



United States  
**Office of Government Ethics**  
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MEMORANDUM

TO: Designated Agency Ethics Officials and Inspectors General

FROM: Stephen D. Potts  
Director

SUBJECT: 1998 Conflict of Interest Prosecution Survey

This Office has recently completed its annual survey of prosecutions involving the conflict of interest criminal statutes (18 U.S.C. §§ 203, 205, 207, 208, 209) for the period January 1, 1998, through December 31, 1998. Information on 15 new prosecutions by U.S. Attorneys' offices, the Public Integrity Section of the Department of Justice's Criminal Division, and an Office of Independent Counsel was provided to us with the assistance of the Executive Office for United States Attorneys in the Department of Justice. Attached are summaries of the prosecutions reported to this Office.

Attachment

## 1998 Conflict of Interest Prosecution Survey

1. [Case 1] [The Government employee] was the Assistant Director, Education and Human Resources, for the National Science Foundation (NSF).

[His] duties included developing and fostering liaisons with universities, professional societies, and members of the scientific community. As part of his duties, he would frequently speak at educational programs as an official representative of NSF. In February of 1993, while he was on official duty, [he] traveled to Chicago, Illinois as the keynote speaker for a program hosted by Loyola University. He certified on his official travel order that the trip was necessary to accomplish the goals of NSF. [The Government employee] was invited to speak at Loyola because of his official position and the subject matter and purpose of the speech were related to [his] official duties. He communicated with Loyola on official NSF letterhead and was identified on all of the materials as an official representative of NSF. [He] accepted \$500 from Loyola University for giving the speech.

Under similar circumstances, [the Government employee] gave a speech at Michigan State University and accepted \$2,000 from the University, \$600 of which paid for his travel expenses. [He] also spoke in Atlanta, Georgia at a program sponsored by Sigma Xi, a scientific research society, and accepted \$2,000 for participating in the program. [He] also accepted \$1,000 from the City University of New York for delivering a commencement address at the Borough of Manhattan Community College. For all of these speeches, [he] was on official duty, was invited because of his official position, and was identified as an official representative of NSF. [He] failed to disclose the receipt of these honoraria on his public financial disclosure report.

[He] was charged with a civil violation of 18 U.S.C. § 209, receiving a supplementation to his salary as compensation for his services as a Government employee. On June 17, 1998, he agreed to pay a \$24,900 civil settlement to the United States.

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

2. [Case 2] [The firm] is a law firm which has a group of attorneys whose practice focuses on telecommunications law. In May of 1993, the former Chief of the Common Carrier Bureau of the Federal Communications Commission (FCC) joined [the firm] as a partner. That person was the Chief of the Common Carrier Bureau from May 1, 1992 until April 30, 1993.

Previously, on November 13, 1992, an Application for Authorization to Operate as an International Resale Carrier ("Application") was filed with the FCC. In December 1992, [Company A] filed a Petition to Deny the Application, and in January 1993, [the firm] responded on behalf of the Applicant. The Application was pending under the official responsibility of the former Chief of the Common Carrier Bureau prior to her departure from the FCC. The former

Chief of the Common Carrier Bureau recused herself from matters involving the Application when she began negotiating for employment with [the firm].

In May 1994, the FCC issued an order granting the application. In June 1994, [Company A] filed a Petition for Reconsideration of the Commission's Order.

In or about June or July 1994, as an attorney with [the firm], the former Chief of the Common Carrier Bureau participated in the preparation of certain pleadings in connection with the Applicant's response to the Petition for Reconsideration. During that time, the former Chief of the Common Carrier Bureau consulted with another partner in the law firm, who had knowledge of the conflict of interest laws. That partner informed the former Chief of the Common Carrier Bureau that she could sign pleadings to be filed with the FCC.

Based on the advice of the other partner at [the firm], the former Chief of the Common Carrier Bureau signed pleadings in July and October 1994 on behalf of the Applicant. The FCC notified the former Chief of the Common Carrier Bureau about a violation of 18 U.S.C. § 207. The former Chief of the Common Carrier Bureau contacted the designated agency ethics official of the FCC and arranged for substitute signature pages to be submitted. [The firm] notified all opposing counsel about the matter.

[The firm] was charged with a civil violation of 18 U.S.C. § 207(a)(2) and 18 U.S.C. § 2(a), aiding and abetting a former employee's violation of § 207(a)(2). Pursuant to a settlement agreement signed by the parties on September 4, 1998, [the firm] agreed to pay the United States \$12,500 in exchange for the dismissal of the United States' claim.

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

3. United States v. Frank M. Gervacio -- Gervacio was a Special Agent with the United States Customs Service from 1983 until June of 1998.

Beginning in June 1987, Gervacio worked with an informant who provided assistance to the Customs Service in criminal investigations. One of Gervacio's duties was to monitor and assess the work of the informant. During a period of several years, the informant received a number of payments from the Customs Service as compensation for his services as informant. One of Gervacio's duties was to nominate the informant for some of the payments which were later approved by Gervacio's supervisors.

On one or more occasions, the informant expressed gratitude for Gervacio's assistance by observing that both he and Gervacio had engaged in hard work for which the informant would receive substantial compensation, but for which Gervacio only would receive his salary. The informant offered to share with Gervacio a portion of his earnings from the Customs Service.

In April 1992, Gervacio nominated the informant for a large "moiety" payment which represented a portion of the value of certain assets forfeited as a result of information provided

by the informant. Prior to the informant's trip to San Francisco to receive the "moiety" payment in August 1992, Gervacio initiated a telephone conversation with the informant in which he asked the informant for money. During August 1992, the informant went to San Francisco to receive the "moiety" payment. Gervacio personally gave the informant a United States Treasury check in the amount of \$110,875. While riding in Gervacio's Government-owned vehicle, the informant attempted to hand Gervacio an envelope with \$4,000 in cash. Gervacio responded that the informant should drop the envelope in the car because Gervacio could not accept the cash directly. The informant left the money in the car and Gervacio recovered it.

On September 9, 1998, Gervacio pled guilty pursuant to a plea agreement to a charge of a criminal violation of 18 U.S.C. § 209, illegal supplementation of salary. Under the plea agreement, Gervacio agreed to the imposition of a fine of \$4,000 by the Court, to not seek employment with any Federal, state, or local law enforcement agency, and to pay a special assessment of \$25. In exchange for these agreements, the United States agreed to move to dismiss the Indictment charging Gervacio with a violation of 18 U.S.C. § 201(c)(1)(B) and not to prosecute Gervacio for any other criminal offense relating to his receipt of \$4,000 from the informant.

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

4. United States v. Catherine Dubay-Fawley -- Dubay-Fawley was an attorney at the National Labor Relations Board (NLRB).

Beginning on or about June 12, 1995 through on or about August 25, 1995, Dubay-Fawley requested, and the NLRB approved, a 75-day detail to an NLRB regional office in Seattle, Washington. The NLRB paid Dubay-Fawley for reasonable expenses, such as travel, rent, and incidental expenses, she incurred while on official duty in Seattle.

On May 12, 1995, Dubay-Fawley submitted to the NLRB a travel order which included an estimated total cost of the detail to be \$9,643. Dubay-Fawley received a travel advance from the NLRB for \$6,375 on May 19, 1995. On August 22, 1995, Dubay-Fawley submitted to the NLRB a final travel voucher for reimbursement of all expenses. The travel voucher contained information which included payment for airline travel and rent for an apartment in Seattle, Washington. Dubay-Fawley attached to the voucher a lease for the apartment, signed by Dubay-Fawley as tenant, and D.S. Foster as landlord, as well as copies of cashier's checks totaling \$4,500 made out to D.S. Foster. The apartment was owned by D.S. Foster, Dubay-Fawley's mother-in-law. Dubay-Fawley's husband had a property interest in the apartment. Dubay-Fawley did not disclose this relationship and interest to the NLRB prior to her request to be detailed to the regional office.

Dubay-Fawley was charged with participating personally and substantially in a particular matter in which she had a financial interest, in violation of 18 U.S.C. § 208. Pursuant to 18 U.S.C. § 216(a)(1), she pled guilty to a violation of § 208 on April 16, 1998. On May 27, 1998,

Dubay-Fawley was sentenced to 3 years' probation and was ordered to make restitution to the NLRB in the amount of \$6,375.

Prosecution handled by the Public Integrity Section of the Department of Justice's Criminal Division and the United States Attorney for the Western District of Washington.

5. United States v. Ronald Henderson Blackley -- Blackley served as the Chief of Staff to the Secretary of Agriculture Espy in the United States Department of Agriculture (USDA).

Blackley was appointed as the Chief of Staff to Secretary Espy on or about January 21, 1993. Under the Ethics in Government Act, Blackley was required to file the Public Financial Disclosure Report (SF 278).

In 1993, Blackley and his wife received payments totaling approximately \$22,025 from Charles Fuller and Charles Cochran. Fuller and Cochran were longtime friends and business associates of Blackley, and they received subsidies from the USDA in 1993 totaling \$63,000 and \$284,000, respectively. Blackley was required to, but did not, report these payments on his SF 278 for the calendar year 1993.

While the USDA Office of Inspector General was conducting an investigation of Blackley with respect to conflict of interest allegations in November 1994, Blackley made a sworn declaration that he did not receive any payments for work performed in 1993 after he became Chief of Staff. He also stated that his only income from the time he became Chief of Staff, aside from the sale of a former residence, was his USDA salary.

In June 1995, Blackley was appointed as Special Assistant in the Bureau for Legislative and Public Affairs in the United States Agency for International Development (USAID). This position required that Blackley obtain and hold a top secret security clearance.

During August 1996, the USAID Office of Inspector General was conducting an investigation to determine whether Blackley was or had been involved in unreported conflicts of interest and whether he should retain his security clearance. In order to conduct a complete investigation, the USAID Office of Inspector General needed to determine whether Blackley was receiving or had received compensation from sources other than the United States Government since he became a Government employee in January 1993. Blackley signed a sworn statement that he did not receive remuneration of any kind (other than his Government salary) during that time.

On January 31, 1997, Blackley was charged with violating 18 U.S.C. § 1001, for failing to disclose the payments received from Fuller and Cochran during 1993 on his SF 278 for that year; for making a false sworn statement to the USDA Office of Inspector General regarding the 1993 payments; and for making a false sworn statement to the USAID Office of Inspector General regarding the 1993 payments. On December 1, 1997, Blackley was found guilty. He was sentenced to 27 months in jail on March 18, 1998. His convictions were affirmed on appeal.

on January 26, 1999. A rehearing en banc was denied, and Mr. Blackley has stated that he will file a petition for certiorari to the Supreme Court.

Prosecution handled by the Office of Independent Counsel Donald C. Smaltz.

6. [Case 6] [The Government employee] was a Contracting Officer for the Department of the Army at Fort Jackson, South Carolina.

Sometime prior to November 1995, [she] began a relationship with [Person D], a foreman for a government contractor. In 1995, [Person D] started his own company, [Company A], and began bidding on government contracts at Fort Jackson. In November 1995, [the Government employee] assumed the title of Project Manager at [Company A] and performed various duties for [Person D]. There is no proof that [Company A] ever provided [the Government employee] with monetary compensation. On April 9, 1996, [the Government employee] approved and certified for payment an invoice submitted by [Company A]. [She] continued her employment relationship with [Company A] until June 1996. However, [she] submitted a written statement to the Director of Contracting at Fort Jackson that her association with [Company A] ended in March 1996.

[The Government employee] was indicted on December 3, 1997 for violating 18 U.S.C. § 208, taking official action in matters affecting a personal financial interest. She signed a Pretrial Diversion Agreement which requires that she complete 50 hours of community service.

Prosecution handled by the United States Attorney for the District of South Carolina.

7. United States v. Robert John Tomczak -- Tomczak was the Vice Wing Commander, 345th Fighter Wing, Eielson Air Force Base, Alaska, and held the rank of Colonel in the United States Air Force.

During the period of July 1993 through July 1995, Tomczak worked on the 801 Housing Project, an approximately \$70 million contract to build military family housing at Eielson Air Force Base. The housing would be owned by a civilian developer and leased to the United States. Tomczak was assigned to oversee the project and was the Wing Commander's direct representative. He was the chairman of the "801 Housing Working Group," which met weekly to discuss any problems arising from the 801 Housing Project. Through his position as chairman of the 801 Housing Working Group, Tomczak worked with representatives of VECO Corporation (VECO) which took over as construction contractor for the project in May 1994. In October of 1995, VECO acquired ownership of HEBL, Inc.

In January 1996, Tomczak began to express an interest in becoming an employee of VECO. He retired from active duty with the United States Air Force during July 1996 and began to work for VECO as General Manager, Government Services Division, in August 1996. The United States continued to engage in contractual matters with VECO with respect to the 801 Housing Project.

In September 1996, the United States and HEBL, Inc. entered into a lease wherein the United States leased from HEBL, Inc. the military housing units of the 801 Housing Project. Under the lease agreement, the United States was to pay HEBL, Inc. \$8,688,150 on or about October 15, 1996, but did not make the payment until October 21, 1996. On or about the 17th and 18th of October 1996, Tomczak, as a representative of VECO and HEBL, Inc., contacted an employee of the Air Force to attempt to expedite the late payment on the 801 Housing Project. In addition, on or about the 19th or 20th of May 1997, Tomczak, again on behalf of VECO, contacted an employee of the Air Force to express displeasure regarding the Air Force's warranty claims on the 801 Housing Project.

The United States charged Tomczak with a violation of 18 U.S.C. § 207(a)(1) with respect to Tomczak's contacting an Air Force employee about the late lease payment for the 801 Housing Project, and with a violation of 18 U.S.C. § 207(a)(1) for contacting an Air Force employee about the Air Force's warranty claims on the 801 Housing Project. On February 17, 1998, the parties entered into a plea agreement, under which Tomczak pleaded guilty to a misdemeanor violation of 18 U.S.C. § 207(a)(1) for contacting an Air Force employee about the late lease payment for the 801 Housing Project and agreed to pay a fine of \$5,000. Pursuant to the plea agreement, the United States dismissed the charge for violating 18 U.S.C. § 207(a)(1) for contacting an Air Force employee about the Air Force's warranty claims on the 801 Housing Project.

Prosecution handled by the United States Attorney for the District of Alaska.

8. United States v. David S. Hughes -- Hughes was an employee of the Department of Defense.

Hughes was the supervisor of 4 credit cardholders of the Government International Merchant Purchase Authorization Card ("IMPAC"). During the period of September 1995 through June 1996, Hughes used the credit card numbers of those four subordinates, none of whom are suspected of any wrongdoing, to make multiple purchases from a local auto parts store and a military surplus store. Hughes purchased goods with the IMPAC card and kept them for himself, re-selling most of them at his bar. Some of the items purchased include gas grills, truck parts, and automobile tires.

Hughes convinced the managers of the auto parts store and the military surplus store to alter the credit card invoices to list what would appear to be official military supplies, instead of listing the actual goods purchased. The purchase price on the invoice appears to have been the actual price of the goods received. The evidence indicates that Hughes defrauded the Government of an amount exceeding \$200,000.

Hughes was charged with, and pled guilty to violating 18 U.S.C. § 287, for submitting false and fraudulent claims, and 18 U.S.C. § 208, for approving the fraudulent purchases. On June 14, 1999, he was sentenced to 10 months in prison.

Prosecution handled by the United States Attorney for the Eastern District of North Carolina.

9. United States v. John J.V. Perea -- Perea was the Bureau of Indian Affairs (BIA) Agency Superintendent for the Crow Reservation, Crow Agency, Montana.

The Indian Business Development Grant (IBDG) program was created to provide Federal grant funds to eligible Indian persons and Indian tribal organizations. Funds to be released through the IBDG program must be approved by the BIA. As BIA Agency Superintendent for the Crow Reservation, on April 9, 1992, Perea misapplied \$103,750 of IBDG funds and \$311,275 of Crow Tribe land purchase funds for the purchase of land by the Crow Tribe from Danetta Falls Down. The land purchase was never completed.

Perea retired from the BIA in 1994 and became employed by the Crow Tribe as Manager of the tribal casino. Beginning on or about February 1, 1996 through February 4, 1997, Perea represented the Crow Tribe in appearances before the BIA in connection with the reconciliation and justification for the release of the \$103,750 of IBDG funds which he had approved for the failed land purchase in 1992.

Perea was charged with violating 18 U.S.C. § 207, representing the Crow Tribe before the United States in connection with the reconciliation and justification for the release of IBDG funds, in which he participated personally and substantially as a Superintendent of the BIA through the deposit and release of such grant funds. He was also charged with violating 18 U.S.C. § 371 (conspiracy to convert Federal funds), 18 U.S.C. § 641 (willfully converting Federal funds), and 18 U.S.C. § 1163 (misapplication of tribal monies).

On March 31, 1998, Perea was found guilty of violating 18 U.S.C. § 207, 18 U.S.C. § 371, and 18 U.S.C. § 641. On July 17, 1998, Perea was sentenced to 5 years' probation, 6 months' detention, a \$150 Special Assessment to the Crime Victims Fund, and a \$6,000 fine. Both parties appealed the Judgment, but the appeals were dismissed on November 18, 1998.

Prosecution handled by United States Attorney for the Western District of Oklahoma.

10. [Case 10] [The Government employee] was a civil employee of the Oklahoma City, Air Logistics Center (OC-ALC), Tinker Air Force Base, Oklahoma City, Oklahoma, and was also the former OC-ALC shop steward.

[The Government employee], who was not an attorney, as an owner of a private company called [Company D], provided legal services to other OC-ALC civilian employees by filing legal briefs on behalf of the civilian employees and by representing them before various board hearings against the United States. [He] collected approximately \$1,050 in fees from OC-ALC civilian employees for his services, and billed out but had not collected an additional \$1,853.75.



[He] was charged with a civil violation of 18 U.S.C. § 205. The case was dismissed without prejudice. On February 2, 1998, the parties entered into a Stipulated Agreement in which [the Government employee] agreed to pay the United States \$3,000 and agreed to refrain from advising, counseling, or representing persons with claims against the United States. [His] failure to comply with his obligations under the Agreement will permit the United States to reinstate litigation against him.

Prosecution handled by United States Attorney for the Western District of Oklahoma.

11. United States v. Mario Jean-Toussaint -- Jean-Toussaint was a Congressional Staff Assistant for a Member of Congress.

While Jean-Toussaint was assisting a constituent with filing an application to normalize the immigration status of the constituent's daughter, he solicited and received money from the constituent in exchange for the preparation and filing of the application with the Immigration and Naturalization Service.

Jean-Toussaint was charged with violating 18 U.S.C. § 203(a)(1)(B). On August 7, 1998, Jean-Toussaint pled guilty and on February 5, 1999, he was sentenced to 3 years' probation, 100 hours of community service, a \$2,340 fine, and \$780 in restitution.

Prosecution handled by the United States Attorney for the Eastern District of New York.

12. U.S. v. Francis "Duffy" Dougan -- Dougan was employed by the Internal Revenue Service (IRS) as a collection officer.

While a collection officer for the IRS, Dougan was assigned to the collection cases of IRS taxpayers Doug Hahl and Doug Weisbart. Beginning October 1995 and continuing through and including June 1997, after Dougan left his employment with the IRS, Dougan represented both Hahl and Weisbart before the IRS in connection with the collection cases to which he had been assigned as an IRS employee.

Dougan was charged with two violations of 18 U.S.C. § 207(a)(1), making a communication to and an appearance before an officer and employee of the IRS, on behalf of Hahl and Weisbart, in connection with a matter, in which the United States was a party or had an interest, in which Dougan participated while an IRS employee. Dougan pled guilty to the charges and was sentenced on May 19, 1998, to 1 year's probation and 100 hours of community service.

Prosecution handled by the United States Attorney for the District of Colorado.

13. United States v. Gregory Avrakoto -- Avrakoto was an employee of the Central Intelligence Agency (CIA).

As an employee of the CIA who was residing in Egypt, Avrakoto could purchase an imported vehicle in Egypt without having to pay a 150% excise tax. Avrakoto participated in a scheme in which he received cash from Egyptian car brokers who paid United States employees to register luxury cars in their names in order to allow the dealers to evade import taxes. While in Cairo, Egypt, Avrakoto agreed to accept \$25,000 in exchange for changing the status of his personally owned vehicle with the Egyptian Ministry of Foreign Affairs, which would allow him to participate in the scheme.

Avrakoto was charged with violating 18 U.S.C. § 209, felony dual compensation, on April 30, 1998 and on September 18, 1998, was sentenced to 6 months' supervised release, 6 months' home detention, and 200 hours of community service.

Prosecution handled by the United States Attorney for the District of Columbia.

14. United States v. Jesse W. Bearden, United States v. Susan Virginia White -- Bearden was an area soil conservationist employed with the Natural Conservation Service, U.S. Department of Agriculture (USDA). White was a subordinate of Bearden.

Bearden and White were inspectors on projects involving the repair of flood damage in 1995. Bearden solicited a bribe from a contractor, who reported the solicitation. Agents of the FBI and the USDA-OIG recorded a meeting at which Bearden accepted \$1,000 from the cooperating witness to approve work completed under a contract with USDA.

In a separate transaction, White approached the project foreman asking whether he could grade her private property. Bearden told the foreman to place extra rock on White's property if he could do so. The contractor completed the work, valued at \$2,800. The contractor submitted the material costs to USDA for payment. Both White and Bearden approved the payment. White never paid for the work completed by the contractor.

White was charged with unlawful supplementation of salary in violation of 18 U.S.C. § 209(a). She pled guilty to a misdemeanor violation on July 29, 1998. On August 31, 1998, White was sentenced to probation for 1 year, and was ordered to pay restitution in the amount of \$1,500. Bearden was charged with bribery under 18 U.S.C. § 201 and unlawful supplementation of salary under 18 U.S.C. § 209. He pled guilty to 1 count of bribery in violation of 18 U.S.C. § 201(b)(2)(A) on September 1, 1998. On February 16, 1999, he was sentenced; his sentence was modified on March 8, 1999 to 5 years' probation, 3 months in a half-way facility, and an additional 3 months' home detention. He was fined \$4,000 and ordered to pay restitution in the amount of \$1,000.

Prosecution handled by the United States Attorney for the Middle District of Georgia.

15. [Case 15] From 1991 through approximately December 1, 1994, [the Government employee] was an officer of the United States Army and a procurement official with respect to the contract for psychiatric services at William Beaumont Army Medical Center.

[He] coordinated activities for all medical facilities within the military services, including Army, Navy, and Air Force Facilities in his region. [He] began employment with FHC Options, Inc., a defense contractor, on December 1, 1994 and retired from the United States Army on January 31, 1995.

[Company E] was awarded a contract to provide inpatient and outpatient psychiatric services in support of William Beaumont Army Medical Center in 1991. In September 1993, based on a request by [the Government employee] James, the Army Audit Agency began an audit of the [Company E] contract to review the award process and to examine whether an option to renew the contract should be exercised. The audit was completed on January 10, 1994 and forwarded to James. On July 12, 1995, a request for proposals was issued by the agency for a follow-on contract to provide essentially the same services that were being provided by [Company E]. On October 13, 1995, [Company F] submitted a proposal which was signed by [the Government employee] as the company's Senior Vice President.

According to the complaint filed by the U.S. Attorney's Office, the contract for psychiatric services that was in existence from 1991 through 1996 was a matter under [the Government employee's] official responsibility. While [he] was in command of the facility, [he] made the decisions to resolicit for the follow-on contract and to fund the program for the follow-on contract.

[The Government employee] was charged with civil violations of the Procurement Integrity Act, 41 U.S.C. § 423(f)(1), and of 18 U.S.C. §§ 207(a)(2) and 207(c)(1). Pursuant to a settlement agreement dated July 23, 1998, [he] agreed to pay the United States \$50,000 in exchange for the United States' dismissal of the complaint.

Prosecution handled by the United States Attorney for the Eastern District of Virginia.