procurement as a sole source contract to be awarded to a particular company (Company). Later the proposed procurement was revised and handled as a competitively bid contract. In May 2002, [the Government employee] informed the Company of the Government's decision to procure the contract through a competitive bid.

Not later than July 9, 2002, [the Government employee] began negotiating for employment with the Company. On July 16, he asked the Acting General Counsel for the Office of Administration for assistance in moving forward for approving the implementation of the procurement for the PCIPB support contract. On July 18 he visited the offices of the Company and interviewed with them for potential employment. On July 19 he contacted the Office of the

White House Counsel in order to recuse himself from all matters related to the Company. On July 23 he received an offer of employment from the Company. On July 24 he was provided with a recusal memorandum which he executed immediately. He accepted the Company's offer of employment on August 1, 2002.

In September 2002, following a competitive bid and evaluation process, the PCIPB support contract was awarded to the Company. Upon learning of conflict of interest concerns by the White House Counsel's Office, [the Government employee] informed the White House Counsel's Office that the Company had withdrawn its job offer and he would not begin employment with the Company. The White House Counsel's Office referred the matter to the Department of Justice.

The Government maintained that [the Government employee's] conduct was a violation of 18 U.S.C. § 208, participating personally and substantially in a particular matter in which, to the official's knowledge, an organization with which he is negotiating for prospective employment has a financial interest.

DOJ entered into a settlement agreement with [the Government employee]. He paid a civil penalty of \$5,000.

The Public Integrity Section of the Criminal Division of the Department of Justice handled the prosecution.

9. United States v. John Ervin Izzard. The Office of the Chief Technology Officer (OCTO), District of Columbia, is responsible for providing the technological support for all agencies within the District of Columbia. To fulfill this responsibility, the OCTO solicits contracts from private vendors who can provide these services. Because many of the OCTO's employees do not have advanced technological training, OCTO contracts with outside consulting companies to obtain individuals with the required technological knowledge to assist with the solicitations and subsequent contracts. These individuals, known as program or project managers, serve as consultants for OCTO in its relationships with the private vendors who bid for contracts with OCTO.

Beginning in January 1999, Izzard was one of these program managers for OCTO. At that time, he was employed by Telecommunications Data Corporation (TDC), which had contracted to provide consulting services for OCTO. Izzard later ended his relationship with TDC and recommended to OCTO that it contract with HMS Company to provide consulting services for the office. As part of the contract between HMS and OCTO, Izzard continued working as a program manager for OCTO. Izzard received a flat salary for his work. OCTO paid HMS pursuant to its contract, and HMS then paid Izzard his salary. There was no additional agreement for Izzard to receive a contingency fee.

In the course of his duties as a program manager, Izzard dealt directly with vendors who were soliciting business from OCTO. He provided vendor selection criteria and recommended to OCTO the vendors who should be awarded Government contracts. He also provided technical

assistance and managed many of the projects between the District of Columbia agency receiving the technology and the private vendor providing the technology.

During the fall of 2000 Izzard asked the owner of HMS, Charles Alvin Hall, for an additional payment of approximately \$36,000. Izzard asserted that he was entitled to 15% of the income that HMS received under its contract with OCTO as additional compensation for his work in providing vendors to OCTO. Mr. Hall refused to pay. The incident was then reported to the authorities.

The U.S. Attorney's Office for the District of Columbia considered Izzard to be a Government employee for purposes of 18 U.S.C. § 208(a). Izzard pleaded guilty to one count of a violation of 18 U.S.C. § 208(a), committing unlawful acts affecting a personal financial interest. He was sentenced to one year probation and ordered to pay \$1,000.00 in restitution and a \$25.00 special assessment.

The U.S. Attorney's Office for the District of Columbia handled the prosecution.

10. United States v. Ariston Bulgan Malinao. In May 2003 Malinao appeared for his citizenship interview before Cecelia M. Hill, District Adjudication Officer in Santa Ana, CA. Malinao gave Hill \$200.00 in cash in an envelope during his interview for citizenship. During a post-arrest interview, Malinao admitted to giving \$200.00 to Hill with the intention that she would look favorably upon his interview, particularly the English proficiency portion.

Malinao pleaded guilty to a violation of 18 U.S.C. § 209(a). He was sentenced to one year's probation.

The Central District of California handled the prosecution.