

FALL 2012

IMPACT

MAGAZINE

A PUBLICATION OF THE U.S. DEPARTMENT OF TRANSPORTATION OFFICE OF INSPECTOR GENERAL

Flying Under the Influence

Commercial pilot arrested for flying drunk

Stealing Copper

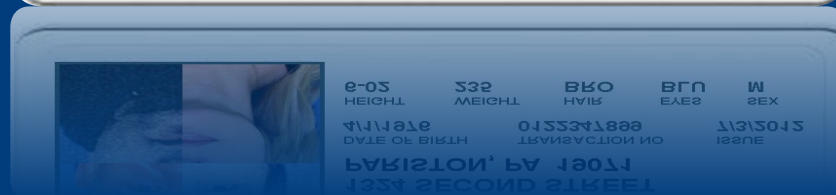
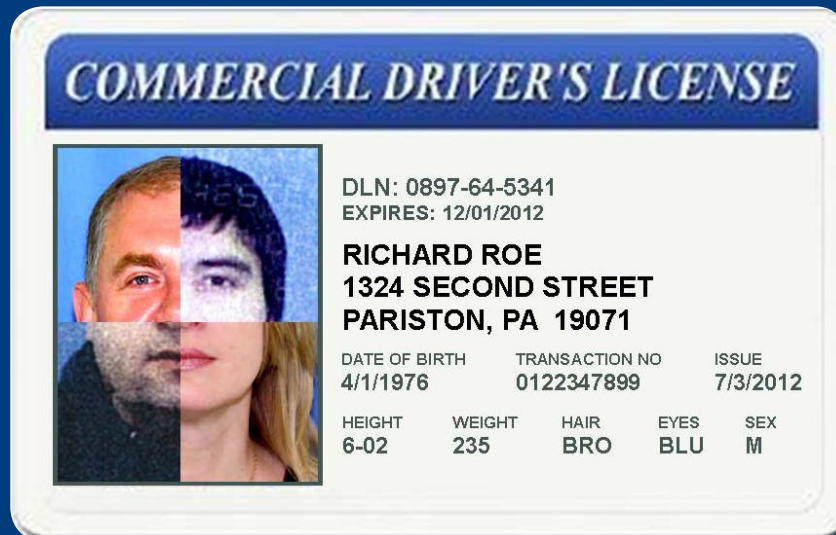
Thieves convicted of stealing copper wire from airport lighting systems

Selling Safety

Agents arrest trucking inspector for accepting bribes

CDL FRAUD SCHEME

DOT-OIG undercover operation busts fraudulent truck driving schools



www.dot.oig.gov

DOT

Every day, you are impacted in some way by the U.S. Department of Transportation—from the subway you take to work to the tomatoes in your salad (someone's gotta ship 'em). Just how big is DOT and the transportation industry?

\$84.4 BILLION

ESTIMATED FY 2012 SPENDING ON CONTRACTS AND GRANTS



THAT'S MORE THAN THE ESTIMATED 2012 GDP OF ECUADOR (\$78.4B)



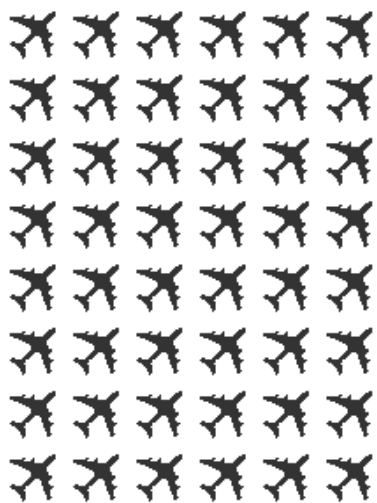
25,000

NUMBER OF METRIC TONS EACH SEAWAY-SIZE VESSEL CAN CARRY—AS MUCH AS 870 TRACTOR TRAILORS

DOT EMPLOYS OVER

60,000

PEOPLE WORLDWIDE



IN FY 2011, IN THE U.S.

794

 MILLION PASSENGERS

10

 MILLION FLIGHTS

0

 COMMERCIAL AVIATION FATALITIES

THE NATIONAL HIGHWAY SYSTEM



160,000 MILES

THAT'S MORE THAN 6 TIMES AROUND THE EARTH

32,885

 HIGHWAY FATALITIES IN 2012

\$59.9 BILLION GENERATED BY RAILROAD FREIGHT INDUSTRY IN 2010



4,000

 MOTORCOACH CARRIERS



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U.S. Department of Transportation
Office of Inspector General

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p. 40 Hidden cameras catch thieves stealing copper wire for cash and drugs



p. 60 Federal inspector convicted for enabling unsafe trucking companies

PHOTO OF TRUCK BY ED DAWSON / COPYRIGHT

DOT-OIG INVESTIGATIONS

At DOT-OIG's Office of Investigations, criminal and general investigators conduct investigations of fraud and other allegations affecting DOT, operating administrations, programs, and grantees. The office also manages a Hotline Complaint Center and investigates whistleblower complaints.



TYPES OF INVESTIGATIONS

Investigations are opened based on four priority areas:



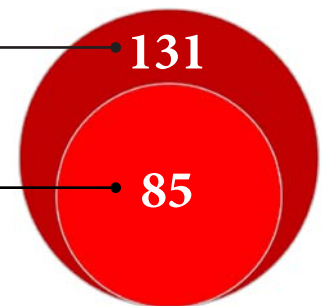
Percentages do not add up to 100% because 2% of cases did not fall under these areas.

WORKING WITH PROSECUTORS

Early in an investigation, allegations that appear to be criminal are presented to the Department of Justice for prosecutorial consideration.

Investigations referred for prosecution in FY 2011

Investigations accepted for prosecution



FY 2011 RESULTS

\$286M
in investigative financial recoveries

> 3x DOT-OIG's total budget

81
PERSONNEL & ADMINISTRATIVE ACTIONS

76
INDICTMENTS

79
CONVICTIONS

199
TOTAL YEARS OF PROBATION & SUPERVISED RELEASE

70
TOTAL YEARS IN JAIL

Our relentless fight against corruption

OUR INAUGURAL EDITION OF IMPACT MAGAZINE generated tremendous positive feedback from Congress, the Department and others who enjoyed reading the remarkable stories behind some of DOT-OIG's most significant investigations.

This year's issue focuses on DOT-OIG's relentless fight against corruption. In this constrained budget environment, DOT has the formidable task of making every federal dollar count while achieving a safe, efficient and effective transportation system.

Our work focuses on both fraud involving grants administered by the department as well as transportation safety issues impacting the traveling public. This year's edition highlights investigations where we identified and arrested those individuals who endangered the lives of others in order to line their own pockets with DOT money assets. Unfortunately, in some instances, we also identified DOT employees who were responsible for this egregious behavior.

Our aviation work helps us to identify opportunities for improved safety by stopping the issuance of bogus safety inspections and pilot check rides, while also ensuring pilot accountability. Our highway and transit investigations uncovered numerous fraud schemes with safety as well as financial implications. We found corruption among motor carrier safety inspectors, improperly issued commercial driver's licenses as well as price fixing and disadvantaged business enterprise fraud, which diverts millions of federal dollars from legitimate firms.

Our work continues to reflect our goal and commitment to provide relevant results. In total, DOT-OIG's fiscal year 2011 investigative work resulted in 76 indictments, 79 convictions and returned \$286 million back to the department. This great effort is due in no small part to the many folks who contact our DOT-OIG hotline—either by phone (1-800-424-9027) or email (hotline@oig.dot.gov)—to report about 6,000 potential complaints a year. Even the smallest tip can help uncover a fraud scheme that could save thousands of dollars in taxpayer funds.

I commend and thank our hard-working staff for their outstanding efforts and I look forward to continuing our meaningful work with the Secretary and the modal administrators to provide the American public with a safe transportation system.

We hope you enjoy this year's issue of IMPACT Magazine.



Calvin L. Scovel III
Inspector General
U.S. Department of
Transportation

Our work continues to reflect our goal and commitment to provide relevant results.



International Trucking

Investigators bust Commercial Driving License testing schemes involving Russian and Chinese criminal organizations



BY MICHAEL WATERS

Assistant Special Agent in Charge
Region 2 (King of Prussia, Penn.)

TATYANA, A BLOND, pony-tailed Russian, met her client in the parking lot of the driver's license testing center in suburban Philadelphia. For \$1,800 cash she provided the client—a police informant—with false residency documents, help obtaining a temporary Pennsylvania driver's license and a state-approved Russian interpreter to provide answers to the commercial driver's license knowledge test. OIG special agents, working closely with their law enforcement and regulatory partners, shut this organization down and identified hundreds of unqualified truck and bus drivers throughout the U.S.

Commercial Driver's Licenses – “Guaranteed”

In January 2009 Sergei,* a Russian immigrant living in New York, answered an employment ad in the *Russkaya Reklama*, a Russian-language newspaper distributed throughout the Northeast. Sergei wanted to make a better living to support his family, and the ad from the International Trucking Academy looked promising. It read:

“ITA – 7 Days a week we make Professionals. For the Locals and Out-of-Towners. Guaranteed Commercial Drivers License in Two Weeks. Tractor Trailer/Bus. Guaranteed Job Placement. Come, We Will Change Your Life.”

ITA was an unlicensed Philadelphia-area commercial driver's school, owned and operated by Vitaliy Kroshnev and his wife Tatyana. Vitaliy first obtained a U.S. Department of Transportation number from the Federal Motor Carrier Safety Administration in December 2006—the starting point for anyone operating a commercial carrier. In early 2007, he registered ITA as a “school” for persons seeking a Pennsylvania CDL, listing himself as president. Vitaliy applied for another USDOT number for ITA

in June 2007—this time listing wife Tatyana as company director. Vitaliy rented office space in Bensalem, Pa., just northeast of Philadelphia. The space was conveniently located

suggest otherwise. In June 2007 Vitaliy brought seven men into an MB Financial Bank to open individual accounts using out-of-state driver's licenses. Banking employees overheard him instructing the men to use specific Pennsylvania addresses on the bank account documents. Each of the seven people deposited exactly \$50 into their respective accounts and did not request bank cards or checks.

Because ITA ran ads in the *Russkaya Reklama*, which is widely circulated in cities like Philadelphia, Baltimore, and Washington, the husband and wife owners likely knew that non-Pennsylvania residents, like Sergei, would see and respond to their advertisements.

Sergei met Tatyana, a pony-tailed blonde, in the parking lot of the Pennsylvania DOT driver's license testing center as instructed. He paid her \$300 and she let an associate of hers accompany him into the testing center.

“Don't talk inside,” the woman told him. “Especially no English.”

She handed the Pennsylvania DOT service representative false documents showing that Sergei resided in Pennsylvania. She did all the talking. Before he knew it,

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ПРИХОДИТЕ, МЫ ИЗМЕНИМ ВАШУ ЖИЗНЬ!

Above: ITA's Russian-language ad “guaranteed” truckers CDLs in two weeks.

next to a Pennsylvania Department of Transportation licensing center. He also leased three trucks that ITA clients used to train for and take the CDL driving test.

The pair may have intended to operate a legitimate trucking school, but their early actions

he walked out with a temporary Pennsylvania driver's license.

Back home in New York, Sergei explained the scheme to his wife. She would have none of it.

"This is probably illegal," she said. "Get your New York license back."

Sergei later called a Suffolk County, N.Y., detective he knew to tell him about ITA. However, because the Kroshnevs and ITA operated in Pennsylvania, outside of the New York detective's jurisdiction, the detective decided to call DOT-OIG, where the issue was assigned

to Special Agent Brian Gallagher, a former investigator with the U.S. attorney's office in Philadelphia. Gallagher met with both Sergei and the detective in a Suffolk County police station where Sergei opened up and explained what he had done.

Gallagher knew this could be a complex investigation that would need considerable resources to build a sound criminal case. He contacted a FBI agent in Philadelphia and learned that the FBI had received similar information about ITA. The two agencies soon combined forces.

Best Evidence: Undercover Operations

If a picture is worth a thousand words, a video of a crime is priceless. The newly formed investigative team thought that this was an ideal case for an undercover operation. In December 2009 the U.S. Department of Justice authorized them to initiate one. The team selected Roman,* a law enforcement officer who spoke Russian, to infiltrate the ITA operation and gather the evidence needed for a successful federal prosecution.

On Dec. 4, 2009, Roman called

FMCSA and Pennsylvania DOT Commercial Driver's License Requirements

To insure safety on interstate highways, the Motor Carrier Safety Act (1984) created national standards that states must follow when issuing CDLs:

- The law prohibits an individual from holding more than one valid driver's license at a time.
- The person holding the license must be domiciled in a state to receive a license from that state.
- Drivers must speak sufficient English to understand traffic signs, respond to official inquiries and make report entries.

- Each state is responsible for developing a CDL knowledge test and skill test.

The State of Pennsylvania implemented these federal regulations in its vehicle code, and Pennsylvania DOT developed its own CDL testing procedures:

- A CDL applicant must first obtain a Pennsylvania driver's license.
- The applicant must prove that he or she currently resides in the state using proofs of residency, such as lease agreements, bank account

information or utility bills.

- If an individual moves from another state, he or she must first transfer the out-of-state license to a Pennsylvania driver's license. This transfer can occur in a matter of minutes.
- The applicant must then complete an application for a CDL learner's permit and pass a computer-based knowledge test.
- During the time that ITA operated, Pennsylvania approved foreign-language interpreters to assist applicants during the computer knowledge test.



Driver's licenses and temporary licenses seized and submitted as exhibits for trial.

the number listed in an ITA ad and spoke with Tatyana. She told him that she had been helping people earn their CDLs “for the past six years.” She advised that ITA would supply residency documents, help him transfer his out-of-state license and provide a female interpreter to help him on the knowledge test. The complete service would “guarantee” Roman “a good and authentic license” for only \$2,500, which included \$300 for a license transfer, \$1,000 for the CDL written test, and \$1,200 for driving lessons and the CDL road test.

Tatyana arranged for Roman to meet with her associate Khrystyna Davyda on the morning of the Dec. 17, 2009. When he arrived at the Pennsylvania DOT driver’s testing center, Roman spotted Davyda’s

vehicle parked in the lot and quickly slid into the passenger seat. Teams of surveillance agents surrounded the parking lot, observing and recording every move. Davyda handed Roman a large, brown folder containing completed Pennsylvania DOT applications, bank documents and lease agreements. These documents had been filled out using the Philadelphia address of an ITA accomplice, Leonid Vilchik, listed as landlord.

Davyda told Roman that the first thing they would need to do was open a bank account using his “new” Philadelphia address. She warned him not to discuss his real address while at the bank. During their recorded conversations, she told Roman that she took clients to different banks because she may have

as many as seven clients in a given week and didn’t want to attract too much attention. Davyda also confided in Roman that ITA was careful not to use the same address for every customer and swapped addresses every six months.

Jan. 13, 2010, was the big day. A male ITA associate and Roman entered a Philadelphia-area Pennsylvania DOT center and transferred Roman’s out-of-state license to a Pennsylvania license. The associate then advised Roman that the interpreter was on her way, and he left Roman waiting outside the facility. Roman soon identified a woman that met Tatyana’s earlier description of Iryna Starovoyt the interpreter: “an older woman with short red hair who looks like a teacher.” Together, they entered the testing center, this time to take the CDL knowledge test.

Starovoyt sternly instructed Roman to listen to her and follow her answers. She read the questions in a whisper. At times she skipped the question and simply gave the answer. Occasionally Roman would move his hand in the direction of an incorrect answer, and Starovoyt would tell him “no.” In one instance, she told him to answer a question incorrectly because a mistake would raise less suspicion. Neither was surprised when he passed the test.

When the two exited the building, Tatyana was waiting. The interpreter headed to her vehicle while Roman accompanied Tatyana

to her silver Nissan Infiniti. After he handed Tatyana \$1,300 in cash, she left him alone in her car to take the money over to Starovoyt. Surveillance agents covertly videotaped the exchange of cash. While waiting for her return Roman discretely poked around and noticed a large recordkeeping book containing his name and phone number. When Tatyana returned, he watched as she wrote \$300 and \$1,000 in the book under his name. Agent Gallagher knew Tatyana's logbook could serve as the smoking gun at trial. He had to get his hands on it.

While driving back to ITA, Roman baited Tatyana by mentioning Starovoyt's testing help.

"She does help," Tatyana said. "Thanks God, the most important thing is that."

The entire operation had occurred exactly as the original informant Sergei had reported. Only now the investigators had video and audio recordings of the illicit transactions. But gathering evidence of a federal crime is one thing; determining the extent and scope of the crime is another.

In the months that followed Special Agent Gallagher and his FBI counterparts would interview dozens of witnesses throughout five states, spending hundreds of hours conducting surveillance. Agent Gallagher organized thousands of pages of data related to CDL permits

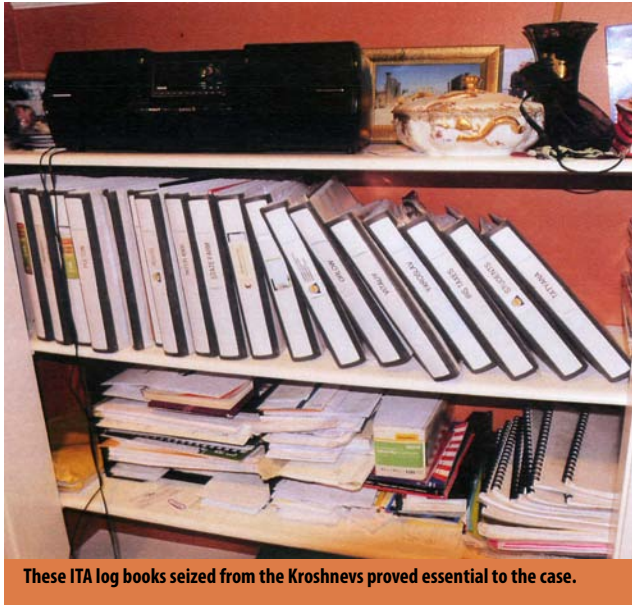


Surveillance photo of Tatyana Kroshnev standing in front of a Pennsylvania Department of Transportation.

and licenses issued by Pennsylvania DOT. He also collected and analyzed banking records, cell phone records and real estate records. The joint OIG-FBI investigation would take approximately three years to dismantle ITA and identify more than 500 unqualified applicants from 27 different states that would be required to retake a computer-based CDL test.

The Prosecution

The federal prosecution was led by Philadelphia-based Assistant U.S. Attorneys Michelle Morgan-Kelly and Frank Labor. Margaret Vierbuchen, an attorney from the U.S. Justice Department's Organized Crime and Gang Section, would join them at trial. As the investigation progressed, the prosecutors decided that investigators should execute simultaneous arrest and search



These ITA log books seized from the Kroshnevs proved essential to the case.

warrants. Agent Gallagher and an FBI agent testified before the federal grand jury, laying out the ITA scheme and explaining the regulations that the company had violated. The grand jury returned a true bill charging nine defendants with conspiracy to produce identification documents related to CDLs.

The indictment alleged that Vitaliy and Tatyana, under the auspices of ITA, led the conspiracy. Leonid Vilchik and Khrystyna Davyda, as well as associates Irina Peterson and Mikhail Aminov, were charged with providing false residency locations in the Philadelphia area to enable ITA customers to fraudulently obtain Pennsylvania driver's licenses. Interpreters Peterson, Starovoyt and Davyda were also charged with helping

people cheat on the CDL written test. Additional charges included bank fraud and false statements.

On Aug. 19, 2010, OIG and FBI agents simultaneously executed nine arrest and six search warrants at nine separate locations, including the Kroshnev residence, ITA's office and Tatyana's Infiniti.

The agents seized more than 25 boxes of business records. The

evidence hauled from the Kroshnev residence included the "smoking gun" logbooks, which identified over 1,000 clients. The logbooks detailed ITA's client information, including illicit Pennsylvania addresses, amounts paid, interpreters' names and the names of conspirators providing false addresses. Investigators also seized two journals detailing ITA's daily cash transactions and unopened mail addressed to ITA clients at the false Pennsylvania addresses. Just when it looked like the case couldn't get any worse for the Kroshnevs, agents found—in the Kroshnevs' mail—about 30 Pennsylvania driver's licenses.

TIME magazine highlighted the joint investigation in a September 2010 piece on Russian trucking enterprises in the U.S. The article

included a quote from U.S. Attorney Morgan-Kelly:

"It places the entire public at risk if persons receiving fraudulent CDLs are driving large vehicles. You have the biggest things on the road that can do a lot of damage, and safety standards are being violated."

As Agent Gallagher analyzed the seized evidence, he identified other co-conspirators and corroborated previous suspicions. His work led to an additional indictment of co-conspirator Irina Rakhman, a close associate of the Kroshnevs, for her role in selling the use of her address to out-of-state ITA clients. Rakhman was arrested on May 16, 2011.

At this point, Agent Gallagher and his co-agents had been through thousands of pages of evidence and interviewed dozens of witnesses. They had the smoking gun ITA business logbooks and the journals. Gallagher detailed all of this evidence in meticulous spreadsheets, which prosecutors used to confront the defendants and their attorneys in approximately 20 plea bargain meetings, or proffer sessions. A proffer agreement allows individuals under criminal investigation to give the government information about crimes in exchange for some assurances that they will be protected against prosecution.

Confronted with the mountain of evidence, the defendants began to fold. Peterson and Starovoyt were the first to plead guilty in February

2011, quickly followed by Davyda and Vilchik. Both admitted their role in the scheme, which put tremendous pressure on the remaining defendants to do the same.

The ITA trial for the remaining defendants was scheduled for just after Labor Day in 2011. On the eve of trial, Vitaliy, Tatyana, Aminov and Rustamov pleaded guilty and, like their predecessors, admitted their roles in the scheme. That left the recently indicted Rakhman as the lone defendant. She insisted on going to trial.

Mama Rakhman Goes to Trial

Despite having only one remaining defendant, the government was still required to undertake the imposing task of presenting more than 100 exhibits and calling 10 witnesses to the stand. To prepare for the trial, Agent Gallagher served more than 30 trial subpoenas. The court also arranged for Russian-language interpreters for Rakhman and some witnesses.

ITA clients from New Jersey and Maryland testified that they were unqualified applicants who paid for the company's services, which included establishing fake Pennsylvania residences. Agent Gallagher presented his detailed evidence spreadsheet that clearly and concisely communicated ITA's financial transactions with more than 1,000 clients. The spreadsheet also showed how the clients came from

out of state and received their temporary Pennsylvania driver's licenses, CDL permits and ultimately their Pennsylvania CDLs. Finally, two defendants, Peterson and Khrystyna Davyda, testified on behalf of the government to describe Rakhman's participation in the scheme. The government rested its case.

The defense attempted to counter the prosecution's accusation that Rakhman had sold the use of her address to out-of-state ITA clients by establishing that some clients did indeed live with her. This line of defense relied on a witness near and dear to Irina Rakhman: her daughter. When Rakhman's daughter took the stand, she testified on her mother's behalf that unnamed trucking "students" occasionally resided in the basement of her mother's house.

While the daughter gave this potentially damaging testimony, Agent Gallagher sifted through the exhibits and boxed evidence behind the lawyer's table, looking for something he recalled from the thousands of documents he had seen during the investigation. Once he found the notebook he had been searching for, he quietly slipped it to the prosecutor.

During cross examination, Assistant U.S. Attorney Vierbuchen confronted the daughter with Tatyana Kroshnev's painstakingly kept ITA expense journal—the notebook that Gallagher had located earlier. The journal showed that the



Above: Tatyana Kroshnev; below: Vitaliy Kroshnev

Kroshnevs paid Irina Rakhman not only for the use of her own address, but also several \$100-payments for the use of her daughter's current address. It was clear from the daughter's reaction on the witness stand that Mama Rakhman had never told her that she was also profiting from her address. Faced with this new evidence, the daughter spoke plainly that she did not have several truck drivers living in her apartment, as her mother had wished the jury to believe. She glared at her mother

sitting at the defense table; the jury could not miss the exchange. At the close of the trial, the jury deliberated for only three hours before returning a guilty verdict.

In early December 2011, six of the defendants were sentenced by the court and given various sentences ranging from imprisonment to probation.

Sentencing for the three main defendants was held on Dec. 22, 2011. The judge remarked that as a daily commuter on Philadelphia's Interstate 76, she hoped Pennsylvania DOT and FMCSA would take action on the unqualified drivers. She then

sentenced Rakhman to six months in a halfway house. Next up was Vitaliy, and the judge announced his sentence of 30 months in prison. A hush fell over the courtroom. The judge further announced that Tatyana would serve 24 months in jail and that she and Vitaliy were to jointly forfeit \$445,450 to the government. Tatyana began to sway, and her eyelids became heavy. She was about to faint. Vitaliy made a sudden rush to the front of the courtroom. Within seconds, deputy U.S. marshals swarmed in, interpreting his movements as a threat to the court. As deputy marshals subdued Vitaliy,

Agent Gallagher assisted a woozy Tatyana until emergency response personnel arrived. The three-year investigation ended with quite the dramatic flourish.

At the insistence of Agent Gallagher, FMCSA sent notices in April 2012 advising 27 state DOTs that hundreds of CDL holders had illicitly obtained Pennsylvania CDLs and transferred them to their states of residence. Each state is now responsible by law for deciding whether to take corrective action—against the drivers—including requiring them to retake the CDL exam.

Epilogue

In January 2012, Jamshid Muhtorov, also known as Abumumin Turkistony or Abu Mumin, 35, of Aurora, Colo., was arrested at Chicago O'Hare Airport by members of FBI's Denver and Chicago Joint Terrorism Task Forces for providing and attempting to provide material support to a designated foreign terrorist organization. Muhtorov's arrest was the result of a long-term investigation conducted by FBI's Denver Joint Terrorism Task Force. The Department of Justice reported that the defendant was a refugee from Uzbekistan. According to the criminal complaint, Muhtorov planned to travel overseas to fight on behalf of the Islamic Jihad Union, a designated foreign terrorist organization that adheres to an anti-Western ideology.

Seized ITA logbooks show that Jamshid Muhtorov was an ITA customer who obtained a Pennsylvania CDL on Dec. 30, 2009, using an illicit Pennsylvania address and with the assistance of an ITA interpreter. The safety implications of the ITA case were far-reaching—more than most realized at the time.



The Islamic Jihad Union was founded by breakaway fighters from the Islamic Movement of Uzbekistan in March 2002 in Pakistan's Tribal Areas. The organization became closely involved with al-Qa'ida. The group opposes Western influences as well as secular rule in Uzbekistan, and seeks to replace the current regime with a government based on Islamic law.

AGENTS HELP BUST BROOKLYN TRUCK DRIVING SCHOOL FOR CDL TESTING FRAUD

ONE STOP UP THE **NORTHEAST CORRIDOR**, a similar scheme allegedly caused the New York Department of Motor Vehicles to issue hundreds of illicit CDLs. N&Y Professional Service Line, a Brooklyn commercial driving school licensed by the DMV to offer courses and training to CDL applicants, was operated by Ying Wai Phillip Ng and his wife Pui Kuen Ng. They ran ads in a local Chinese-language newspaper offering assistance to those seeking New York CDLs. One such ad read:

“Commercial Drivers License Exam. Provide professional assistance to help those with English difficulty for both written and driving exam. If interested, please visit...”

DOT-OIG agents joined forces with the U.S. Immigration and Customs Enforcement, New York State Department of Motor Vehicles, New York City Police Department and IRS Criminal Investigation. Agents from DOT-OIG and ICE set up an undercover operation.

In January 2012, Kuai,* an undercover agent, entered N&Y wearing hidden video and audio recording devices. The agent, speaking in Mandarin, posed as a prospective bus driver seeking a CDL. He explained to Pui, the wife in the N&Y team, that that he could speak some English, but would have difficulty passing a written CDL test. As in Pennsylvania, New York law requires CDL applicants to pass written tests, but these tests are only administered in English and Spanish.

Pui gave the agent some papers with sample test

questions. She instructed Kuai that, on the day of the test, he should tell the DMV that he wanted to take the “CDL test” covering “general knowledge, air brake and passenger.” Pui then wrote the figure “\$1,800” on a piece of paper. She said that a man would pick him up and drive him to the test. Kuai should give him the money. The undercover agent again expressed concern about his ability to pass the written test given his limited English skills.

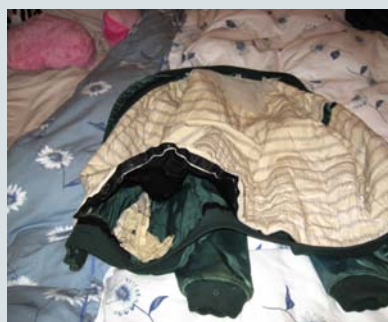
“He will teach you what to do at the time,” Pui replied, “You don’t have to worry about it.”

Pui even guaranteed that if Kuai failed to pass the test, he would get his money back.

At 7:30 a.m. on Feb. 1, 2012, Phillip Ng—Pui’s husband—pulled up at the undercover agent’s Brooklyn “residence,” driving a Toyota Sienna minivan. They headed to the DMV on Staten Island, N.Y. Again, Kuai wore hidden audio and video recording devices.

While still outside in the parking lot, Phillip handed Kuai a paging device and told him to attach it to his belt. Phillip then told the agent to put on dark, varsity-style jacket. Phillip explained that the jacket would allow him to see the Kuai’s CDL test from the minivan.

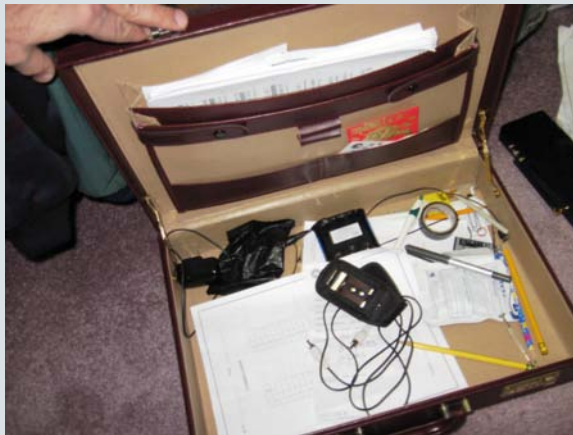
“I’ll teach you how I can see the test,” Phillip said. He revealed that a snap button on the right sleeve harbored a hidden camera. Phillip then unlatched a television screen that was built into the minivan ceiling, and the two men watched as the image on the screen followed wherever the button pointed. Phillip boasted that, with this method, he



The Ngs fed their clients the correct answers to CDL exams using papers and jackets wired with cameras.

had “helped people with the written test for more than 10 years.”

To pass New York’s 95-question knowledge test and qualify for the CDL road test, an applicant must answer 80-percent of the multiple-choice questions correctly in each of the test’s three sections. Phillip instructed Kuai that if the paging device vibrated twice, the answer to the test question was “A.” If it vibrated four times, the answer was “B”; six times, the answer was “C.” He removed a sample test from a dark briefcase and asked Kuai to practice pointing the hidden camera to the test questions.



Siezed briefcase full of pagers and wiring equipment used to help truckers cheat on CDL exams.

After a little practice with both camera and paging device, Kuai entered the DMV and took the written test, pointing the camera in the jacket sleeve at each question as he’d been instructed. Not surprisingly, he passed the test and paid Phillip the \$1,800 in cash. More importantly, Kuai collected the evidence needed file criminal charges on the N&Y couple.

On March 1, 2012, the U.S. attorney’s office for the Eastern District of New York announced a criminal complaint in Brooklyn charging Ying Wai Phillip Ng and his wife, Pui Kuen Ng with mail fraud. According to the U.S. attorney’s office press release, over 700 applicants associated with N&Y have taken the CDL road test since January 2010.

One of these applicants—Kin Yiu Chueng—fell asleep at the wheel while driving a bus bound for New York in May 2011. The fatigued driver ran the bus off the right side of the road about 30 miles from Richmond, Va., and flipped onto its roof just before 5 a.m. The tragic accident killed four female passengers and injured more than 50 people. He is accused of four counts of involuntary manslaughter.

For the safety of the traveling public, Governor Andrew Cuomo announced on March 5, 2012, that New York had suspended N&Y’s license. He ordered 174 people who had used N&Y to obtain CDLs to retest or

face suspension. Governor Cuomo stated that he took this action because “we vowed last year that New York would not tolerate unsafe buses, dangerous or unqualified drivers, or fraud in obtaining licenses.”

DOT-OIG—working with the FBI, other law enforcement partners and FMCSA—will continue to bring justice to those who skirt DOT safety rules and endanger the traveling public.

Note: *At the time of publication, the criminal cases against Phillip Ng and his wife are pending. Criminal complaints are only accusations by the government. All defendants are presumed innocent unless and until proven guilty.*

Are you planning a **BUS TRIP?**



U.S. Department of Transportation
Federal Motor Carrier Safety Administration

Planning a bus trip? Look before you book.

Use the SaferBus app to check the safety record of the carrier you are choosing.

If you are purchasing a bus ticket or hiring a bus company for your group's travel, safety should be the top priority. Don't risk your life or the lives of others by making an uninformed decision. The Federal Motor Carrier Safety Administration has developed the SaferBus mobile application to provide 24/7 access to important safety information that you should verify before you select a U.S. DOT registered bus company to transport you or members of your group. Don't take a chance. Look before you book!



SaferBus provides easy access to bus companies' safety information.

Bus Company Operating Authority and Insurance Status - The app protects consumers from illegal interstate bus companies that should not be operating. Passengers should not use interstate bus companies that do not have valid U.S. DOT operating authority or that do not comply with Federal insurance requirements.

View Bus Safety Performance Records - The app gives easy and user-friendly access to up to 24 months of a bus company's safety performance data. This data provides insight into a carrier's performance in a number of important safety categories: unsafe driving, fatigued driving, driver fitness, controlled substances/alcohol, and vehicle maintenance.

Bus Company Safety Results - The app alerts consumers to bus companies with an unsatisfactory safety rating. FMCSA issues three types of safety ratings. The top rating is Satisfactory. Bus companies with a Conditional rating may pose a higher safety risk, and companies with a final Unsatisfactory rating should NOT be operating.

Report a Complaint - The SaferBus app links to the FMCSA National Consumer Complaint Database. In using this feature you can also connect to the FMCSA hotline number 1-888-DOT-SAFT (1-888-368-7238). Call 911 in the case of a safety emergency.

Download the SaferBus app at:

<https://www.fmcsa.dot.gov/safety-security/saferbus/saferbus.aspx>



Selling Safety

Former FMCSA
Inspector Convicted
of Accepting Bribes
from Consultants
for Canadian Cross-
border Trucking
Companies





BY JOSEPH MCGOVERN

Assistant Special Agent in Charge
Region 1 (Cambridge, Mass.)

FORMER SUPERVISOR

James Wood worked at the Federal Motor Carrier Safety Administration's Buffalo, N.Y., office, which also has jurisdiction over Canadian carriers operating in the U.S. Wood sold advance notice of FMCSA safety reviews to a Canadian trucking safety consultant, who then sold this insider information to trucking companies. This arrangement allowed the companies enough time to polish their records prior to the safety reviews. Wood even called trucking companies to personally recommend the safety consultant's services. Pushed to the limit by Wood's insatiable demands, the consultant reported the scheme to authorities in January 2011.

The consultant related a tale of corruption and greed by which Wood abused his position to obtain tens of thousands of dollars in bribes.



A Breach of Trust

In early January 2011 the Administrator of FMCSA's New York division telephoned DOT-OIG. He had received allegations from a trucking safety consultant in Ontario that a safety supervisor at the Buffalo, N.Y., office named James Wood had been accepting bribes. The case was assigned to veteran Special Agent Rich McGrade. Moving quickly, McGrade and a fellow OIG agent interviewed the Canadian consultant. The consultant willingly related a tale of corruption and greed by which Wood abused his FMCSA position to obtain tens of thousands of dollars in bribes.

The consultant originally met Wood in August of 2008 while representing an Ontario trucking company. The company owner told the consultant that Wood had offered to help with the company's myriad safety problems uncovered during an FMCSA compliance review. In exchange for cash, Wood agreed to provide the consultant with a list of companies scheduled for review by the FMCSA Buffalo

office in early 2009. The consultant intended to use this information to warn trucking companies in advance of upcoming safety reviews, but his attempts weren't well-received. That prompted Wood to strike a new arrangement. In exchange for \$1,000 cash he began calling the trucking companies to provide referrals for the consultant's services. Referrals from an FMCSA safety supervisor carry some weight in the trucking industry, so the consultant's business began to pick up.

Wood's position as safety supervisor gave him access to a wealth of inside information. For example, he could provide a list of Canadian trucking companies with less-than-pristine safety ratings, which were prime candidates for the consultant's services. He could also name the specific truck drivers slated for upcoming FMCSA reviews, allowing the consultant's clients to prep the drivers' records in advance.

Wood also abused his supervisory authority by assigning "easy" or "tough" safety compliance specialists to favor or discredit

targeted trucking companies, devising schemes that were often quite intricate. For example, for a fee, he helped the consultant fabricate anonymous safety complaints against his client's competitors, which inevitably triggered FMCSA compliance reviews. He would then assign his most experienced and thorough safety specialists, essentially guaranteeing that enforcement actions would be initiated against the targeted companies. Afterwards, these companies—hurt by fines or downgraded safety ratings—became potential new clients for the consultant.

Wood's experience at the FMCSA Buffalo field office also allowed him to take advantage of a special reciprocity agreement between FMCSA and Canada's Ministry of Transportation of Ontario. Specifically, a safety rating issued by FMCSA was also considered valid at MTO and vice versa. The consultant sometimes paid Wood to arrange for favorable FMCSA safety reviews if he felt that a trucking company client was being targeted by MTO. Once

the trucking company received a satisfactory safety rating from FMCSA, it could avoid facing an MTO safety compliance review.

The consultant was making a killing off of his financial arrangement with Wood. So why did he decide to rat Wood out and admit his part in the bribery scheme? The consultant explained that one of his buddies, who was also a Canadian trucking consultant, reported that Wood was initiating FMCSA complaint audits on two of the other consultant's trucking clients. The consultant contacted Wood on behalf of his buddy to call off the planned reviews, and Wood demanded \$3,500, which he paid. However, after making the payment, he learned that the two companies were still slated for reviews, despite his having paid the hefty bribe. He contacted Wood again, and Wood demanded an additional \$1,000 to call off the reviews. Although he paid the fee, he could only convince Wood to promise to delay one of the reviews.

In short, the consultant came to authorities because Wood was cheating him at their own game. In fact, he learned that Wood had similar arrangements with two other Canadian consultants.

Putting Together a Case

Although the consultant's testimony provided a wealth of incriminating allegations, DOT-OIG agents needed to corroborate the allegations with

hard evidence.

The immediate challenge that Special Agent McGrade faced was logistics. Because federal law enforcement can only operate on U.S. soil, any investigative operations would have to take place domestically, even if Canadian trucking companies were involved.

To assist with the case, Agent McGrade partnered with FBI's Buffalo division and U.S. attorney's office. Since the sensitive investigation required immediate prosecutorial attention, the agents also briefed the U.S. attorney's office for the Western District of New York, who assigned Assistant U.S. Attorney Trini Ross to the case.

On Jan. 12, 2011, agents asked the consultant to call Wood's personal cell phone, as he had done in the past. However, this call was being monitored and recorded by DOT-OIG and FBI special agents. As instructed, the consultant again asked Wood to delay the pending safety reviews for the two trucking clients.

"It's too late for me to do anything," Wood said. "[The FMCSA safety specialist] is going to be there next week."

The consultant pleaded with Wood to push back the compliance review, explaining that the drivers logs would take some time to get in order.

"What's he willing to pay for two weeks?" asked Wood.

The monitored call recorded Wood agreeing to the consultant's offer of \$1,000.

When asked about the compliance review of the other company, Wood said, "I made plans to come up to do this one." It was scheduled for Jan. 24, 2011. He agreed to the consultant's offer of \$3,000 to manipulate the outcome of that review in the trucking company's favor.

Later that day, the consultant, equipped with a wire, traveled to Buffalo to pay Wood the agreed-upon \$1,000. Agents closely monitored the transaction to protect the witness' safety and to maintain the integrity of the case. After the consultant handed over the money, Wood counted it carefully.

"It's all there," he said, as if playing the lead in a bad TV crime drama.

Setting the Trap

The following day the consultant sent a scripted email to Wood's personal email address to arrange the bribe payment. The consultant said that his buddy had "promised me money by coming Monday or mid next week for sure. Let me know if you want me to come over. I will have to make a trip...and meet you. Please confirm."

Wood's response on the morning of January 14 was brief: "Call me ASAP!"

The consultant called on Jan. 15, 2011, with agents again monitoring the conversation.



Wood counted the money carefully. “It’s all there,” he said, as if playing the lead in a bad TV crime drama.

“Hey, when’s he getting the rest of the documents to you?” Wood asked. The consultant understood that “documents” was a code word for “money.”

When the consultant tried to delay the conversation by asking to discuss it when Wood came to Canada for the compliance review, he replied “It’s got to be before that ... I’m not gonna come up there and do it unless ... I know it’s taken care of.”

Wood closed the conversation by telling the consultant, “Don’t ever put that kind of stuff in an email to me again. You sent me the email—with all the numbers and everything and company names—don’t do that.”

Swift Arrest

On Jan. 19, 2011, the agents secured a warrant for Wood’s arrest for bribery. They planned to arrest him immediately after the consultant made the agreed upon cash payment. The location of the arrest was critical because Wood had a pistol permit, and the consultant had previously seen a pistol under the seat

of his car. The consultant would be wired, so agents would be able to hear the bribe payment discussion. However, methodical planning and swift execution were essential for everyone’s safety.

When the consultant phoned Wood on the morning of Jan. 20, 2011, stating he was ready to make the cash payment, Wood readily agreed to meet in the parking lot of a suburban Buffalo mall. At the lot, the consultant entered Wood’s car, made the payment and left. Agents allowed the consultant to walk a safe distance away from the car, and then moved in quickly to block Wood’s vehicle and neutralize the possible threat of his handgun.

Wood was arrested without incident. All of their careful planning had paid off.

During a subsequent search of his home, agents found and seized both U.S. and Canadian currency that Wood had received as bribes. They also found a cache of weapons including a handgun in the glove compartment of one of Wood’s vehicles.

The Confession

Agents advised Wood of his rights both verbally and in writing. Wood waived his right to remain silent and offered to answer questions without a lawyer present.

He confirmed the consultant’s story and confessed that he had met with the consultant an estimated 20 times. He had accepted at least \$15,000 in bribes, including the \$1,000 payment made during the investigation.

He named a second Canadian consultant who paid him bribes for FMCSA information as well beginning in 2010. This individual had agreed to pay \$20,000 to Wood for lists of Canadian trucking companies to be reviewed by FMCSA in 2010. Wood had received a total of \$17,000 in cash for the lists. This same consultant had also agreed to pay \$12,000 for the 2011 lists. In fact, he had paid Wood a portion of that amount—\$2,800 in cash—during an exchange in a Buffalo hotel the previous day. Wood also admitted to selling the list to a third Canadian consultant for only \$500.

“I take responsibility ... I have shammed (sic) God, myself, my family, and my adjacency (sic) ... I AM TRUELY (sic) SORRY!”



Wood explained that he had been driven to commit these crimes by a series of disasters that wiped out his bank accounts. His home had caught on fire not once but twice during a two week period in October 2008, causing substantial damage. For several months, he was forced to live out of hotels and then friends' homes when his credit cards were maxed out. On top of that, he had needed money to pay for his daughter's wedding, around the time he had started accepting bribes from the second Canadian consultant.

Wood provided law enforcement with a written statement recounting the bribes he had accepted. He closed his statement by saying:

“I know that what I have done is wrong and I take responsibility for this. I have shammed [sic] God myself, my family, and my adjacency [sic]. I know it makes no difference now, But to All I Have hurt. I AM TRUELY [sic] SORRY!”

The Case in Court

Wood originally entered a plea of not guilty at his initial court appearance on Jan. 20, 2011, but his court-appointed attorney wasted no time in initiating plea negotiations with the U.S. attorney's office. Wood pleaded guilty to the bribery charge on June 2, 2011.

In announcing the guilty plea, U.S. Attorney William J. Hochul, Jr. noted:

“This crime had the potential to compromise our Government's transportation regulatory system as it relates to the safety of our nation's highways. This Office—along with our law enforcement partners—stand ready to thoroughly investigate and prosecute any attempt to affect the integrity of either our nation's Governmental agencies or the well being of its citizens.”

On Dec. 29, 2011, Wood was sentenced to 18 months in federal prison and 24 months of supervised release. He was also ordered to

forfeit \$41,300—including \$19,000 from his government-sponsored retirement fund.

Afterward, Agent McGrade worked closely with FMCSA personnel to determine the extent of the damage caused by Wood and whether the corruption extended to any others in the Buffalo office. Fortunately, they found that it did not.

Wood's sentencing culminated nearly a year of work by the investigative team. This outstanding effort, from complaint to sentencing, was significant not only in terms of the case's seriousness, but also for its speed and efficiency. Thanks to the swift professionalism of the investigative team, James Wood paid a heavy price for his crimes. More importantly, DOT-OIG and FBI agents repaired a dangerous breach in the regulatory safety net that protects the traveling public in both the U.S. and Canada.

Flying Under the Influence

Jail time for United Express pilot who co-piloted flight from Austin to Denver after a night of heavy drinking.



BY ELISE WOODS

Assistant Special Agent in Charge,
Region 3 (Washington, D.C.)

THE FLYING PUBLIC relies on commercial pilots to exercise good judgment and sound decision making. On the morning of Dec. 8, 2009, First Officer Aaron Jason Cope boarded United Express flight 7687 after a night of heavy drinking. Fortunately the flight was without incident, and the aircraft landed safely in Denver, Colo., with 48 passengers and crew aboard. However, for Cope, the flight ended with an escort to a mandated breathalyzer test where he blew a 0.09 blood alcohol concentration, higher than the DUI limit in all 50 states. He was suspended on the spot by his employer. The case presented novel legal issues regarding federal DUI laws.

The Unmistakable Scent of Booze

On that December morning, 48 passengers and four crew members boarded United Express flight 7687, departing from Austin, Texas, to Denver, Colo. The aircraft was an Embraer 170 and requires two pilots to operate as a team, one as a Pilot Flying and one as a Pilot Monitoring. That day, Robert Obodzinski served as the captain and Pilot Flying, which made him the sole manipulator of the aircraft's controls. Aaron Jason Cope was the first officer and Pilot Monitoring, responsible for support and backup duties, such as monitoring the controls, conducting safety reviews and operating the landing gear. The Federal Aviation Administration considers both pilot positions to be safety sensitive.

During the flight, Obodzinski periodically smelled alcohol odors in the cockpit. At first he assumed that the smell came from the hand sanitizer the flight attendants frequently used, or maybe, he reasoned, someone had spilled an alcoholic beverage in the cabin. Whenever he glanced at the first officer, Cope appeared to be sitting up straight and thinking and speaking clearly.

Then Obodzinski recalled that the evening before the crew members had gone to dinner at a local Austin hotel. Cope had declined the invitation to join them, saying he wasn't feeling well. He had not seen Cope again until he arrived for the

flight that morning, when the first officer appeared to have a puffy face and red eyes.

"I assumed that, since he said the night before he wasn't feeling well, that he was probably coming down with a cold," Obodzinski later testified.

As time passed during the two-and-a-half-hour flight, curiosity over the source of the booze smell got the best of Obodzinski. He leaned over to Cope and took a big whiff; the co-pilot reeked of alcohol. The captain was confronted with the difficult dilemma of whether to continue the flight, or turn the plane around and head back to Austin. He ultimately chose to continue the flight, but was

Curiosity over the source of the booze smell got the best of Obodzinski. He leaned over to Cope and took a big whiff. The co-pilot reeked of alcohol.

careful to prevent Cope from taking any further operational control.

However, he knew that Cope was assigned to serve as Pilot Flying on the next scheduled leg of the flight, which would carry 70 to 80 passengers. That flight was scheduled to

depart 30 to 40 minutes after flight 7687 landed, so he had only a short window of time to report his concerns about Cope's inebriation.

After arriving safely in Denver, Obodzinski immediately contacted dispatch to delay the next scheduled leg of the flight. When Cope went outside to conduct a post-flight inspection, he called the acting chief pilot of the airline, his union representative and a human resources manager for Republic Airways, the parent company of United Express. He was told to escort Cope to an alcohol testing facility in the Denver airport's main terminal and to ensure that Cope did not eat or drink anything on the way over.

When Cope returned to the aircraft, Obodzinski said to him, "If you have any problem taking a breathalyzer, call off sick and get out of here."

In Obodzinski's words, Cope "just kind of stood there, looking at me blank-faced. . . . He said, 'Well I guess I better call off sick then.'"

But Obodzinski didn't let him off that easy and escorted him to the testing center as instructed. On the way, Cope quickly gulped water from a drinking fountain despite orders not to drink anything before the test. He admitted to drinking quite a bit the night before, telling Obodzinski that he had consumed whiskey and then ordered more drinks at a bar with a friend in Austin. He had ended the night by buying beer at a gas station,

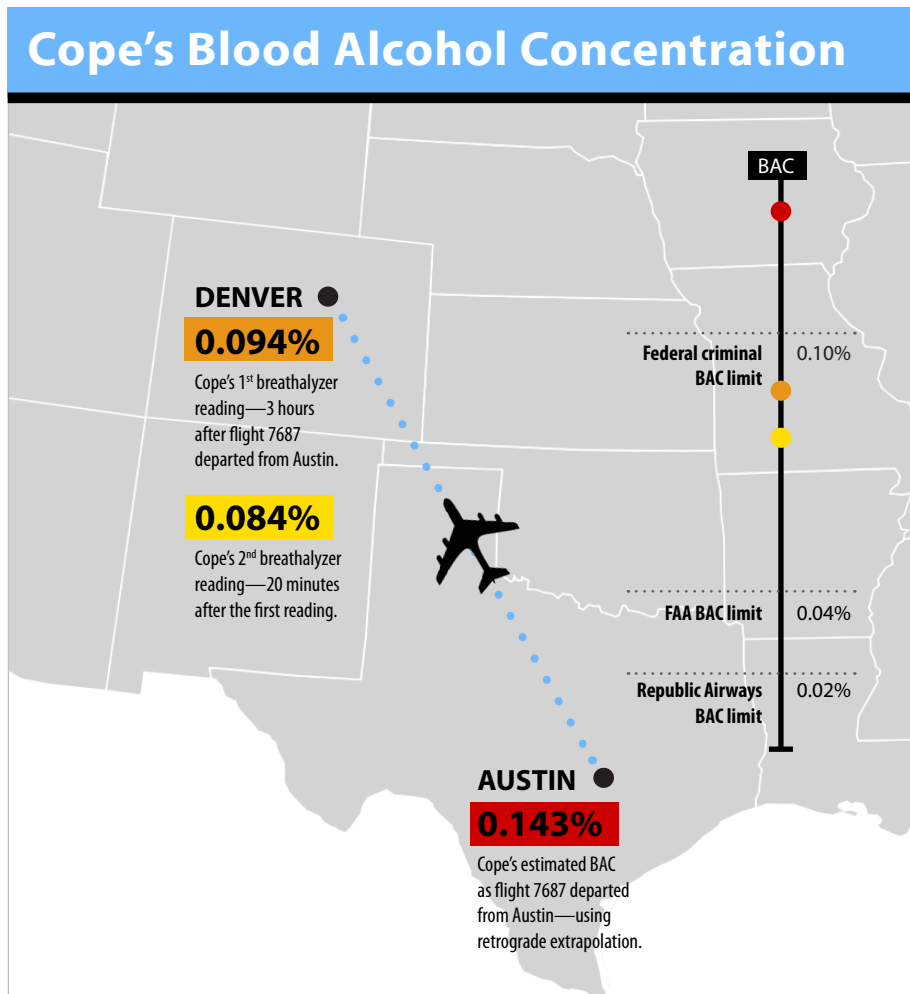
which he drank before going to bed.

A testing official administered two alcohol breath tests. The first test determined that Cope's blood alcohol content was 0.094. The second test—given about 20 minutes later—registered 0.084. These test results violated both FAA's BAC limits (0.04) and Republic Airways' limits (0.02). Needless to say, Cope was immediately suspended, and FAA revoked his airline transport pilot certificate and referred the matter to DOT-OIG.

Cutting-edge Toxicology

The case was assigned to Special Agent Jason Bunch in DOT-OIG's investigative office in Lakewood, Colo. Bunch knew he faced a critical hurdle in developing a criminal charge. While Cope's BAC at the time of the breath test clearly exceeded FAA limits, both test results came in just under the federal criminal limit (0.10).

Fortunately, Bunch was a former security police officer with the U.S. Air Force, and from his experience working drunk driving cases he was very familiar with cutting-edge medical toxicology research. For the Cope case, Bunch was particularly interested in a technique called retrograde extrapolation, which can estimate a person's BAC in the hours before an administered test. This is done by calculating a person's average hourly elimination rate, which is the rate at which alcohol is removed



from the body, and projecting that rate backwards in time. Although Cope's alcohol test was administered nearly three hours *after* the flight departed from Austin, retrograde extrapolation results could prove that Cope's BAC had exceeded the federal limit of 0.10 at some point *during* the flight.

Bunch conducted extensive research and found Cynthia Burbach, the foremost forensic

toxicologist in the field of retrograde extrapolation. As luck would have it, she was located right in his backyard, serving as the toxicology director for the Colorado Department of Public Health and Environment. She agreed to perform a detailed analysis of Cope's FAA medical records and certified alcohol breath tests. Using retrograde extrapolation, Burbach estimated that Cope's BAC was 0.143 as flight 7687 departed from



A Dräger Breathalyzer like the one used to measure Cope's blood alcohol content.

Austin—well above federal limits. This was exactly what Special Agent Bunch needed to pursue criminal charges against Cope.

Cope Goes to Trial

Cope was indicted for operating a common carrier while under the influence of alcohol and opted to go to trial.

During the trial, the defense questioned the accuracy of the breath test results. They called in expert witness Dr. Patricia Beth Rosen, an emergency room physician that consulted for Austin Toxicology.

“The alcohol breath test is

not a very good test,” Rosen said. She explained that a breath test’s accuracy can be affected by many variables, such as the depth of the person’s breath, humidity and temperature, and the person’s level of cooperation with the test.

Rosen also commented that the differences between the first test (0.094) and the second test (0.084) were “pretty incredible.” According to Rosen, this elimination rate was “not physiologically possible,” suggesting that the test results were inaccurate.

“A blood sample is much more reliable,” she said.

To counter the defense’s case, the prosecution called in Richard Jones, the alcohol breath technician who had performed the test on Cope. Jones testified that he performed the breath test accurately, following all appropriate procedures. For example, he conducted an “air blank test” prior to the test to detect abnormalities. The technician also said that Cope was cooperative during both tests.

Additionally, Jones calibrated his testing device, a Dräger Breathalyzer 7410, while still on the stand to demonstrate its accuracy. He said that the device was tested monthly and had last been tested five days prior to Cope’s breath test. He also stated that the manufacturer had performed an annual wet bath test a few months before, which provided further assurance that the device was functioning properly.

Cope’s attorney argued that despite the breath test results the aircraft was operated perfectly, proving that the defendant was not impaired. This argument wasn’t very convincing. Even the defense’s expert witness, Rosen, admitted that a person with a BAC of 0.084 should not be operating an aircraft, but she did not readily agree that Cope was impaired.

“If he did everything he was supposed to do and his behavior was normal, I don’t know that I would be uncomfortable with him flying.” Rosen said. “I don’t know

that I would be able to say he was impaired.”

The prosecution called in toxicologist Burbach to offer expert testimony on the effects of alcohol impairment. Burbach stated that an individual need not exhibit visible signs of alcohol consumption to be impaired. According to Burbach, any deviation from 0-percent BAC impairs cognitive function to some degree, affecting the ability to process information, operate a motor vehicle and exercise good judgment.

“Judgment is the first thing that goes,” Burbach said.

The prosecution also asked Burbach to testify on her use of retrograde extrapolation. Burbach explained that the first step in retrograde extrapolation is to determine whether a person was in the alcohol absorption phase or in the elimination phase. BAC rises during the absorption phase, when a person consumes alcohol and it is absorbed into the blood. BAC decreases during the elimination phase, after a person reaches maximum alcohol concentration. Burbach concluded that Cope was in the elimination phase because his second BAC

Any deviation from 0-percent BAC impairs cognitive function to some degree. Judgment is the first thing that goes.

reading was lower than the first reading.

To arrive at her retrograde extrapolation of Cope’s BAC, Burbach used what she deemed the average hourly elimination rate for a male (0.015). According to Burbach, the average elimination rate is between 0.01 and 0.025 milligrams per deciliter per hour. However, she said she had observed elimination rates as high as 0.036 to 0.56 per hour. She added that Cope’s rapid drop in BAC between his first and second breath tests indicates that he had an even faster elimination rate than average.

“He is absolutely an experienced drinker,” Burbach said.

Burbach estimated that Cope’s BAC was 0.143 when the flight departed from Austin, which the scientific community considers “substantially impaired and substantially under the influence of

alcohol.” She added that she would be concerned about Cope’s diminished cognitive function and ability to perform his first officer responsibilities even with a BAC of 0.02.

As a final nail on the coffin, the assistant U.S. attorney asked the defense’s expert witness Rosen a closing question: “Would you have gotten on a plane with Cope?”

“No,” Rosen said, resoundingly.

Cope was found guilty and sentenced to six months in jail and six months of home detention with electronic monitoring. The sentencing sent a clear signal that pilots who act irresponsibly and fail in their core duty to protect passengers in their care will be subject to severe penalties. The public rightly expects that airline pilots will not drink and fly.

A photograph of a sunset or sunrise with a power line tower, a bus, and a traffic light silhouette.

Electric Vehicle Promoters Line Pockets with Federal Grant Funds

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BY JOSEPH MCGOVERN

Assistant Special Agent in Charge
Region 1 (Cambridge, Mass.)

THE FEDERAL TRANSIT

Administration, part of the DOT, provides federal grants to promote safe, technologically advanced public transportation. Electric battery-powered buses offer local transit agencies a cleaner, more efficient bus fleet and improve the air quality of local communities. From 2000 to 2004, two Massachusetts entrepreneurs received \$4 million in FTA grant funds with the promise of creating 1,000 local jobs manufacturing electric vehicles. In the end, they produced neither the promised jobs nor the vehicles. Following a DOT-OIG investigation, both were convicted and sentenced to prison on federal fraud charges.



It was said that EVW would bring 1,000 jobs to a Pittsfield facility built on the brownfields that GE had left behind.

Green Hopes for Pittsfield's Brownfields

The City of Pittsfield, Mass., is 111 miles west of Boston and lies at the confluence of the east and west branches of the Housatonic River. Pittsfield thrived economically thanks to the success of General Electric. However, by the 1950s the Pittsfield GE facility had contaminated the Housatonic and its floodplain with hazardous substances. By 2005 a GE workforce that once topped 13,000 was reduced to less than 700. The abandoned facility sat idle on the polluted landscape, forming what urban planners refer to as “brownfields.”

However, in the year 1999 Pittsfield had reason to be optimistic. The city, the Environmental Protection Agency, and the State of Massachusetts negotiated a major settlement agreement with GE to clean up Pittsfield and the Housatonic River. In October of that year Congressman John Olver announced that a \$1.35 million FTA grant would fund a partnership between the Pittsfield Economic Development Authority and a company called Electric Vehicles Worldwide to develop an electric bus and van manufacturing center right in the city.

A press release described EVW as a joint venture led by the “innovative technology guru” Jim Hogarth, president of EVW, and Michael Armitage, CEO of the U.S. Venture Group with “a history of building clean, energy-efficient, battery-powered vehicles.” It was said that EVW would bring 1,000 jobs to a Pittsfield facility built on the brownfields that GE had left behind.

By early 2004 things had apparently changed. A January 30, 2004, headline in Pittsfield's local newspaper *The Berkshire Eagle* read, “After millions in grants, Pittsfield company fades.” According to the article, ElectraStor—EVW's wholly owned subsidiary—was only leasing its corporate offices on a month-to-month basis, and its landlord was seeking a new tenant for its offices. ElectraStor's spokesman Curt Preisser declined to comment, but the article noted that “at the request of U.S. Rep. John Olver's office, Preisser delivered an inch-and-a-half-thick stack of technical progress reports submitted in 2003 to the Pioneer Valley Transit Authority.”

Citizen Hotline Tip Launches a Probe

A concerned citizen forwarded the article along with a follow-up editorial to the DOT-OIG hotline. The matter was marked for action and was simultaneously referred to the DOT-OIG's investigations office in Cambridge, Mass., and to its Office

of Highway and Transit Audits in Washington, D.C.

DOT-OIG Special Agent Frank Italia established initial contact with the FTA project manager in Washington, D.C., who admitted that he had been unable to travel to Pittsfield to view ElectraStor's progress on the battery project. Local grant administrators are usually responsible for overseeing these kinds of projects. Because there was not a local Pittsfield agency suitable to be a recipient for the FTA grant, the Pioneer Valley Transit Authority was asked to serve in this role, even though it was located about 50 miles away. In return for its oversight efforts, PVTA received 5 percent of all FTA funding. The FTA manager was able to provide copies of technical progress reports that ElectraStor had submitted to both FTA and PVTA—but no one with any technical background in battery development had reviewed them.

Around the same time a DOT-OIG agent swung by ElectraStor's office—a large, brick industrial building—and encountered locked doors. Repeated knocking received no response, even though the lights were on and an old Mercedes sat in the parking lot that was later found to be registered to ElectraStor's Vice President and Chief Scientist Christopher Willson. On a subsequent visit, when Agent Italia again knocked on the doors, he was greeted by a tall, friendly man



Electrastor claimed it would develop an electric van and bus manufacturing center.

PHOTO BY SONNYKWAN / CC BY SA 3.0

who introduced himself as Willson. Agent Italia, who did not introduce himself as a special agent, asked Willson for electric vehicle information, claiming the information was for his son's science project. Willson was eager to talk and provided Italia with general information about the technology.

After discovering FTA and PVTA's apparent lack of grant fund oversight and Electrastor's lack of office activity, DOT-OIG decided there was enough evidence to prompt a full-scale audit. The auditors focused on FTA's oversight of grants made to PVTA for the ElectraStor battery project.

The grant was included as an earmark in the fiscal year 2000 Transportation Appropriations bill. For its part, EVW agreed to match the earmarked funds on a dollar-for-dollar basis and was allowed to seek reimbursement for 50 percent of its expenses related to the proposed electric vehicles.

During a visit to Pittsfield, the auditors had extensive contact with Willson and ElectraStor CEO Michael Armitage. They observed a prototype battery, which Armitage and Willson explained was much too large to fit a bus and could only hold an electric charge for a few seconds.



Investigators took these photographs of ElectraStor's moribund lab areas and CEO's office.

The auditors reviewed 31 claims totaling \$8.86 million that ElectraStor had submitted requesting 50 percent, or \$4.43 million, in reimbursement. FTA had paid approximately \$4.25 million between 2000 and 2005, with PVT A retaining approximately \$200,000 for its oversight activities. ElectraStor had been reimbursed the remaining \$4 million.

The audit ultimately determined that ElectraStor's claims were "ineligible for reimbursement based on the incomplete and unreliable records ElectraStor made available to the audit team." The audit also identified \$284,000 in unsupported consultant payments; \$115,000 in lobbying expenses; and \$17,000 in

meal expenses. The auditors further questioned why ElectraStor had included as part of its matching funds five high-interest, short-term loans and an approximately \$2.5 million payment for a debt owed to an engineering company. These and other questionable expenses appeared to warrant an investigation, so the matter was referred back to investigators in Cambridge, Mass.

Handoff from Audit to Investigations

Special Agent Italia was again tapped to handle the developing situation. With an auditor, he briefed Assistant U.S. Attorney Bill Welch of the District of Massachusetts. After their discussion and a review of a number

of key documents, Welch agreed there was sufficient probable cause for a search warrant of ElectraStor's offices. Armitage was also the target of an Internal Revenue Service criminal investigation for failing to file several years' worth of tax returns.

On the morning of June 29, 2006, a law enforcement caravan loaded with two dozen DOT-OIG, IRS, and FBI special agents—along with state and local police officers—entered ElectraStor's parking lot. Agents quickly and safely secured the office containing Willson, Armitage, a clerk—and a lot of empty space. It turned out that the company, which had received over \$4 million in federal funds, had only three remaining employees.



Armitage immediately asked for his attorney. When Agent Italia asked a clearly shaken Willson if he would be willing to talk with him and another agent, Willson agreed. In his office, Willson talked about Electrastor and its financial issues. The conversation was interrupted—and ended—by a telephone call from an attorney stating he represented Willson.

The agents' thorough search yielded about 50 boxes of documentary evidence, as well as computer evidence. However, it was only the beginning of a long, challenging and complicated case. The story that the investigators would subsequently uncover was one that started with the best of intentions but turned into self-serving violations of Federal law.

The Rise and Fall of ElectraStor

Jim Hogarth was a well-educated and experienced engineer with some background in the still new area of electric vehicles. But he was far from an innovative technology guru and had no history of building energy-efficient vehicles. However, his ideas on electric bus development and manufacturing were ultimately steered toward Congressman Olver's office based on the opportunities in the Pittsfield area.

Knowing that the development of an electric bus for manufacturing could cost over \$100 million, Hogarth set out to meet some investors. In 1999 he met Armitage who at the time was the CEO of Power Development Company, a company that owned power plants in the

northeastern United States. Armitage expressed interest in the electric vehicle project and agreed to invest \$15 million, as well as to endeavor to raise an additional \$200 million in capital. Together, Hogarth's company Hogarth Associates and Armitage's U.S. Venture Group formed Electric Vehicles Worldwide, LLC.

However, Armitage did not invest the promised \$15 million, and both he and Hogarth encountered difficulties attracting investors and raising capital. Due to funding shortages Armitage pressured Hogarth to limit EVW's scope to battery rather than bus development, and the two of them clashed on this issue. By spring 2001 Armitage—with minimal actual investment—had acquired enough shares and control

of the EVW board to call for a vote that switched EVW's focus to battery development and removed Hogarth from the company.

At this point, EVW decided to adapt existing battery technology for use in an electric bus, so it entered into a licensing agreement with a New Jersey-based company. Armitage and EVW then established ElectraStor, LLC, a wholly-owned subsidiary, to develop the battery. A small team consisting of Willson and four new hires spent a number of months learning battery technology at the New Jersey facility.

At the time EVW and ElectraStor had no facility, but Armitage had promised that they would eventually fill a 400,000-square-foot manufacturing facility. In reality ElectraStor's first office and lab was located in the basement of an ElectraStor employee's rented Pittsfield home.

By all accounts, Armitage was not very involved in the day-to-day business of ElectraStor and supposedly spent much of his time meeting with potential investors. In 2001 Armitage became more visible, and Willson took the lead in battery development. During this time, ElectraStor began leasing space at 333 West Street in Pittsfield to set up a small testing lab.

They also began working with Ohio-based Belcan Corporation whose technical staff discovered problems with the battery's size,

weight, chemistry, and testing methods, which were used at Willson's direction. Belcan began to raise questions about the practicality of his design for a pure electric battery and advised that a hybrid battery would be a more realistic option. These reservations caused friction between ElectraStor and Belcan. Armitage was quick to defend Willson and dismiss the concerns.

By 2002 ElectraStor was having money problems, and payments to vendors including Belcan became irregular and delinquent. In April 2002 they received an additional \$800,000 in FTA grant funding. The company was unsuccessful at obtaining much funding from other investors, and it continued to struggle with seemingly insurmountable technical issues.

Due to severe cash flow problems the company was forced to enter into an agreement with an accounts receivable factoring company and paid a 15-percent fee to receive immediate funding based on invoices submitted to PVTa. Both PVTa and FTA approved this financially desperate arrangement without question or follow up when it should have been a red flag: this recipient of significant grant funding, that supposedly provided matching funds, was seeking the corporate equivalent of a payday loan.

ElectraStor was forced to lay off the bulk of its technical staff by the

REQUEST FOR ADVANCE OR REIMBURSEMENT			OMB APPROVAL NO.	
(See instructions on back)			1. TYPE OF PAYMENT REQUESTED <input type="checkbox"/>	
FEDERAL SPONSORING AGENCY AND ORGANIZATIONAL ELEMENT TO WHICH THIS REPORT IS SUBMITTED			4. FEDERAL GRANT OR IDENTIFYING NUMBER BY FEDERAL AGENCY	
Federal Transit Administration			M/J	
6. FUND IDENTIFICATION NUMBER	7. RECIPIENT'S ACCOUNT NUMBER OR IDENTIFYING NUMBER	8. PERIOD FROM (month, day, year)		
04-2562370	1379			
9. PAYEE ORGANIZATION			10. PAYEE (Where applicable)	
Pioneer Valley Transit Authority			Name:	
Due to severe cash flow issues the company was forced to enter into an agreement with an accounts receivable factoring company				

spring of 2003, which left the company with only one employee with any type of technical background. The company nevertheless continued the “dog and pony shows,” as the one employee put it, to attract capital investment.

Willson continued to present technical reports claiming that ElectraStor had met certain milestones. In 2003 FTA awarded a second addition to the existing grant to the tune of more than \$725,000. FTA awarded a third addition to the grant in 2004, valued at almost \$1 million.

The last technical employee left ElectraStor in June 2004. Armitage wrote in a 2004 letter to Pittsfield's mayor and city council, “The company finds itself in the void between R&D and commercial manufacturing. A sizable capital investment is needed.” He further stated that ElectraStor was “alive and well and committed to bringing jobs to Pittsfield.”

However, from late 2004 through 2005, the only remaining jobs at ElectraStor belonged to Armitage, Willson and two successive office managers who handled basic administrative work. During this period, FTA funds represented almost all of ElectraStor's income, yet Armitage and Willson continued to submit invoices to PVTa, claiming that its FTA reimbursement did not exceed 50 percent of ElectraStor's expenses.

They submitted a total of seven false invoices to maintain the flow of federal funds, claiming substantially more expenses than the company had actually incurred and concealing the fact that FTA funds were paying nearly all of their expenses. Moreover, a significant amount of these funds paid Armitage's credit card accounts and expenses related to a Canadian company HSM Systems, Inc. which Willson and Armitage had established in January 2005.

In July 2005 FTA and PVTa entered into an entirely new grant agreement, awarding ElectraStor almost \$400,000 in additional funding. Because neither agency had engaged in any meaningful oversight or review of the previous grant, the fraud continued undetected until DOT-OIG's audit. The final audit report, issued July 8, 2008, recommended that FTA recover every penny of the \$4.25 million it had paid ElectraStor under the two grants.

Building a Criminal Prosecution

Working in tandem with IRS Criminal Investigations and forensic auditors, Italia pieced the case together, reviewing thousands of documents and conducting numerous interviews in half a dozen states. Armitage, Willson and EVW were indicted on April 2, 2009, on multiple charges including conspiracy, wire fraud, false claims, false state-

The FTA funds fraud was calculated to be in excess of \$700,000.

ments and obstructing a federal audit by lying to DOT-OIG auditors. The FTA funds fraud was calculated to be in excess of \$700,000. In addition to a 2008 indictment for bank fraud, Armitage was charged with tax evasion, false statements to the IRS and willful failure to file a federal tax return.

At first, neither Armitage nor Willson indicated any desire to negotiate a plea, so the discovery process began as prosecution and the defense filed numerous pre-trial motions. Willson maintained that he had done nothing wrong. Armitage seemed to be focused on protecting his assets.

Eventually, Armitage was the first to buckle, pleading guilty on

Oct. 20, 2010. The plea agreement included three counts of false statements to a financial institution, three counts of tax evasion, and one count each of false statements to the IRS, false claims, conspiracy, and obstruction of an audit. At Armitage's sentencing hearing, the judge commented:

"I think the overwhelming evidence is that the company that you've formed and received money from the federal government was clearly incapable ... And I find that the money that the government gave to that entity was, for lack of a better phrase, money down a rat hole and was money that never should have been paid and wouldn't have been paid if the company had been honest about its situation."

Armitage was sentenced to 66 months incarceration; payment of over \$6 million in restitution (including \$4.25 million to FTA), forfeiture of \$24,000, a \$100,000 fine and five years of supervised release. Charges against EVW were dropped as it was defunct.

Willson elected to take his case to trial. His defense was that he had done nothing wrong, other than follow a dream to do significant research and to believe in the wrong guy. He claimed that all he did was "mimic" what had been done in the past on the invoices. Willson blamed FTA and PVTa.

He stated, "I was relying on them to check the invoice, make sure that



In the end, Electrostor did not contribute any electric vans or buses to the streets of Pittsfield, Mass.

it was right, get back to me and have patience with my accounting, and help me correct any errors and then get it properly submitted.”

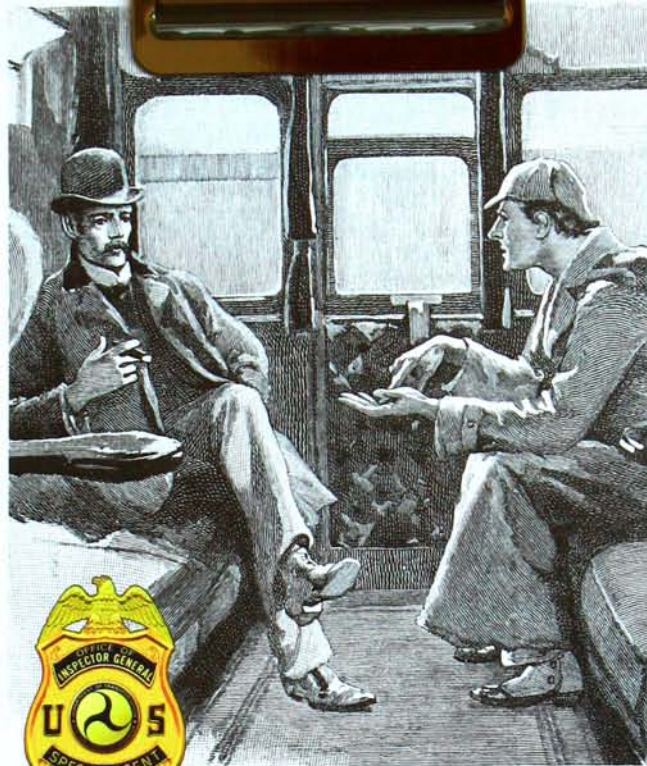
Under cross-examination by a federal prosecutor Willson claimed that money paid from the ElectraStor bank account for HSM expenses in Canada in 2005 was not FTA funds,

but money owed to Armitage for his investment in ElectraStor.

The jury was unconvinced. On June 21, 2011, the jury convicted Willson of one count of conspiracy, six counts of wire fraud and four counts of false claims. He was subsequently sentenced to one year and one day of incarceration; payment

of \$100,000 in restitution and six months of supervised release.

The City of Pittsfield weathered the broken promises of Michael Armitage. In the face of population loss and world and national economic turbulence, it has survived.



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Stealing Copper

Thieves strip wire from airport
approach lighting system



BY KATHRYN KERKHOFF

Special Agent

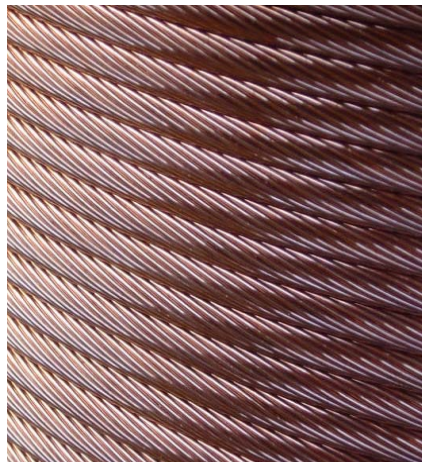
Region 9 (San Francisco, Calif.)

IN COMMUNITIES throughout the U.S., drug users and common thieves are stealing copper for quick cash from metal recyclers who pay a couple of bucks per pound. The dollar loss from the thefts is usually relatively small but is far exceeded by the collateral property damage and potential safety risks. Foreclosed homes or vacant buildings are the usual targets, but in January 2012 thieves set their sights on the copper wire in the high-voltage approach lighting system at the Modesto, Calif., airport.

A Problem of Epidemic Proportions

Modesto, the county seat of Stauslaus County in Northern California's Central Valley, is about 100 miles east of San Francisco. The distance feels much longer in the Bay area's notorious traffic. At the south of town lies the city's small Modesto Airport, which sees an average of 122 aircraft operations per day. A tall chain link fence marks the airport perimeter, separating it from a nearby generic industrial park, a neighborhood of ranch-style homes and the woods of Tuolumne River Regional Park.

Pilots flying into Modesto rely on the airport's 1,400-foot medium-intensity approach lighting system to land aircrafts safely. The lighting system is especially critical in poor visibility, such as in fog and heavy rain. In January 2012 the airport's approach lighting system malfunctioned, shutting down three of the airport's four lighting towers, creating a hazardous situation not only for aircraft but for the surrounding community. When airport officials investigated to determine the cause of the lighting failure, they discovered that during the night someone had stolen high-voltage copper wire from the airport towers that housed the lighting system. To gain access to the airport grounds, the thieves hiked down a wooded trail, bypassed a security gate and used



Copper—with its high thermal and electrical conductivity—is widely valued for wiring, plumbing and industrial machinery.

wire cutters to cut through the chain link security fence surrounding the lighting towers. The lighting towers suffered considerable damage. Concrete was destroyed, pull boxes were forced open and manhole covers were damaged.

Shortly after the first incident, the thieves struck again. This time they treated themselves to the shiny new government property signs recently installed on the towers in addition to the wiring.

When interviewed, one Modesto resident lamented to local reporters, “[the copper thieves] will steal from the church; they’ll steal from the airport—they don’t care.”

Sergeant Aaron Tait from the Modesto Police Department described copper wire theft as “a problem of epidemic proportions.”

Catching the Crooks on Camera

Since airports are considered federal property, FAA contacted DOT-OIG as well as the Modesto Police Department. Together, DOT-OIG and local investigators hatched a plan to catch the brazen copper thieves. They reasoned that the thieves, overconfident from their prior successes, would consider the airport their cash cow and would strike again. In an attempt to catch the thieves in the act, the lighting towers were liberally studded with surveillance cameras.

It wasn't long before the thieves returned to the scene of the crime. As the cameras were rolling one night, two men cut through the airport security fence and snuck onto airport property. After making certain the coast was clear, they tiptoed toward a manhole cover

The men had stolen the copper wire in exchange for cash and drugs

housing a tower's copper wire. The cameras captured one man straining to prop open the heavy cover while the other man yanked great lengths of shiny orange wire out of the ground. When fully loaded, the two men exited through the same segment of broken fencing. Smelling



freedom and profit, the men hopped onto their getaway vehicles—a pair of bicycles—and made off with their stash, having no idea their crime was caught on camera.

The Jig Is Up

After reviewing of the surveillance tapes, the Modesto Police Department put out an alert to search for two men on bikes. A few days later, police spotted two men riding bicycles—one carrying a garbage bag full of copper wire. The police stopped the men: Kody Estep, 22, and Robin Vanderheiden,

32, although the latter identified himself as Jeremy Patrick.

Once the men viewed the airport surveillance photos capturing their theft, it was clear that the jig was up. Both confessed to agents that they had broken into the lighting systems and stolen copper wire multiple times in January. They admitted to selling the wire in exchange for cash and drugs. They had stolen over 2,800 feet of copper wire and caused damages estimated to cost upwards of \$100,000. Vanderheiden also admitted that he had given

the name of his cousin—Jeremy Patrick—because he was high on methamphetamine at the time and was also wanted on an outstanding arrest warrant for drug violations.

Estep and Vanderheiden pled guilty to conspiracy and theft of the copper wire from the Modesto Airport. On August 6, 2012, Vanderheiden was sentenced to 16 months in prison and ordered to pay \$60,000 to FAA for damages caused to Modesto Airport.

Former FAA Safety Inspector Received “Tips” from Pilots





BY MARLIES GONZALEZ

Special Agent In Charge
Region 4 (Sunrise, Fla.)

AS AN **FAA AVIATION** safety inspector, Harrington Bishop's duties at the Teterboro Flight Standards District Office included conducting flight "check rides" for testing and recertifying pilots. However, FAA supervisors had previously admonished him twice for conducting unauthorized check rides on weekends, holidays and other nonscheduled work days. Bishop also had an unusually high pass rate of 99 percent. After it was discovered that he had accepted tens of thousands of dollars in illegal gratuities—what he called "tips"—in exchange for hundreds of these off-hour check rides, FAA contacted DOT-OIG.

The Office of Government Ethics has established Standards of Conduct that apply to all federal government employees. Among other things, these standards prohibit employees from using their public office for private gain. Any federal employee that accepts illegal gratuities can be subject to criminal charges.

Employee integrity cases are a priority for DOT-OIG. These cases are given special attention and focus due to the sensitive nature of potential violations. These investigations can involve allegations of criminal violations, serious administrative misconduct or both.

In August 2010, FAA discovered that Bishop had conducted approximately 100 unauthorized airman practical tests from July 2009 to August 2010 for the Cave Flight School located at the Flying W Airport in Medford, N.J. He conducted the tests on weekends, holidays and when he was on leave—even though employees are not authorized to grant licenses or participate in check rides on their days off. Bishop, a 20-year veteran U.S. Air Force pilot, passed nearly everyone he tested—often military pilots seeking civilian certificates.

Yet he had been admonished twice by FAA since 2006 for conducting these off-hour check rides, and his supervisors had formally instructed him to stop this activity.

In March 2011 FAA security staff interviewed Bishop, and he freely admitted to accepting money for his services. He explained that he

99%

Bishop's pass rate

\$300

Average "tip" received for each unauthorized test

usually received \$300 per check ride. Security staff recognized that his admissions were potentially criminal and referred the matter to DOT-OIG.

The investigation was assigned to DOT-OIG Special Agent Rich McGrade in the New York office. Agent McGrade reviewed FAA's internal report; gathered all records pertaining to Bishop's check rides; and took notes of his leave dates, holidays and weekends. By comparing the dates of the check rides to the dates Bishop was off duty, Agent McGrade discovered that, between May 2004 and February 2011, Bishop had conducted hundreds of unauthorized pilot check rides. Bishop spent weekends, holidays and even approved leave days conducting these flight checks, including private pilot and airline transport pilot certificate tests.

McGrade also reviewed Bishop's pass rate for the flight check rides he performed. According to FAA, testing services that pass more than 85-percent of its pilots are deemed "licensing mills." Based on

McGrade's calculations, Bishop's pass rate was 99 percent—far above the 85-percent guide line.

Agent McGrade presented these records to the U.S. attorney's office in Newark, N.J. The federal prosecutor accepted the case based on the seriousness of the allegations, the

amount of money involved and the strength of the evidence that had been obtained.

Just before pleading guilty on Oct. 27, 2011, to a single count of accepting illegal gratuities as a public official, Bishop resigned from his position. He admitted to accepting tens of thousands of dollars of "tips" in exchange for hundreds of check flights, even though he was fully aware that he was not allowed to accept payment while acting in an official capacity. Bishop also admitted that nearly all of his check flights resulted in passing grades. This meant that each pilot became FAA-certified—whether they deserved it or not—as a result of his work.

In the U.S. District Court of Camden, N.J., Bishop was sentenced to a year and a day in prison, one year of supervised release and a \$5,000 fine. He was also ordered to forfeit to the government \$70,000 that he obtained in unlawful tips. At his sentencing, Bishop admitted that he knew his actions were wrong.



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doesn't mean you should
take...**



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An assessment to aid the Department in focusing attention on the most serious management and performance challenges it faces in the current fiscal year.

Testimony



07.18.2012 On July 18, 2012, the Inspector General testified before the House Subcommittee on Aviation regarding the Federal Aviation Administration's (FAA) Contract Tower Program. Established in 1982, the program currently oversees 250 contract towers providing air traffic control services to airports nationwide. The Inspector General testified that, based on our ongoing work...

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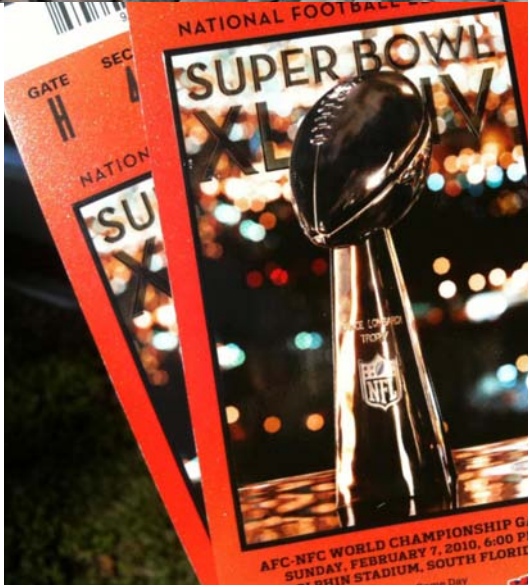
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Open Hand

Tennessee DOT supervisor accepted over \$120,000 in kickbacks and gifts, ranging from the mundane to the extravagant.



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BY RAMON SANCHEZ
Assistant Special Agent in Charge
Region 4 (Atlanta, Ga.)

WHEN **JAMES HAGAR** first began working at Tennessee DOT in 1970, he was earning \$350 a month as an entry-level engineering aide. Just before he retired, Hagar took home a comfortable \$60,000 salary as an operations specialist supervisor, earning the public's trust in overseeing hundreds of millions of dollars in Tennessee road construction projects. Along the way, Hagar had also acquired some expensive tastes—from \$1000-a-day quail hunts to fine Lexus automobiles—paid for with over \$100,000 in gifts, cash and kickbacks he demanded from local contractors in exchange for his “power of the pen.”

One Careless Email

The downfall of James Hagar began with an email he neither sent nor received. In fact, the email didn't even mention his name.

While DOT-OIG Senior Special Agent Bradley Wheeler and investigators from Tennessee's Bureau of Investigations were sifting through emails seized from Lu, Inc.—a company suspected of installing substandard guardrails—they came across a 2004 email from a Lu, Inc. employee Sharon White to her friend Gary:

"I'm totally weirded out, Gary. Novice told me to write him a \$30,000 check to give to some guy from Tennessee DOT whose wife apparently wants a Lexus. Talk about shady."

The email triggered Agent Wheeler's internal alarm bells. The "Novice" mentioned was Novice Cole, Sharon White's boss and the president and owner of Lu, Inc. White's careless email to her friend insinuated that Cole was committing crimes that until then had been unknown to investigators.

Lexus Nexus

In 2006 Cole paid the State of Tennessee \$600,000 to settle the unsafe guardrail case. But neither Agent Wheeler nor TBI investigators would stop sniffing out the trail left by that suspicious \$30,000 Lexus.

When interviewing a Tennessee DOT employee, Agent Wheeler



Crash attenuators are typically barrels filled with sand or water that are intended to reduce damage to vehicles during crashes

asked if anyone at Tennessee DOT had purchased a Lexus for his wife. The employee mentioned James Hagar.

The investigators then checked out Lexus dealerships close to Lu, Inc. Skimming through the Lexus of Nashville's dealerships records, Wheeler discovered that a 2004 Lexus RX330—a sleek \$35,800

SUV—was sold to Mr. and Mrs. James Hagar on Dec. 16, 2004. Further digging uncovered a canceled check drawn from Hagar's account. Agent Wheeler decided to find out whether Novice Cole had a hand in helping Hagar write such a large check.

Cole agreed to cooperate with investigators once he learned the

In exchange for kickbacks, Hagar increased the number of crash attenuators on the contract from 5 to 22.

subject of the investigation. In August 2008 Cole testified that he first met Hagar in 1990 when he moved Lu, Inc. to the Arlington Avenue location in Nashville. According to Cole, Hagar possessed the “power of the pen.” As a Tennessee DOT operations specialist supervisor, Hagar oversaw one-third of all contracts awarded in the Nashville region. He also had the authority to make significant changes to Tennessee DOT contracts through claims, change orders and supplemental agreements. Cole knew immediately that Hagar was a man he wanted to keep in his good graces.

Cole stated that Hagar approached him in 2000 for help buying a panel gate for his farm. Cole said that he initially refused, but Hagar persisted until he finally gave in. Hagar bought the panel gate at Tractor Supply Corporation, and Cole paid Hagar the amount on the receipt. According to Cole, this was the first time he had given Hagar anything of value.

Hagar came to Cole for more money in 2004—this time it was for a new barn roof. Cole stated that he again initially refused to pay, but Hagar wouldn’t take “no” for an answer. Cole offered a compromise: he would pay to re-paint the barn. When Hagar came back with a receipt for the paint job, he paid Hagar the full amount in cash.

“I paid Hagar what he wanted, but I didn’t ask him for a thing,” Cole told skeptical investigators.

That same year, Hagar’s wife decided she just had to have a Lexus, and Hagar decided that Cole was the man to buy it for her. Cole said he was initially annoyed by Hagar request for \$30,000. He even complained to his employee Sharon White that he didn’t appreciate the pressure Hagar had placed on him. However, he was somewhat placated when Hagar suggested increasing Lu, Inc.’s reimbursements on a subcontract.

While it may be true that Cole hadn’t asked Hagar for anything, he certainly profited from the relationship. Lu, Inc. was awarded a \$239,000 subcontract in 2001 to install guardrails and impact attenuators along a stretch of Interstate 65 between Dickerson Pike and Old Hickory Boulevard. Attenuators—also known as crash cushions—are typically barrels filled with sand or water that are intended to reduce the damage done to vehicles during crashes.

The original subcontract called for Lu, Inc. to install five attenuators, but Hagar gradually increased that number over the life of the contract until it reached a total of 22 attenuators. Lu, Inc. received \$15,000 for each attenuator, and Hagar even sweetened the deal for the prime contractor who received an additional \$1,000 markup per attenuator. When the project was completed in 2005, Lu, Inc.’s invoices totaled over \$500,000—more than twice the original subcontract value.

Despite Cole’s claims that Hagar was entirely to blame for this scheme, investigators found that it was Cole who had submitted the material certifications Hagar used to increase the number of attenuators on the project.

The interview with Cole also revealed that Hagar’s criminal repertoire was not limited to manipulating state contracts; he also had a hand in changing Tennessee DOT policies in ways that benefited contractors like Cole. Thanks to Hagar, Tennessee DOT stopped requiring complete replacement of damaged attenuators and began allowing replacement of just the broken parts. This policy change increased a contractor’s profit margin by as much as \$9,000 for each damaged attenuator.

Hagar Has His Say

Agent Wheeler and TBI conducted a series of interviews with Hagar beginning in November 2009

through July 2010. A month after the initial interview, Hagar agreed to a proffer agreement with the U.S. attorney's office for the Middle District of Tennessee. A proffer agreement allows individuals under criminal investigation to give the government information about crimes in exchange for some assurances that they will be protected against prosecution.

Much of Hagar's testimony contradicted what Cole had told agents. He admitted that he added additional work to the contract for Lu, Inc. for the installation of attenuators, but claimed this had been Cole's idea.

According to Hager, Cole had said, "I'm making a killing on these attenuators. If I got enough of these attenuators, I could put my kids through college!"

Regardless of who originally came up with the scheme, Hagar accepted the bribes. In fact, agents discovered Cole wasn't the only contractor that paid Hagar bribes. In total, he admitted to accepting over \$120,000 in gifts and cash from

The contractor told Hagar, "I'm making a killing on these attenuators. If I got enough of these attenuators, I could put my kids through college!"

various prime contractors and subcontractors between 2001 and 2009. The gifts ranged from the mundane to the extravagant: a hay trailer, a tractor, a Shell station gas card, several tickets to sporting events, a side of beef, a saddle, gravel, bales of hay for horses, trips to the beach, a Brazilian fishing trip and no fewer than 15 quail hunting trips at the \$1000-a-day Covey Rise Lodge.

The Indictment & Prosecution

On Jan. 18, 2011, Hagar was charged in the U.S. District Court of Nashville, Tenn., with soliciting and accepting \$30,000 from a subcontractor on a federally funded

highway construction project.

On Aug. 15, 2011, Hagar was sentenced to serve six months in a federal penitentiary and two years of supervised release, ordered to pay \$30,000 in restitution to the Federal Highway Administration and fined \$4000.

OIG's investigation was conducted jointly with TBI and involved exemplary prosecution support by the Tennessee State attorney general's office and the U.S. attorney's office for the Middle District of Tennessee. During sentencing, Judge Aleta A. Trauger proclaimed that Hagar's actions were "a gross breach of the public's trust" and that many motoring taxpayers in the State of Tennessee would now be quick to judge the many public servants who rise daily to make a difference in the lives of many who travel on Tennessee roads.

Because of Cole's payments to Hagar, Tennessee DOT and FHWA have suspended Lu, Inc. from bidding on work until the year 2014.

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SPOTLIGHT

HOTLINE COMPLAINT CENTER



DOT-OIG's Hotline Complaint Center has been in operation since 1979, one of the earliest federal OIGs to operate a hotline. The Complaint Center receives complaints from employees and members of the public 24 hours a day, seven days a week. These complaints alert the agency of potential law violations, mismanagement, gross waste of funds, abuse of authority or a danger to public health and safety. The Complaint Center is led by Scott Harding, a retired First Sergeant of the U.S. Army with 10 years of experience at DOT-OIG. We asked Scott to talk with us and describe Complain Center operations.

“No such thing as a typical day.”

Scott, how does the Complaint Center contribute to OIG’s mission?

We are basically the “front door” to the OIG for complaints of fraud, waste or abuse involving DOT programs and DOT-funded projects or grants. We provide a safe place to report suspected wrongdoing, receiving approximately 500 contacts a month—or 6,000 a year—from employees and the public. For our team, there’s no such thing as a typical day, and even though we receive all types of complaints from all types of complainants, we strive to focus on providing the best possible customer service.

What’s the best way to contact the OIG Hotline?

Whatever works best for you; we take the information any way we can get it. We can be reached by telephone, facsimile or email. Complaints can also be submitted online, using our online complaint form, or you can reach us via the U.S. mail. If none of those methods work for you, we can arrange for employees to speak directly with a hotline investigator by phone or by visiting the Complaint Center on the seventh floor of the DOT headquarters

building in Washington, D.C.

Can a caller request to remain anonymous?

Yes, but when a caller asks to remain anonymous and does not provide contact information, we sometimes cannot pursue the complaint due to a lack of investigative leads. However, if a caller provides contact information but requests confidentiality, we will protect that identity yet still have the ability to contact them to develop investigative leads if necessary.

What does your office do after you receive a hotline complaint?

The first step is to assess the complaint to determine if it involves a DOT program or operation. If it doesn’t, we refer the complainant to the correct agency; if it does, we assess it to determine if there are any imminent safety risks. In the event of safety risks, we send the complaint to the DOT operating administration with the regulatory enforcement tools to take immediate action.

How does your office process routine hotline complaints?

The DOT-OIG is one of the few federal OIG hotlines that offer



Scott V. Harding
Chief of Complaint Center Operations

complainants a live person 24 hours a day, seven days a week. We found that the most cost-effective way to do this is with a contract support provider. Our contractor’s job is strictly initial intake. They enter complaint information into a database and prepare daily reports of all hotline contacts for our review. Of course, the contract support provider has emergency contact information and can contact me and other OIG managers after hours if necessary. One thing that sets us apart is that our contract support provider will give a caller an OIG case number on the spot. The caller can use this

number in future communications with the OIG. The nonprofit watchdog group, Project on Government Oversight, highlighted this as a best practice in its 2009 report on OIG operations.

What do your hotline investigators do?

Our hotline investigators ensure that all complaints are appropriately addressed by assessing complaints and assigning them to DOT-OIG investigative field offices or DOT operating administrations. Hotline investigators will often contact the complainant to request additional information or supporting documentation. In cases that warrant a DOT-OIG investigation, our hotline investigators conduct preliminary interviews and gather records before the matter is referred to one of our regional investigative offices.

You mentioned that you sometimes refer complaints to a DOT operating administration, why is that?

We receive a high volume of complaints through the hotline system, so we are unable to provide full investigative attention to every one. We find that some complaints are management issues that could be resolved by agency managers. We refer these to the appropriate operating administration. Policy requires

they complete their investigation and report back to the Complaint Center within 90 days. This “tasking” process allows us to deal with a significant number of complaints, and our hotline investigators closely examine operating administrations’ investigative reports to ensure that they appropriately address all aspects of the complaint. If the investigative report is deficient, we contact the operating administration to request additional information. Once the hotline investigator is satisfied that the matter has been fully reviewed, we close the complaint. We always reserve the right to conduct an OIG investigation if the circumstances warrant.

How does OIG ensure that the operating administrations take hotline complaints seriously?

Sometimes a hotline complaint involves complicated issues, and the operating administration will ask for more time to complete its investigation. However, we have established time tables, and we enforce the time tables through an escalation policy. We initially respond to an overdue hotline investigation with a friendly reminder email at the staff level. The longer the investigation drags on, the higher we escalate the issue up the chain of command. If it is more than 270 days overdue, our Inspector General will report the matter to the Secretary.

What types of complaints result in an OIG investigation?

That’s difficult to answer. I work closely with our Office of Investigation’s senior management on complaints that are within our purview, but due to the volume of complaints we have to exercise our judgment in determining the best use of available resources to meet our responsibilities. All complaints are important, even if we do not immediately conduct an OIG investigation. The complaints are entered in our case management system, which allows us to detect clusters of complaints from different complainants over a period of time. These patterns can alert us to the severity of a potential problem. Basically, all complaints have value as investigative intelligence.

What are some of the biggest challenges facing your office?

I think we have some of the same challenges that all law enforcement agencies face, and we certainly have some of the same challenges I experienced as a non-commission officer. First, we receive many more complaints than we are able to investigate. Second, a complainant may feel strongly about a complaint, but we are sometimes unable to independently gather enough evidence to prove the allegation. Finally, we do not have the resources to reply to each and every communication we

receive from a complainant. While we know that can be frustrating, unfortunately it is reality.

Can a complainant find out how an investigation turned out?

Absolutely, we provide a complainant with the OIG case number, as well as instructions on completing a Freedom of Information Act request.

What are some of your most memorable complaints?

It's really gratifying when we are able to unravel a fraud scheme

from a single piece of information that catches someone's attention as odd or unusual. For example, a confidential complainant reported to us that a DOT employee was inexplicably authorizing multiple government cell phone invoices. We referred the complaint to our Special Investigations Unit, and our investigators determined that the employee had given government cell phones to family members. She even transferred the cell phone billing addresses to her own residence to evade detection. It turns out the employee and her family

had been using the government cell phones for about three years. In one month alone, one of the phone lines racked up about \$300 in music and game download charges. Since the employee committing the fraud authorized the bills every month, the government was unknowingly paying all the charges for her family's cell phone use. Thankfully, the confidential complainant came forward, and we were able to end this fraud. The employee was arrested, convicted, and removed from federal service.

How to Contact the DOT-OIG Hotline Complaint Center

If you want to report an allegation of fraud, waste, abuse, or mismanagement at the U.S. Department of Transportation, you may do so by using one of the following methods:

- **Online OIG Hotline Complaint form:** <https://www.oig.dot.gov/dot-oig-hotline-complaint-form>
- **Call:** 1-800-424-9071 (toll free)
- **Email:** hotline@oig.dot.gov
- **Mail:** DOT Inspector General, 1200 New Jersey Ave SE, West Bldg 7th Floor, Washington, DC 20590
- **Online FAR Disclosure Form for Contractors:** <http://www.oig.dot.gov/contractor-disclosures-certain-violations-criminal-law-and-civil-false-claims-act-0>

A photograph of a road tunnel entrance. The tunnel is dark, with a concrete wall on the right and a white wall on the left. A road with yellow double lines leads into the tunnel. In the foreground, a destroyed motorized wheelchair lies on the grass. The wheelchair is black and yellow, and appears to be crushed. The background shows a bridge with a green railing and some trees with red leaves.

Aiding and Abetting

Former federal inspector convicted of assisting trucking company in evading federal safety rules

Debris from Deris Scott's motorized wheelchair after a tractor-trailer struck and killed Scott and dragged his wheelchair for two blocks.



PHOTO BY ED DAWSON / COPYRIGHT

BY RAMON SANCHEZ
Assistant Special Agent in Charge
Region 4 (Atlanta, Ga.)

BY THE TIME HE WAS passing through Kenova, W. Va., on the morning of Oct. 26, 2009, Michael Joyce had been driving his tractor-trailer for 14 straight hours and didn't notice when the rear of his trailer struck and killed 68-year-old Deris Scott who was crossing the street in his wheelchair. Joyce's employer Mabe Trucking Company, Inc. pressured its drivers to evade driving rules intended to reduce crashes like the one that killed Scott. The mastermind behind these fraudulent practices was trucking consultant Jim Brylski—a former Federal Motor Carrier Safety Administration inspector with extensive inside knowledge of government inspection practices. Mabe Trucking and Brylski soon found themselves the subject of a federal investigation.



Photos taken at the Oct. 29, 2009, fatal accident that killed Deris Scott. Left to right: the tractor-trailer driven by Mabe driver Michael Joyce; debris left on the road after the accident; Scott's wheelchair

"I Never Seen Him."

On that fatal morning, truck driver Michael Joyce made a right-hand turn onto 14th Street in Kenova, W. Va., driving a red Peterbuilt semi-trailer for Mabe Trucking. At the same time, 68-year-old Deris Scott—whom everyone in town knew as "Scotty"—was crossing the street in a motorized wheel chair. Joyce's turn was too wide, and the back wheels of his truck struck Scotty, dumping him onto the street and dragging the wheelchair for more than two city blocks. Scotty died at the scene.

When an officer arrived at the accident scene, he saw several people attending to Scotty, who was lying on the street, but there were no vehicles in sight. A motorist who had witnessed the accident followed Joyce and was able to flag him down about half a mile later. According to the police, Joyce thought he'd just run over a curb.

The police performed a complete driver and vehicle inspection, uncovered six violations of Federal Motor Carrier Safety Administration

regulations. Joyce did not have a current driver log to track duty hours, as required by federal law. His truck, owned and maintained by Mabe Trucking, had not had proper maintenance: its breaks were misaligned, the automatic airbrake system was inoperable and the fifth axle's right brake chamber leaked. More significantly, Joyce had been driving the tractor-trailer for over 14 straight hours, exceeding federal safe hours-of-service driving rules.

Joyce was arrested and charged with negligent homicide and for leaving the scene of an accident causing death—a felony punishable by up to three years in prison. However the accident sparked a fierce debate on whether Joyce should be charged for an accident he did not know he had caused.

"I'm sorry, I never seen him," Joyce told reporters.

Wayne County's prosecutor told the press, "We can't get inside of his mind. I don't know what the truck driver knew or didn't know as to whether or not a person was

involved. But, we do know that the evidence would indicate that he left the scene where something had taken place that left debris on the road in two different places."

The charges against Joyce were dropped on November 3, 2009. But what had started as a tragic accident investigation would soon snowball into a full-scale federal probe of his employer Mabe Trucking.

Dogged Safety Inspectors

On Dec. 14, 2009, FMSCA's North Carolina division office received a report that Mabe driver Michael Joyce had been involved in a fatal accident. The report prompted FMCSA to initiate an inspection of Mabe's trucking operations.

Mabe Trucking employs over 250 people and operates 160 semi-tractors with over 450 trailers. The company is headquartered in Eden, N.C., and is owned and operated by Roger "Butch" Mabe, Jr. whose grandfather and uncle were both truck drivers. Over the years, Butch built a distinguished career with



Tractor after being dragged for 2 blocks; Kenova police mark evidence at the crime scene.

trucking companies—such as Rapid Transport, Old Dominion, Goldston Terminal and Penske Trucking—where he rose through the ranks as a leasing agent and maintenance supervisor. In June 1988, Butch purchased his first five tractors and formed Mabe Trucking Company, Inc. By 2009, Butch's company had become one of the largest employers in Eden and even boasted a Carrier of the Year award from client Dollar General.

At the time of Joyce's accident, Mabe's safety rating was listed as satisfactory. However, the company had been the focus of two prior FMCSA enforcement actions for violations pertaining to drug and alcohol driver testing and drivers exceeding hours of service. Additionally, FMCSA received a letter from a former Mabe driver alleging that the trucking company had routinely instructed its truck drivers to operate their 80,000-pound tractor-trailers long after they had exhausted their safe driving hours of service.

The FMCSA State Division Administrator for North Carolina, Chris Hartley, directed his team of investigators—led by Safety Inspector Mike Foley—to conduct an unannounced safety inspection at Mabe Trucking. Hartley's decision would prove to be a game-changer.

On the afternoon of March 15, 2010, FMCSA inspectors arrived unannounced at Mabe Trucking's headquarters. As planned, the safety inspection caught owner Butch off guard.

During this inspection FMCSA verified that Joyce had exceeded his allotted safe driving hours on the day of the fatal accident, as well as in the seven days prior. When inspectors reviewed other driver records, they uncovered false records of duty status and several more violations. Some were egregious. One record showed that a driver drove 10 hours after having been on duty for 14 hours—a total of 24 consecutive hours of driving.

The Obstructionist

In spite of these findings, Inspector Foley sensed that Mabe Trucking was hiding something, so he asked for more information on Mabe's procedures for dispatching drivers and monitoring hours of service. Butch pointed Inspector Foley to James "Jim" Brylski, Mabe's hired trucking consultant, whom Butch had phoned immediately after FMCSA inspectors arrived.

Brylski, a 62-year-old veteran of the trucking consulting industry, was a charismatic man who prided himself on his ability to thwart FMCSA inspections. He had learned from the best, working under FMCSA State Division Administrator Chris Hartley for a portion of his 12 years as a safety investigator. After retiring, Brylski started his own trucking consulting business called DOT Advisor in 1999. Unfortunately, he used his extensive insider knowledge for evil rather than good. Clients paid Brylski to design bold strategies to defeat federal safety inspections.

SAFE HOURS-OF-SERVICE DRIVING REGULATIONS

DOT's FMCSA regulates the number of hours a truck driver may drive and work per day—as well as the number of hours a driver may work per week. The rules are intended to make sure drivers of commercial motor vehicles can get the rest they need to operate safely when on the road.

PROPERTY-CARRYING CMV DRIVERS	PASSENGER-CARRYING CMV DRIVERS
Each duty period must begin with at least 10 consecutive hours off duty.	Each duty period must begin with at least 8 consecutive hours off duty.
Drivers may drive up to 11 hours, but are limited to 14 hours in a duty period.	Drivers may drive up to 10 hours, but are limited to 15 hours in a duty period.
The 14-hour duty period may not be extended with off-duty time for meal and fuel stops.	The 15-hour duty period may not be extended with off-duty time for meal and fuel stops.
Drivers may work 60 hours on-duty in 7 consecutive days, or 70 hours in 8 consecutive days.	Drivers may work 60 hours on-duty in 7 consecutive days, or 70 hours in 8 consecutive days.

His specialty was polishing documents and records to avoid “red flags.”

During the unannounced inspection, Foley asked Brylski to describe how Mabe verified the accuracy of their drivers' records of duty status. Brylski responded that Mabe only reviewed fuel reports, which are the least accurate measures of driver hours. Foley also asked Brylski about toll receipts since Mabe operated in many toll-heavy areas. Brylski replied that Mabe used EZ Pass, a prepaid electronic toll fee payment system, but did not use them to audit driver records. Brylski willingly provided the requested fuel and EZ Pass receipts—neither of which included

the dates or times that drivers operated their tractor-trailers.

After talking with Mabe's safety director Judy Newcomb, inspectors realized that everything Brylski had told them was a lie. Newcomb reported that no one at Mabe checked driver records of duty status; in fact, the drivers' fuel and EZ pass receipts never even came through the company's safety office. When confronted, owner Butch also confessed that Mabe did not have a process to check driver records, but insisted that he would implement a process “right away.” The most important discovery was a Mabe Trucking database containing six months of receipts. This database

included the dates and times missing from the receipts that Brylski had provided, and the inspectors' noted discrepancies between the receipts and drivers' log entries.

This discovery of Brylski's deceit prompted inspector Foley to look even closer into Mabe's operations. When reviewing drivers' files, Foley noticed that Mabe used a geo-spatial positioning system called Qualcomm that tracked the specific times, dates and locations of each driver. The files also showed that Mabe used a fuel credit card system called Comdata. Using Qualcomm and Comdata records, Foley conducted his own verification of records of duty status and found

139 falsified records involving 42 drivers. It was clear that Brylski had willfully obstructed FMSCA's access to records needed to determine the company's safety compliance.

When Foley presented these facts to Brylski, the consultant lamented that, if FMCSA had made an appointment for this inspection rather than dropping by unannounced, "none of the documents would have been found!"

Mabe's problems were exacerbated when investigators spoke with some of the company's drivers. Drivers reported that Butch not only neglected to hold drivers accountable for safety, but actually pressured them to defy safety regulations and to falsify records.

"Take the load, or clean out the truck," Butch would tell them.

FMCSA Inspectors Join Forces with DOT-OIG Special Agents

After concluding that Mabe's operating practices created a risk to public safety, FMCSA contacted DOT-OIG. On May 26, 2010, Special Agent Eddie Wynn—a DOT-OIG investigator with 15 years of experience—launched a case on Mabe's criminal conspiracy to violate federal safety regulations and obstruct inspections.

Agent Wynn's review of FMCSA inspection reports determined that inspectors had collected more than enough evidence to establish criminal violations, including false

statements, conspiracy and obstruction. In total, his investigation identified 55 "egregious" counts of false records of duty status made by Mabe drivers, including records in Joyce's driver log. Moreover, Mabe drivers were involved in 14 motor vehicle accidents between March 2010 and February 2011. One of these accidents caused an additional fatality, and two resulted in critical injuries.

Agent Wynn interviewed Mabe drivers to seal their testimonies against Butch and Brylski. One after another, drivers confessed to violations to FMCSA safety regulations at the direction of Mabe Trucking Company. According to one driver, Butch always seemed to know when FMCSA was going to conduct an inspection at the company.

"I got the DOT in my pocket," Butch often bragged.

The driver also mentioned that Butch's hired consultant had falsified the driver's logs prior to an FMCSA inspection to help conceal hours-of-safety "red flags." Although the driver reported this illegal practice to Mabe's safety department, nothing was ever done to correct the log. The driver could not remember the consultant's name, but was able to select Brylski from a black-and-white photo line-up. The driver also recalled that the consultant drove a Jeep Cherokee, which closely resembled Brylski's Jeep Compass Sport.

Yet another driver testified that

FMCSA TRUCKING REGULATIONS

Establish the maximum number of hours a truck driver can operate a commercial motor vehicle in a given period of time.

Require every driver to certify the correctness of all entries in the driver's records of duty status.

Prohibit a motor carrier, its agents, officers, representatives, or employees from making, or causing to be made, a fraudulent or intentionally false statement on any required document or record, to include driver's records of duty status.

Require that driver's records of duty status be retained with all supporting documents for a period of 6 months from date of receipt.

dispatchers routinely assigned him to deliveries long after he had exhausted his safe driver hours of service. If a driver refused to violate the law, Mabe would reduce the driver's work hours the following week.

"Mabe pressured me to take trips I probably shouldn't have taken," the driver said.

Drivers were also fined \$200 if they were caught falsifying records—even though the company forced them to follow this illegal practice. Conversely, Mabe rewarded drivers \$100 each for passing roadside inspections or for avoiding citations after being pulled over.

The most disturbing account was from a former Mabe driver. He told investigators that he once drove 6,200 miles in a week for Mabe, using methamphetamines to stay awake long past his safe driver hours of service. The driver had failed more than one drug test during his employment with Mabe, but was not fired until he tested positive for marijuana.

Agent Wynn came up with a winning strategy to prove that Brylski conspired with Mabe to thwart FMCSA inspections: he compared Brylski's billing hours with FMCSA's announced schedule of inspections. Mabe records showed that Brylski represented the company during four FMSCA inspections since he was hired in 2001. For example, Brylski submitted an invoice to Mabe for audit preparation services he performed in November 2005—two months before FMSCA's January 2006 inspection. Another invoice provided even more damning evidence: EZ Pass and Comdata receipts established that the driver logs were false. These were the same receipts that Brylski had refused to provide FMCSA inspectors following Joyce's

fatal accident.

Armed with this evidence, Wynn was ready to interview Mabe's crooked trucking consultant. He began by asking Brylski why he did not provide FMSCA inspectors all available receipts, such as those

A former Mabe driver once drove 6,200 miles in a week, using methamphetamines to stay awake.

for Mabe's Comdata and EZ Pass transactions.

"I gave the inspectors everything I was aware that Mabe had in-house," Brylski said.

Wynn knew he'd caught Brylski in a lie. The agent's prior review of Mabe's records had already established that Brylski was well-versed on the company's recordkeeping systems. He informed Brylski what he knew.

Although Brylski continued to deny that he had knowingly obstructed FMCSA's inspection, DOT-OIG's case against the consultant was shaping up nicely. Butch, however, had created distance between himself and Brylski, claiming that he was unaware of the hired consultant's criminal practices. Unfortunately for Butch, Wynn's careful review unearthed

documentation that linked Butch with Brylski's schemes.

Together, DOT-OIG agents and FMCSA inspectors uncovered a culture of lies, deceit and strong-arm tactics that induced several Mabe drivers to violate federal laws and endanger the safety of the motoring public.

The Prosecution

On May 23, 2010, Agent Wynn provided the U.S. attorney's office for the Middle District of North Carolina with a 13-count draft indictment against Brylski and Butch, alleging one count of obstructing FMCSA from performing its lawful function to access and inspect Mabe's business records. The indictment further alleged that Butch and Mabe Trucking Company committed 11 counts of making false statements by pressuring drivers to exceed their allotted safe driver hours of service.

On Jan. 10, 2012, Roger "Butch" Mabe, Jr. waived his right to indictment and pleaded guilty to making false statements. Butch was sentenced to serve five years of probation and pay a \$2,000 fine and \$100 special assessment. On March 16, 2012, Brylski also pleaded guilty to the one-count information charging him with making false statements. He was sentenced to serve 12 months of probation and pay a \$3,000 fine.



Are they really
meeting
ALL the contract
goals?



Disadvantaged Business Enterprise (DBE) Fraud

Under this scheme, a contractor misrepresents who performed the contract work in order to increase job profit while appearing to be in compliance with contract goals for involvement of minority- or women-owned businesses.

**Recognize and Report Fraud in
Federally Funded Programs,
Contracts, and Grants**

(800) 424-9071

*U.S. Department of Transportation
Office of Inspector General*

DOT-OIG's DBE Fraud Investigations Return \$16+ Million to FTA



From left: Inspector General Calvin Scovel, Deputy Assistant Inspector General of Investigations Robert Westbrooks, Special Agent In Charge Doug Shoemaker, Deputy Secretary of Transportation John Porcari, Senior Special Agent Robert Stanek, FTA Administrator Peter M. Rogoff, and Principal Assistant Inspector General for Investigations Timothy Barry

IN THE PAST YEAR, DOT-OIG has returned over \$16 million to the Federal Transit Administration through settlement agreements negotiated by the U.S. attorney's office in Manhattan, N.Y. The settlements involved DOT-OIG investigations of alleged Disadvantaged Business Enterprise fraud on federally funded New York City transit projects.

The Department's DBE program is

intended to ensure nondiscrimination in the award and administration of DOT-assisted contracts in the Department's transit, highway, airport and highway safety financial assistance programs. DBEs are for-profit, small business concerns for socially and economically disadvantaged individuals that own at least a 51-percent interest in their companies and have control over daily business operations. At least 10 percent

of funds authorized for transit financial assistance programs must go to DBEs. The program helps ensure a “level playing field” on which DBEs can compete fairly for DOT-assisted contracts.

In one notable DBE fraud case, Skanska USA Civil Northeast, Inc., a subsidiary of one of the nation’s largest construction companies, represented to the government that it would meet its DBE goal in part by subcontracting with Environmental Energy Associates, Inc. Skanska claimed that EEA would perform demolition work for the Fulton Street Transit Center, a \$1.4-billion project that will serve 300,000 commuters daily and will include new subway transfer connections and 70,000 square feet of office and retail space.

However, investigators from DOT-OIG and the New York State Metropolitan Transportation Authority OIG determined that EEA did not provide any “commercially useful function” on the project. Skanska supplied the demolition equipment, foremen and crews. It even placed its own employees on the EEA payroll and deposited funds into EEA’s bank account to cover the additional salary. When requested, EEA submitted fraudulent certified payroll records to the MTA claiming that the employees from Skanska were actually EEA employees. The

certified payroll records included a 5-percent markup that reimbursed EEA owners for allowing Skanska to illegally use its DBE status.

In April 2011 the DOT-OIG presented a settlement check to FTA from Skanska in the amount of \$9.8 million. The U.S. attorney’s office in Manhattan, N.Y., negotiated the settlement as part of a nonprosecution agreement. They paid an additional \$9.8 million to MTA.

In a separate investigation, DOT-OIG special agents returned \$6.5 million to the FTA in April 2012 as part of a civil fraud settlement agreement negotiated by the U.S. attorney’s office in Manhattan, N.Y. The case involved MTA’s East Side Access project, a tunnel that will connect the Long Island Railroad to Grand Central Station. Two major construction companies Dragados USA, Inc. and Judlau Contracting, Inc.—through their joint venture Dragados/Judlau, JV—submitted a report to MTA claiming \$17 million in payments made to DBEs toward the contract’s \$22-million DBE goal. In reality, the joint venture paid fees to three DBEs to act as pass-throughs, while non-DBE subcontractors actually performed the work. Investigators found that the joint venture had in fact paid less than \$5 million for work actually performed by DBEs.

DOT-OIG Investigators Receive Awards for Outstanding Investigative Work



Stanek (right) receives an award from U.S. Attorney Preet Bharara, Southern District of New York

Senior Special Agent Robert Stanek of Region 2 (New York, N.Y.) was recognized for his outstanding efforts in the **Disadvantaged Business Enterprise investigation involving Environmental Energy Associates, Inc. and Skanska USA Civil Northeast, Inc.** The investigation to date has resulted in two guilty pleas and a settlement that paid the U.S. government \$19.6 million. Agent Stanek was also recognized by U.S. Attorney Preet Bharara of the Southern District of New York for his efforts in the **investigation of Judlau Contracting/Dragados USA, Inc., the prime contractor on the East Side Access Project.** As part of the settlement, approximately \$6 million will be returned to FTA. Also recognized during the award ceremony were New York State Metropolitan Transportation Authority OIG Investigators Cliff Brock and Sol Farash who worked with Stanek to successfully resolve the case.

Senior Special Agents Ethan Pickett and Richard McGrade of Region 2 (New York, N.Y.) were recognized by the U.S. attorney's office in District of New Jersey for their efforts in the **investigation of Platinum Jet Management.** In our first issue of IMPACT magazine, the featured story focused on the luxury air charter company, which ran illegal charter flights and crashed a passenger aircraft in February 2005 at the Teterboro Airport in New Jersey. The accident resulted in injuries. A National Transportation Safety Board investigation concluded that the aircraft's incorrect center of gravity contributed to the crash. Following a four-week trial, Michael and Paul Brassington, co-founders of the now defunct air charter company, were convicted by a federal jury on a series of charges. Both defendants received prison sentences, and one defendant is also expected to face deportation to Guyana after serving his prison term.



From left: AUSA Scott B. McBride, AUSA J. Fortier Imbert, Special Agent Ethan Pickett, Special Agent Richard McGrade, and U.S. Attorney for the District of New Jersey Paul J. Fishman



Special Agent Wheeler (right) accepts his award from U.S. Attorney Jerry E. Martin, District of Tennessee

Senior Special Agent Bradley Wheeler of Region 4 (Sunrise, Fla.) was recognized by the U.S. attorney's office in the District of Tennessee for his efforts in the **investigation of a Tennessee Department of Transportation employee**. Wheeler's investigation proved that James Douglas Hagar, Tennessee DOT operations specialist, accepted a \$30,000 kickback in exchange for approving \$272,000 in additional guard rail devices. Hagar was responsible for the oversight of a federal-aid project requiring the installation of guard rail systems. He received six months in prison for his breach of trust and was ordered to pay \$30,000 to DOT's Federal Highway Administration, as well as a \$4,000 fine.

Special Agent in Charge Doug Shoemaker of Region 2 (New York, N.Y.) received the "Investigator of the Year" award from the Law Enforcement Foundation for his efforts as a member of the Federal Construction Fraud Task Force for the Eastern District of New York. Shoemaker and other team members were recognized for their collective efforts in **investigating corruption, fraud and organized crime influence in the New York City construction industry**. The Task Force has examined more than 120 prime construction projects worth more than \$1.9 billion. The Task Force was formed in 1999 and to date has served more than 30 search warrants and prosecutions.



Left to right: AUSA Burton Ryan, EDNY; Doug Shoemaker, SACJR12; AUSA Karen Hennigan, EDNY; Tiki Barber, former New York Giants runningback and FLEFboard member; IRS Special Agent Alan Katz; and U.S. DOL-OIG Special Agent Mona Sterlacci.



Special Agent Timothy Arnold (center) is recognized by the U.S. attorney's office of Southern District of Florida and the Federal Law Enforcement Officers Association

Senior Special Agent Timothy Arnold of Region 4 (Sunrise, Fla.) was recognized by the U.S. attorney's office in the Southern District of Florida and by the Federal Law Enforcement Officers Association for his efforts into the **investigation of airplane parts brokers who sold aircraft parts with fraudulent FAA certifications.** These aircraft parts included wings and control surfaces for aircraft flown by the U.S. Air Force and the commercial industry. To date Arnold's investigation has convicted 11 individuals and generated more than \$6.5 million in recoveries. The investigation has also handed down more than 22 years of prison sentences and probations.

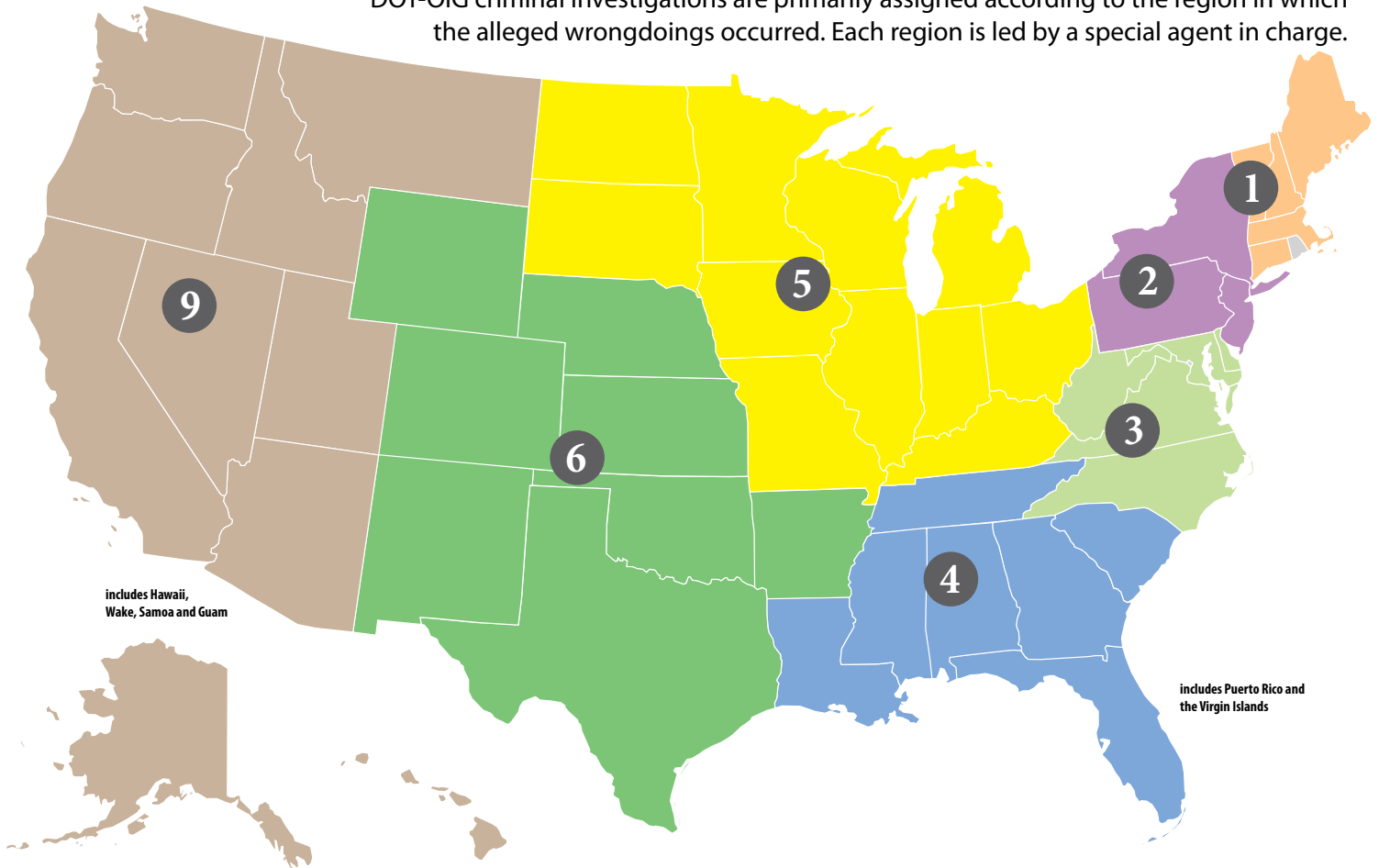
Special Agent Jameel Bagby of Region 3 (Washington, D.C.) received a Certificate of Appreciation from the U.S. Department of Justice, Office of the U.S. attorney's office for the District of Columbia. Bagby received this award at the Thirty-Second Annual Law Enforcement Awards Ceremony held at the Cannon Caucus Room at the Cannon Office Building by U.S. Department of Justice (District of Columbia) for his efforts in the **investigation of VisionTech Components in Clearwater, Fla.** The defendants ran an integrated circuit counterfeiting operation that generated \$15.8 million in revenue. The defendants sold counterfeit integrated circuits to more than 1,000 unsuspecting buyers in the United States and abroad—including defense contractors, other brokers and distributors, and numerous industry sectors. The lead defendant was sentenced to 38 months in prison, three years probation, \$578,000 in restitution and asset forfeiture of \$166,000.



Special Agent Jameel Bagby received a Certificate of Appreciation at the 32nd Annual Law Enforcement Awards ceremony

DOT-OIG INVESTIGATIVE REGIONS

DOT-OIG criminal investigations are primarily assigned according to the region in which the alleged wrongdoings occurred. Each region is led by a special agent in charge.



CONTACT INFORMATION FOR SPECIAL AGENTS IN CHARGE

REGION 1  **Ted Doherty**
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REGION 2  **Doug Shoemaker**
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REGION 3  **Kathryn Jones**
(202) 260-8580

REGION 4  **Marlies Gonzalez**
(954) 382-6645

REGION 5  **Michelle McVicker**
(312) 353-0106

REGION 6  **Max Smith**
(817) 978-3979

REGION 9  **Hank Smedley**
(415) 744-3090

NATIONAL FRAUD HOTLINE

(800) 424-9071

hotline@oig.dot.gov



**U.S. DEPARTMENT OF TRANSPORTATION
OFFICE OF INSPECTOR GENERAL**

**WHISTLEBLOWERS
KNOW YOUR RIGHTS**

On February 17, 2009 the American Recovery and Reinvestment Act (ARRA) was signed into law by President Obama to improve public welfare. If you protect America's interests by reporting fraud, abuse, or mismanagement of ARRA funds at your workplace, and are retaliated against as a result, know that America is here for you.

American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, Title XV, Subtitle D, Section 1553



ADMINISTRATIVE REVIEW:

You have the right to file a complaint with the Office of Inspector General and receive a timely investigation and response.



REPRISAL-FREE:

You have the right to be free from discharge, demotion, or discrimination as a result of disclosing:

- *Gross mismanagement of a stimulus-funded project.*
- *Gross waste of stimulus funds.*
- *Danger to public health and safety related to a stimulus-funded project.*
- *Violation of the law relating to stimulus funds or a stimulus-funded project.*
- *Abuse of authority related to the implementation of stimulus funds.*



REMEDIES:

You have the right to receive remedies if the Office of Inspector General determines you were subjected to an unlawful reprisal. Your employer may be ordered to abate the reprisal, reinstate your employment, and you may receive compensation to reimburse you for your attorney fees and other financial suffering experienced as a result of the reprisal.



ALTERNATIVES:

You have the right to take action against your employer in civil district court if the Office of Inspector General does not respond within 210 days or determines that there was not an unlawful reprisal.

... OIG HOTLINE ...

www.oig.dot.gov/recovery/whistleblower_protections.jsp

Phone: 1-800-424-9071

Email: hotline@oig.dot.gov





**The tests are mostly right...
Nobody will know...**



Quality Control Testing

In this fraud scheme, a contractor misrepresents the results of quality control tests to earn contract incentives falsely or to avoid production shutdown in order to increase profits or limit costs.

**Recognize and Report Fraud in
Federally Funded Programs,
Contracts, and Grants**

(800) 424-9071

*U.S. Department of Transportation
Office of Inspector General*



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