



United States
Office of Government Ethics
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MEMORANDUM

TO: Designated Agency Ethics Officials and Inspectors General

FROM: Amy L. Comstock
Director

SUBJECT: 2002 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. §§ 203, 205, 207, 208, 209) for the period January 1, 2002, through December 31, 2002. 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 can be found on our web site at www.usoge.gov under "[Laws and Regulations.](#)"

2002 Conflict of Interest Prosecution Survey

[CASE 1] [Defendant A] was the head of the Executive Office of Asset Forfeiture within the Department of the Treasury. [Defendant B] was an attorney in that office.

[They] used the Government procurement process relating to computer automation work in order to funnel money to themselves and their companies. [Specifically, [Defendant B] established a company that developed and marketed software. He and [Defendant A] then took certain actions in their official capacity as U.S. Government employees that affected the financial interests of that company.] They used Government property, time, and labor for work related to this software, which they called Equus. They also solicited employment and other financial benefits from third party contractors in exchange for offering to award future potential Government contracts. They used a co-conspirator's company as a straw company, in order to award a Government automation contract on the condition that the third party contractor pay the co-conspirator to perform much of the contract work.

On May 21, 2002, [Defendant A] was convicted on 1 felony count of violating 18 U.S.C. § 208, which bars taking official action in matters affecting certain personal or organizational financial interests. [He] was acquitted on another felony count of violating section 208. On May 21, 2002, [Defendant B] was convicted on 2 felony counts of violating section 208. [They] were also each convicted on 1 count of violating 18 U.S.C. § 371 (conspiracy); 2 counts of violating 18 U.S.C. § 201(b)(2) (bribery); and 3 counts of violating 18 U.S.C. §§ 1343 and 1346 ("honest services" wire fraud). On September 9, 2002, each of them was sentenced to 87 months' imprisonment, a \$15,000 fine, and 3 years' supervised release. [They] were also required to pay a special assessment fee in the amount of \$700 and \$800, respectively. The case is currently on appeal.

Prosecution handled by the District of Maryland.

[CASE 2] [The defendant] is a former customer service center manager of the General Services Administration (GSA).

In his position as customer service center manager, [he] supervised all GSA contractors in the Tampa area. [Company A] was a GSA mechanical maintenance contractor under [the defendant's] direct authority. In late 1998, [he] requested [Company A] to prepare a quotation, under [Company A's] existing contract with GSA, to provide secretarial services to the Tampa GSA office. Once [Company A] prepared the information, [he] signed work orders for secretarial services to be provided by [Company A]. [His wife was hired to provide the secretarial services]. [She] was paid approximately \$4,000. Also, in 1999, [the defendant] submitted to GSA false financial disclosure documents related to the additional income.

[He] pled guilty on November 20, 2001, to violating 18 U.S.C. § 208, which bars taking official action in matters affecting certain personal or organizational financial interests. On February 22, 2002, [he] was sentenced to 1 year's probation and restitution.

Prosecution handled by the Public Integrity Section of the Department of Justice's Criminal Division.

[CASE 3] [The defendant], an Internal Revenue Service employee, began an intimate relationship with a taxpayer whose pending tax case [he] was overseeing. The taxpayer had a tax liability of approximately \$250,000. [The defendant] filed notices of abatement so that efforts to collect the outstanding tax liability would be impeded. [He] received numerous benefits from the taxpayer, including those relating to a trip to Las Vegas made with the taxpayer on the taxpayer's airplane.

On November 1, 2002, [he] pled guilty to a misdemeanor count of violating 18 U.S.C. § 209, which bars the unlawful supplementation of salary. [He] was sentenced to 2 years' probation in January 2003.

Prosecution handled by the Central District of California.

[CASE 4] [The defendant] was an employee of the United States Postal Service.

[He] was employed as a mechanic at a Postal Service Vehicle Maintenance Facility. He was responsible for ensuring that the Vehicle Maintenance Facility had a sufficient supply of engine starters for use in postal vehicles. [He] opened a company, [Z Electric], which rebuilt engine starters. He caused the Vehicle Maintenance Facility to purchase rebuilt starters from [Z Electric]. In addition, he misappropriated vehicle parts from the Vehicle Maintenance Facility and sold the parts back to the facility through [Z Electric].

On May 17, 2002, [he] pled guilty to a misdemeanor violation of 18 U.S.C. § 208, which bars taking official action in matters affecting certain personal or organizational financial interests. He also pled guilty to violating 18 U.S.C. § 1707 (theft of property used by Postal Service). On August 8, 2002, [he] was sentenced to 5 years' probation, a \$500 fine, and \$13,449.50 restitution.

Prosecution handled by the Eastern District of California.

[CASE 5] [The defendant], the Acting Assistant District Director of the Immigration and Naturalization Service (INS)/San Francisco, was taking money from aliens for purported "services" in relation to their immigration applications. When confronted by the Office of Inspector General, he denied taking any money from aliens who had applications pending before the INS.

The prosecution was undertaken pursuant to 18 U.S.C. § 209, which bars the unlawful supplementation of salary; 18 U.S.C. § 1001; and 18 U.S.C. § 1505. The jury rendered its verdict on June 3, 2002. [The defendant was convicted of violating section 209. The jury was hung on sections 1001 and 1505. On September 11, 2002, [he] was sentenced to 4 years' probation, a \$12,000 fine, \$4,711.60 restitution, and a \$100 special assessment.

Prosecution handled by the Northern District of California.

[CASE 6] 18 U.S.C. § 209, which bars the unlawful supplementation of salary, applies to officers and employees of the District of Columbia and non-Government sources who compensate any such officers and employees for their Government services. [The defendant] was a Cardiographic Assistant, working for the District of Columbia Surveyor's Office. He received cash payment for making copies of land surveys.

On February 27, 2002, [he] pled guilty to a felony violation of section 209. He was sentenced on May 31, 2002, to 3 years' probation, \$1,800 restitution, and a \$100 special assessment.

Prosecution handled by the U.S. Attorney's office, District of Columbia.

[CASE 7] [The defendant] was an employee of the Internal Revenue Service (IRS) in New Haven, Connecticut, from approximately 1982 through 1999. He retired [in 1999] from his position as an IRS Revenue Officer.

Among the collection cases assigned to [him] during his IRS tenure were tax liability cases relative to [Company B] (1995-1997 filings) and [Company C] (1993 filing). He actively participated in those matters while at the IRS, including visits to [Company B's] offices and receipt of payments from that company. After retiring from the IRS, [he] started a consulting business, and thereafter appeared before the IRS on behalf of [Company B] and [Company C]. He filed a power of attorney on behalf of [Company B], indicating that he would be representing [Company B] regarding, inter alia, tax matters for the tax years 1995-1999. He filed penalty abatement requests on behalf of [Company B] for filings in 1995-1997. He did not charge [Company B] for his services. With regard to [Company C], the owner of [that company] drafted a letter to the IRS, seeking recovery of some penalties and interest that [it] had paid to the IRS. He asked [the defendant] to deliver that letter to the IRS, and [the defendant] personally made that delivery to an IRS Revenue Officer, seeking abatement for tax year 1993. He did not charge [Company C] for his services.

On September 13, 2002, [the defendant] pled guilty to violating 18 U.S.C. § 207(a)(1), which prohibits a former Government employee from communicating to or appearing before the Government, on behalf of another person or entity other than the United States, in connection with a matter in which he participated personally and substantially as a Government employee. [He] was sentenced on December 4, 2002, to 1 year's probation, a \$1,200 fine, and 50 hours of community service.

Prosecution handled by the District of Connecticut.

[CASE 8] [The defendant] was employed as an Inspector with the Federal Aviation Administration (FAA).

While employed as an Inspector with the FAA, [he] negotiated future employment with an air carrier, [X Aviation], which was the subject of an FAA inspection to upgrade its licensing status. [The defendant] was a member of the FAA inspection team reviewing [X Aviation's] licensing upgrade and simultaneously negotiated a future position with [X Aviation] as its President.

On December 12, 2002, [the defendant] pled guilty to a misdemeanor violation of 18 U.S.C. § 208, which bars taking official action in matters affecting certain personal or organizational financial interests. [He] was sentenced to 1 year's probation and a \$25 special assessment.

Prosecution handled by the Eastern District of New York.

[CASE 9] [Defendant K] was an attorney with the Bureau of Public Debt at the Department of the Treasury. He is a leading authority on high yield/prime bank note schemes. His job requires him to be the point man for the Bureau of Public Debt's program to expose high yield fraud.

[He] accepted "financial assistance" from [Defendant L] in exchange for advice on an illegal gratuity arrangement. The "financial assistance" consisted of \$5,000 cash in 2 envelopes and a \$5,000 wire transfer for a total of 3 payments and \$15,000. [Defendant L], a friend of [Defendant K's], was working for [businessman M], who was running an estimated \$23 million "Ponzi" scheme in Nacogdoches, Texas.

On January 30, 2003, [Defendant K] pled guilty to violating 18 U.S.C. § 209, which bars the unlawful supplementation of salary. Pursuant to 18 U.S.C. § 216(a)(2), [he] was sentenced on May 15, 2003, to 6 months' incarceration, 2 years' supervised release, and a \$100 special assessment. Since his indictment, [he] has been terminated from his Federal employment and is in the process of having his law license revoked. On January 24, 2003, [Defendant L] pled guilty to violating section 209. Pursuant to 18 U.S.C. § 216(a)(1), [he] was sentenced on May 15, 2003, to 3 months' incarceration, a \$4,000 fine, \$40,000 restitution, 1 year's supervised release, and a \$25 special assessment. {[Businessman M] pled guilty on February 10, 2003, to violating 18 U.S.C. § 1343 (wire fraud). On September 23, 2003, [he] was sentenced to 5 years' incarceration, 3 years' supervised release, and a \$100 special assessment. [He] was also ordered to pay restitution to be determined through the court-reviewer process.}

Prosecution handled by the Eastern District of Texas.

[CASE 10] [Defendants R and S] were employed and trained by the U.S. Army as perfusionists (a physician's assistant who operates heart/lung bypass equipment during surgery).

Immediately after military retirement, both [Defendants R and S] were employed by a practice group that performed contract perfusion services for the Army at Brooke Army Medical Center (BAMC). In May 1998, [they] purchased limited partnership interests in [O Company]. [O Company] is in the business of distributing perfusion supplies and has an exclusive arrangement with Medtronic, Inc., a major medical products manufacturer, to distribute perfusion supplies that

use “Carmeda” coating, a patented Medtronic product. Under the limited partnership, [Defendants Rand S] were to receive distributions based on the quantity of product sold by [O Company].

[The defendants’] job responsibilities at BAMC included ordering supplies for the perfusion department. Prior to joining the partnership, they had ordered supplies from [P Company] (the predecessor of [O Company]) and [O Company]. After joining the partnership, they continued to initiate purchase orders to [O Company]. All of these orders were designated as “emergency” requests, which bypassed the usual bidding process. [Defendant R] was hired by BAMC as a staff perfusionist, a General Schedule (GS)-13 position, in June 1998. In September 1998, [Defendant S] was hired by BAMC as a staff perfusionist, a GS-13 position. [Defendant S] is currently the Chief of Perfusion Services.

Around the time the two joined PRN as limited partners, [Defendant S] submitted a request to the contracting office that they put out a Request For Quote that would allow BAMC to purchase all perfusion supplies from a sole source without any further bidding or competition. [The defendants] together submitted the specifications for the Request For Quote, including “Carmeda” coated items that were only available through [O Company]. Both [defendants] acted as technical advisors to the contracting office in preparing the Request For Quote and evaluating any bids received. [O Company] submitted the only bid in response to the Request For Quote, and [Defendant R] advised the contract officer that the price was reasonable.

After the awarding of the contract to [O Company], and after both of them were hired directly by BAMC as GS employees, [the defendants] initiated purchase requests under the contract, and [Defendant R] continued to serve as the point of contact for BAMC on matters relating to the [O Company] contract.

Neither [defendant] ever advised anyone in the contracting office, or anyone with whom they worked at BAMC, about their relationship to [O Company].

When questioned by investigators, [the defendants] both claimed that [Defendant R] had discussed the proposed limited partnership arrangement with [Colonel X] of the Army JAG office one month before they joined (i.e., in April 1998). [Defendant R] stated that the conversation happened in the cafeteria and that he showed a copy of the partnership agreement to [Colonel X]. According to [Defendant R], [Colonel X] told him that there was no problem with his joining the partnership so long as he did not take any kickbacks. According to [Defendant R], he followed up the conversation with an e-mail to [Colonel X], asking [the colonel] to call an attorney for the partnership to discuss detail. [Colonel X], now retired, was interviewed and states that he never had a cafeteria conversation with anyone about a partnership proposal and that he did not receive any e-mail from [Defendant R] asking him to contact an attorney.

[The defendants] pled guilty on May 6, 2002, and May 13, 2002, respectively, to misdemeanor violations of 18 U.S.C. § 208, which bars taking official action in matters affecting certain personal or organizational financial interests. [They] were sentenced to probation on August 6, 2002, and August 13, 2002, respectively.

Prosecution handled by the Western District of Texas.