

HONEST SERVICES AND MISUSE OF OFFICE©

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I. Background.

The concept of “honest services” is derived from 18 U.S.C. Chapter 63 on Mail Fraud.

Under 18 U.S.C. § 1341 (Frauds and swindles):

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than 20 years, or both.

And, pursuant to 18 U.S.C. § 1343 (Fraud by wire, radio, or television):

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both.

The phrase utilized in both §§ 1341 and 1343, “scheme or artifice to defraud,” was defined by Congress in 1988 as “a scheme or artifice to deprive another of the intangible right of *honest services*.” 18 U.S.C. § 1346. (Emphasis supplied.)

Congress specifically enacted 18 U.S.C. § 1346 (Definition of “scheme or artifice to defraud”) in 1988 in reaction to the U.S. Supreme Court decision rendered one year earlier in the case of McNally v. United States, 483 U.S. 350 (1987). In the McNally decision, the U.S. Supreme Court overruled a long line of lower court decisions when it determined that a former public official in the Commonwealth of Kentucky and a private citizen could not be convicted of mail fraud concerning a kickback scheme to require an insurance agent, which provided insurance for the state, to share commissions with certain agencies in which the defendants had an interest, because 18 U.S.C. § 1341 did not prohibit schemes to defraud citizens of their intangible rights to honest and impartial government. However, in enacting 18 U.S.C. § 1346, it was explained by members of Congress that the purpose of the legislation was to overturn the McNally decision and restore the “honest services” mail fraud provision which existed prior to the McNally case. See Joshua A Kobrin, Note, “Betraying Honest Services: Theories of Trust and Betrayal Applied to the Mail Fraud Statute and § 1346,” 61 N.Y.U. ANN. SURV. AM. L. 779, 814 (2006). See also United States v. Sawyer, 85 F.3d 713, 723 (1st Cir. 1996) (“We have recognized that § 1346 was intended to overturn McNally”); United States v. Walker, 490 F.3d 1282, 1297 n. 16 (11th Cir. 2007) (the honest services amendment was enacted to override McNally).

Although the term “honest services” is not defined in the statute, the statute (18 U.S.C. § 1346) has nevertheless withstood numerous challenges for unconstitutional vagueness. In fact, last year the statute withstood such a challenge. On June 24, 2010, the U.S. Supreme Court

issued a landmark decision in the case of Skilling v. United States, 130 S. Ct. 2896 (2010), holding that § 1346 was not unconstitutionally vague when properly confined to bribery and kickback schemes. However, the Court found that the nondisclosure of a conflict of interest (also known as undisclosed “self-dealing”) was not a violation of the honest services fraud statute. Therefore, although the scope of honest services fraud was narrowed by the Supreme Court, the law was still found to be constitutional.

II. Honest Services Fraud Pre-Skilling

The following is an overview of a few cases that attempted to define honest services fraud, prior to the U.S. Supreme Court’s decision in the Skilling case.

The Fifth District Court of Appeals stated in the case of United States v. Brumley, 116 F.3d 728, 734 (5th Cir. 1997), cert. den. 118 S.Ct. 625 (1997), that:

“[H]onest services” contemplates that in rendering some particular service or services, the defendant was conscious of the fact that his actions were something less than in the best interests of the employer-or that he consciously contemplated or intended such actions. For example, something close to bribery. If the employee renders all the services his position calls for, and if these and all other services rendered by him are just the services which would be rendered by a totally faithful employee, and if the scheme does not contemplate otherwise, there has been no deprivation of honest services.

The Eleventh Circuit Court of Appeals stated in United States v. Walker, 490 F.3d 1282, 1297 (11th Cir. 2007) (citations in text), that:

The term “honest services” is not defined in the statute, but we have found that “when a political official uses his office for personal gain, he deprives his constituents of their right to have him perform his official duties in their best interest.” United States v. Lopez-Lukis, 102 F.3d 1164, 1169 (11th Cir.1997). “Public officials inherently owe a fiduciary duty to the public to make governmental decisions in the public's best interest.” United States v. deVegter, 198 F.3d 1324, 1328 (11th Cir.1999). “If an official instead secretly makes his decision based on his own personal interests-as when an official accepts a bribe or personally

benefits from an undisclosed conflict of interest,” the official has deprived the public of his honest services. *Lopez-Lukis*, 102 F.3d at 1169.

As set forth in the case of United States v. Mangiardi, 962 F. Supp. 49, 51 (M.D. Penn. 1997), aff’d 202 F.3d 255 (3rd Cir. 1999), cert. den. 529 U.S. 1060 (2000):

The typical case of honest services fraud is that the public is not getting what it deserves: honest, faithful, disinterested service from a public official. This concept applies whether the official is bribed or fails to disclose a conflict of interest. Finally, the scheme or artifice must lead to actual or intended actual injury. That is, the official must be performing a discretionary function which the scheme or artifice is intended to influence because it is the exercise of a discretionary function (the “service”) which must be the target of the scheme.

(Citations omitted.)

In the case of United States v. Rybicki, 354 F.3d 124, 139 (2d Cir. 2003), the Second Circuit Court of Appeals found that in the private sector, honest services fraud cases fell into two groups: (a) cases involving bribes or kickbacks, and (b) cases involving self-dealing. “Self dealing” was defined to be a situation where an employee causes his or her employer to do business with an enterprise in which the employee has a secret interest, which is undisclosed to the employer. 354 F.3d at 140.

But, with the recent Skilling decision, the U.S. Supreme Court found that honest services fraud consisted only of bribes and kickback schemes, not undisclosed “self-dealing” or the nondisclosure of a conflict of interest.

III. The Skilling Case

In 2010, the U.S. Supreme Court heard oral arguments in three high profile cases involving prominent public and private officials accused of honest services fraud. During these

hearings various justices reportedly made comments suggesting that the honest services law was vague and perhaps unconstitutional, with Justice Scalia reportedly calling the law “mush.”

The first case heard by the Court, Black v. United States (U.S. Supreme Court Case No. 08-876), involved Conrad M. Black, former chairman of a media company which owned and published several newspapers, including the *Chicago Sun-Times* and *The Daily Telegraph* (in the U.K.). Mr. Black and other corporate officials were convicted of mail fraud and wire fraud for paying themselves bogus “noncompetition fees” and failing to disclose receipt of those fees to the company’s board of directors and audit committee. Mr. Black was also convicted of obstruction of justice, for hiding 13 boxes of company documents at his home. Mr. Black was sentenced to 78 months in prison.

The second case, Weyhrauch v. United States (U.S. Supreme Court Case No. 08-1196) involved former Alaska state representative Bruce Weyhrauch, who was charged with bribery, extortion, conspiracy and mail fraud, for allegedly seeking legal work with an oil services company that was lobbying the state to lower taxes on oil, and then failing to disclose his job search as a conflict of interest. He was convicted and sentenced to five years in prison.

Then, on March 1, 2010, the U.S. Supreme Court heard arguments in the case involving former Enron CEO Jeffrey K. Skilling (Skilling v. United States, U.S. Supreme Court Case No. 08-1394). At its height, Enron was the seventh largest revenue producing company in America and its stock sold at \$90 per share. However, after Enron crashed into bankruptcy in 2001, an elaborate conspiracy was uncovered whereby officials at Enron were found to have overstated the company’s financial position, which propped Enron’s stock prices at artificially high levels. It was alleged by the government that Mr. Skilling personally profited from the conspiracy, and netted \$89 million from the sale of his Enron shares prior to the collapse of the company. Mr.

Skilling was charged with one count of conspiracy to commit honest services wire fraud, plus over 25 counts of securities fraud, making false representations to Enron's auditors, and insider trading. Following his conviction by a jury on 19 of the counts, including the honest services charge, his lawyers appealed, arguing that the honest services law was unconstitutionally vague.

On June 24, 2010, the U.S. Supreme Court's rendered its decisions in the Black, Weyhrauch, and Skilling cases, and in so doing, narrowed the scope of honest services fraud. See Black v. United States, 130 S. Ct. 2963 (2010); Wehyrauch v. United States, 130 S. Ct. 2971 (2010); Skilling v. United States, 130 S. Ct. 2896 (2010). In essence, the Supreme Court held that § 1346 – the federal mail fraud statute – criminalizes only those schemes that involve bribes or kickbacks. On the other hand, the Court found that the nondisclosure of a conflict of interest is not a violation of the honest services fraud statute. Therefore, undisclosed “self-dealing,” which is the taking of official action by a public official or private employee to further his or her own secret financial interests, is not a violation of the honest services fraud statute.

Thus, the U.S. Supreme Court determined that, when properly confined to bribery and kickback schemes only, the honest services fraud statute is not unconstitutionally vague. As the Supreme Court concluded in the Skilling opinion, “our construction of § 1346 establish[es] a uniform national standard, define[s] honest services with clarity, reach[es] only seriously culpable conduct, and accomplish[es] Congress’s goal of ‘overruling’ *McNally*.” Skilling, 130 S.Ct. at 2933.

What this means for Jeffrey Skilling is that he did not commit honest services fraud, because it was never alleged or shown that he engaged in bribery or kickback schemes. The government did not allege or show that Skilling solicited or accepted side payments from a third party in exchange for misrepresenting the company's financial position. Whether or not the

reversal of his honest services conviction will impact his other convictions is a matter to be determined on remand.

In addition, pursuant to the Skilling decision, the judgments in the Black and Weyhrauch cases were also vacated and remanded to the lower courts for further consideration. In the Weyhrauch case, on remand, the Court of Appeals for the Ninth Circuit affirmed the district court's denial of the government's request to introduce evidence to prove "a knowing concealment of a conflict of interest," because the nondisclosure of a conflict of interest was no longer a basis for prosecution under honest services fraud. United States v. Weyhrauch, 623 F.3d 707, 708 (9th Cir. 2010).

Meanwhile, on remand from the U.S. Supreme Court, the Seventh Circuit Court of Appeals in the Black case reversed the convictions on certain of the mail and wire fraud counts (those relating to the defendants' mischaracterization of a \$5.5 million payment), and found that a retrial on those counts would be necessary if the government decided to pursue it. However, the Appellate Court affirmed the convictions on the other counts of mail and wire fraud (those concerning the defendants' receipt of \$600,000 for non-existent covenants not to compete), finding that the evidence of "pecuniary fraud" was so compelling that no reasonable jury could have refused to convict. In addition, the Court affirmed the obstruction of justice conviction against Conrad Black. United States v. Black, 625 F.3d 386 (7th Cir. 2010).

IV. Skilling Aftermath

It was widely speculated that the *Skilling* decision would greatly reduce the number of honest services fraud prosecutions. However, as was indicated in a recent article published online in *The National Law Journal*,

[It] appears that rumors of the death of honest services fraud cases were greatly exaggerated. Prosecutors continue to prosecute these cases, and appellate courts continue to readily uphold these prosecutions.

Laurie L. Levenson, *Criminal fraud cases survive Skilling decision*, The National Law Journal (Jan. 3, 2011), <http://www.nlj.com>.

For example, in 2005 Michael Scanlon pled guilty to charges of bribery, mail and wire fraud, and honest services mail and wire fraud, for his role in conspiring with former lobbyist Jack Abramoff to defraud Abramoff's Native American casino clients. Scanlon subsequently helped bring 20 other lobbyists and public officials to justice, including Abramoff, former Rep. Tom DeLay, and former Rep. Bob Ney. However, following the *Skilling* ruling in 2010, Scanlon filed a motion to modify his plea agreement, stating that did not have "fair notice" that his conduct was criminal. Scanlon's motion was denied. The court, citing *Skilling*, determined that, "A criminal defendant who participated in a bribery or kickback scheme... cannot tenably complain about prosecution under § 1346 on vagueness grounds." *United States v. Scanlon*, ___ F. Supp. 2d ___, 2010 WL 4867613 at 5 (D.D.C., Nov. 30, 2010). On February 11, 2011, Scanlon was sentenced to 20 months in federal prison. He was also ordered to pay over \$20 million in restitution.

As Ms. Levenson concluded in her article,

Skilling did not give a green light to politicians or executives to be dishonest and courts are not eager to allow such defendants to walk away unscathed. Even after *Skilling*, the greediest of defendants are still being held accountable for their actions.

Levenson, The National Law Journal (Jan. 3, 2011).

V. Examples.

Below is a sampling of cases from the past few years involving bribery and kickback schemes. Many of the cases are quite recent.

1. United States v. Kemp, 379 F. Supp. 2d 690 (E.D. Penn. 2005), aff'd 500 F.3d 257 (3rd Cir. 2007), cert. den. 128 S.Ct. 1329 (2008). In this case, a jury convicted Corey Kemp, the former treasurer of the City of Philadelphia, former bank executives, and others for various offenses, including honest services mail/wire fraud. In essence, the then city treasurer received payments and gifts (such as NBA All-Star game tickets, Super Bowl tickets and accommodations, trips, construction of a deck, personal loans, loans for relatives, and a loan to his church) in exchange for City business. The former city treasurer was given a 10-year sentence, and the two bank executives each received 2-year sentences. On appeal, the United States Court of Appeal, Third Circuit, affirmed the convictions.

2. United States v. Sorich, 523 F.3d 702 (7th Cir. 2008). Two of the defendants, in this case, including Robert Sorich, were high level employees in the Office of Intergovernmental Affairs (an office of the mayor of the City of Chicago), and two others were department officials. Three of the four defendants were convicted by a jury of mail fraud, wherein the defendants were found to have doled out thousands of city civil service jobs based on political patronage and nepotism. The scheme, which had apparently been going on for years, included filling out sham interview forms to assure certain persons would be hired. The defendants were convicted by a jury and sentenced, the longest sentence being 46 months.

The defendants appealed their convictions, contending that their behavior, while dubious, was not criminal, and that the honest services mail fraud statute was unconstitutionally vague. The defendants also argued that they did not make any money from the scheme, nor did they deprive the city or the people of Chicago of any money or property. However, the Seventh

Circuit Court of Appeals affirmed the convictions and sentences, concluding that the defendants' actions did constitute mail fraud, that the mail fraud statute was not unconstitutionally vague as applied to the facts of the case, and that the jobs which were doled out by the defendants were indeed a kind of property.

3. United States v. Woodard, 459 F.3d 1078 (11th Cir. 2006). In this case, a 29-year veteran of the Atlanta Police Department, John D. Woodard, and his wife were convicted of mail fraud, conspiracy to commit mail fraud, and deprivation of honest services, and sentenced for three years and two years, respectively, plus ordered to pay restitution, for operating a business that charged persons a fee to recover money and property held at the police department. The police officer would use confidential information obtained through his position with the police department to locate potential clients, and after locating the clients, the defendants would then lead the clients to believe that the only way the money and property could be reclaimed was through their business operation, which charged a substantial fee (the property can actually be reclaimed directly at the police department for no charge). The defendants also falsified powers of attorney in order to reclaim money and property. On appeal, the Eleventh Circuit Court of Appeals affirmed the convictions and sentences.

4. United States v. Walker, 490 F.3d 1282 (11th Cir. 2007). This case involved Charles W. Walker, a former Georgia state legislator who was convicted of 127 counts of conspiracy, mail fraud, and income tax evasion, and sentenced to over 10 years in prison. Among other things, the defendant, who owned a personnel agency that provided temporary workers for hospitals and other businesses, used his influence to get legislation passed to benefit Grady Hospital in Atlanta, and in return received business favors from Grady Hospital, relating

to the utilization of his personnel agency. The defendant's personnel agency also provided personnel services to Medical College of Georgia, which he failed to disclose.

5. United States v. Thompson, 484 F.3d 877 (7th Cir. 2007). In this case, the federal Appeals Court found that a public servant's actions did not constitute mail fraud. The defendant, Georgia L. Thompson, a section chief in the State of Wisconsin's Bureau of Procurement, presided over the selection of a travel agent for the state. During the bid process, two travel agencies emerged as the top contenders. One agency was based in the state and the other based out of state. The evaluation team selected the out of state agency, and the section chief requested a delay, apparently believing that her boss would not approve of the selection. It was then agreed by the evaluation team that the matter would be re-bid on a best and final basis, as allowed by state law. Ultimately, the in-state travel agency got the bid. Three months later the section chief received a \$1,000 raise. The defendant was subsequently convicted in the United States District Court, Eastern District of Wisconsin, of mail fraud with regard to the selection of the state's travel agent. The defendant appealed, and the Seventh Circuit Court of Appeals reversed the conviction, ordered an acquittal, and stated as follows:

[The subject federal statutes] have an open-ended quality that makes it possible for prosecutors to believe, and public employees to deny, that a crime has occurred, and for both sides to act in good faith with support in the case law. Courts can curtail some effects of statutory ambiguity but cannot deal with the source. This prosecution, which led to the conviction and imprisonment of a civil servant for conduct that, as far as this record shows, was designed to pursue the public interest as the employee understood it, may well induce Congress to take another look at the wisdom of enacting ambulatory criminal prohibitions. Haziness designed to avoid loopholes through which bad persons can wriggle can impose high costs on people the statute was not designed to catch.

484 F.3d at 884.

6. Alabama. Former Alabama governor Don Siegelman was convicted of bribery, conspiracy to commit mail fraud, mail fraud and obstruction of justice, and sentenced to a seven-year prison term, for receiving a \$500,000 donation to his campaign to establish a state lottery in exchange for appointing the donor of the funds to a board which regulated hospital construction. Siegelman subsequently filed an appeal, and on March 6, 2009, a panel of three judges for the 11th Circuit Court of Appeals in Atlanta upheld five of the seven charges, struck two of the fraud counts, and ordered a new sentencing hearing. United States v. Siegelman, 561 F. 3d 1215 (11th Cir. 2009).

However, on June 29, 2010, the U.S. Supreme Court vacated the judgment of the 11th Circuit Court of Appeals, and remanded Mr. Siegelman's case in light of the Supreme Court's ruling in the Skilling case, which held that the honest services mail fraud statute criminalizes conduct involving bribery and kickbacks only. Siegelman v. U.S., 130 S. Ct. 3542 (2010). On August 31, 2010, Mr. Siegelman filed a brief with the Court of Appeals, requesting a dismissal of all charges. This case has received significant press coverage, including a segment on *60 Minutes*.

On December 22, 2009, the United States Circuit Court, Eleventh Circuit, affirmed in part, vacated in part, and remanded the District Court's decision concerning William Luther Langston, former Executive Director of the Alabama Fire College, with the Chief Judge beginning the Court's opinion with the following statement:

Once again, our circuit is presented with an appeal involving an Alabama official and his part in a massive case of public corruption. The facts of this case should be an affront to every decent law-abiding citizen in the State of Alabama.

United States of America v. William Luther Langston, 590 F. 3d 1226, 1228 (11th Cir. 2009). Langston was convicted by a federal jury of 36 counts of mail fraud, wire fraud, theft of federal funds, conspiracy, money laundering, and conduct giving rise to criminal forfeiture, for diverting Fire College funds to himself, family, and friends. Among other things, he had the Fire College provide jobs which required no work to various family members and friends, buy appliances for his son, pay for the tuition of his grandsons at a private school, purchase motorcycles, build a house for a friend, and buy a house and furnishings for himself. He was sentenced to 125 months' imprisonment, plus three years of supervised release, and ordered to pay \$1,428,945 in restitution. Upon appeal, the Circuit Court found that the government had erroneously indicted Langston as an agent of the State of Alabama, rather than as an agent of the Fire College, and thus vacated 17 of the counts, remanding to the district court for further proceedings. However, the Circuit Court did affirm the remaining counts and also concluded that Langston's sentence was substantively reasonable. The Court commented that although some counts of conviction were being vacated, this would likely not affect Langston's prison term, only the amount of restitution.

On October 4, 2010, eleven individuals, including four current state legislators for the State of Alabama, were charged for their roles in a wide-ranging conspiracy regarding the bribery of state legislators for their votes to allow electronic Bingo gambling machines in the state. The federal indictment alleges that, during 2009-2010, Alabama State Senators Larry P. Means, James E. Preuitt, Quinton T. Ross, Jr., and Harri Anne H. Smith "corruptly solicited, demanded, accepted and agreed to accept money and things of value" in exchange for their favorable vote and influence on the gambling legislation. For example, it is alleged that State Senator Preuitt, who had previously voted against the gambling legislation, was promised \$2

million in campaign contributions and the use of country music stars for his reelection campaign, in exchange for his vote in favor of the legislation.

State Senator Smith was charged with one count of conspiracy, two counts of bribery, one count of extortion, 11 counts of honest services mail and wire fraud, and four counts of money laundering. Means was charged with one count of conspiracy, two counts of bribery, two counts of attempted extortion, and 11 counts of honest services mail and wire fraud. Preuitt was charged with one count of conspiracy, one count of bribery, one count of attempted extortion, 11 counts of honest services mail and wire fraud, and one count of making a false statement. Ross was charged with one count of conspiracy, two counts of bribery, two counts of attempted extortion and 11 counts of honest services mail and wire fraud.

7. Illinois. On December 9, 2008, former Illinois Governor Rod R. Blagojevich was arrested and charged with conspiracy to commit mail and wire fraud and solicitation of bribery, and was subsequently indicted for committing racketeering conspiracy, wire fraud, extortion conspiracy, attempted extortion and making false statements to federal agents. The charges alleged that he used his office to seek or obtain money, campaign contributions and employment for himself and others in exchange for official actions, including trying to leverage his authority to fill the U.S. Senate seat vacated by President Obama.

Mr. Blagojevich's high profile case went to trial in June 2010, but the jury was deadlocked, failing to reach a verdict on 23 of the 24 counts against the former governor. He was convicted of one count of making false statements to the FBI. A retrial is scheduled for April 2011.

Blagojevich's former chief of staff, John Harris, pleaded guilty to one count of participating in a scheme to commit wire fraud, and agreed to testify against Blagojevich.

Christopher Kelly, his former advisor and fundraiser, was also indicted, but died of an intentional overdose on September 12, 2009. Robert Blagojevich, brother of the former governor, was also indicted on four counts for his participation in the alleged schemes, but the jury could not reach a verdict in his case and he will not be retried.

On February 1, 2010, Chicago Alderman Isaac “Ike” Carothers pleaded guilty to federal corruption charges and was sentenced to 28 months in prison, for accepting \$40,000 in home improvements from a developer, in exchange for supporting a rezoning in favor of a development project known as Galewood Yards. Galewood Yards, which, at the time, was the largest undeveloped tract of land within the Chicago city limits, was a former rail yard, and city planners recommended that the property remain an industrial site. However, a developer, Calvin Boender, wished to transform the property into a commercial and residential development, which required a zoning change. Boender was successful in pushing the rezoning through, and the property now contains a 14-screen movie theater, union training center, and 187 single-family and multi-family residences.

In March of 2010, following a jury trial, Calvin Boender, the developer of Galewood Yards, was convicted of one count of bribery, two counts of illegal campaign contributions and two counts of obstructing justice. He was sentenced to 46 months in federal prison.

8. Detroit. In June of 2009, former Detroit City Council President Pro Tem Monica A. Conyers pleaded guilty to one count of conspiracy to commit bribery, and was sentenced to 37 months in federal prison to be followed by two years of probation. Mrs. Conyers admitted to receiving cash payments from a representative of Synagro Technologies, Inc., a Houston-based waste management company, for her vote in favor of a multi-million dollar sludge hauling contract between the City and Synagro. Mrs. Conyers is the wife of U.S. Representative John

Conyers, Jr., who is Chairman of the House Judiciary Committee. Her chief of staff, Samuel L. Riddle, Jr., was also indicted on charges for extortion, conspiracy to commit extortion, attempted extortion, mail fraud, bribery, and for making false statements to the FBI in relation to the Synagro contract, as well as for other deals. He is presently in prison on unrelated charges.

9. New Jersey Mayors. Three New Jersey mayors, a deputy mayor, plus numerous other public officials and community leaders were arrested on July 23, 2009, as part of a major FBI sting dubbed “Operation Bid Rig” that netted the arrest of 44 people in New Jersey and New York. Peter Cammarano III, who, at the time, was the youngest ever elected mayor of Hoboken, subsequently pleaded guilty in April 2010 on one count of conspiracy to commit extortion under color of official right, for accepting \$25,000 in cash contributions from an undercover agent posing as a developer, in exchange for exercising his official influence and authority. He received a two-year prison sentence.

Dennis Elwell, former mayor of Secaucus, was charged with conspiracy to commit extortion, attempted extortion, and accepting corrupt payments, for accepting a \$10,000 cash bribe from an undercover agent in exchange for his help with a hotel development. His trial is set for May 2011. Anthony R. Suarez, mayor of Ridgefield, was charged with conspiracy to commit extortion for agreeing to accept \$10,000 in cash from a government informant posing as a developer. However, he was acquitted by a federal jury following a two-week trial in October 2010. Leona Beldini, former deputy mayor of Jersey City, was sentenced to three years in prison plus a fine of \$30,000, following her conviction for conspiracy to commit extortion, for accepting \$20,000 in illegal campaign contributions in exchange for agreeing to help an undercover informant with real estate deals.

10. Connecticut. Former Hartford Mayor Eddie A. Perez was convicted by a jury in June 2010 on five felony counts for receiving a bribe, conspiracy to fabricate evidence, accessory to the fabrication of evidence, conspiracy to commit first-degree larceny by extortion, and criminal attempt to commit first-degree larceny by extortion. He allegedly received free remodeling work on his home from a city contractor, plus tried to extort a \$100,000 payoff from a developer on behalf of a political ally. He was sentenced to three years in prison, to be followed by three years probation.

In 2004 former Connecticut Governor John G. Rowland pleaded guilty to one count of conspiracy to commit honest services fraud relating to discounted renovations done on his vacation home, and served approximately eleven months in prison.

In 2003 former Bridgeport Mayor Joseph P. Ganim was convicted of racketeering, racketeering conspiracy, extortion, mail fraud, bribery, conspiracy, and filing false tax returns, relating to bribes and kickbacks received in promoting city contracts with various companies. He was sentenced to nine years in federal prison, fined \$150,000, ordered to pay \$148,617 in restitution, and ordered to forfeit \$175,000 in property.

11. Louisiana. On November 13, 2009, former Louisiana Congressman William Jefferson was sentenced to 13 years in prison following his conviction on 11 counts of bribery, money laundering, honest services fraud, and using his office as a racketeering enterprise, stemming from charges that he accepted \$478,000 in bribes to promote business ventures in Africa. He was also ordered to forfeit over \$470,000. One of the more notable aspects of this case was the FBI's discovery of \$90,000 cash in Mr. Jefferson's freezer.

12. New Mexico. On December 29, 2009, the United States Court of Appeals, Tenth Circuit, affirmed the convictions of Joseph Ruiz, former New Mexico Deputy Insurance

Superintendent, on multiple counts of honest services mail and wire fraud, corrupt solicitation, and extortion. See United States v. Ruiz, 589 F. 3d 1310 (10th Cir. 2009). Mr. Ruiz's scheme involved detecting licensing violations by various insurers, then threatening the insurers with fines unless they contributed to two charities with which he and his boss were associated. If an insurer refused to make the requested charitable contribution, then the fine amount was higher than the amount of the contribution sought by Ruiz. When an insurer suggested contributing to a different charity, Ruiz demanded that the insurer pay the fine instead. The government showed that Ruiz solicited more than \$150,000 in donations from insurers for the two charities. In addition, one of the charities used its donated funds to purchase children's books that were authored by Ruiz, for which he then received over \$1,500 in royalties. He was sentenced to 48 months in prison and ordered to pay \$105,000 in restitution and penalties.

13. Escambia County, Florida. In 2006, W.D. Childers, former president of the Florida Senate and chairman of the Escambia County Commission, was convicted of violating Florida's Government-in-the-Sunshine Law, a misdemeanor, and served 49 days in jail. Also in 2006, Childers was found guilty of two charges of bribery and unlawful compensation, for allegedly orchestrating the county's purchase of property for a \$6.2 million soccer complex from associates of Childers. Mr. Childers was found to have bribed a fellow commissioner, who subsequently committed suicide, with a "collard-green pot" full of cash for his assistance in pushing through the project. He served a 3-1/2 year prison sentence, and was released on June 17, 2009. In June 2010, the 11th Circuit Court of Appeals overturned the bribery conviction, ruling that Childers' constitutional right to confront his accuser had been violated. However, the Florida Attorney General's Office subsequently requested, and was granted, a rehearing of this matter by the full assembly of appellate judges. A hearing date has not yet been set.

14. Palm Beach County, Florida. In June 2007 the former chairman of the Palm Beach County Commission, Anthony R. Masilotti, pleaded guilty for his involvement in a public corruption conspiracy stemming from the unlawful use of his elected position to promote and conceal significant financial ventures, including land deals which netted him millions of dollars. He also accepted significant travel gratuities, including free airfare valued at approximately \$100,000, from a developer in return for voting favorably on measures for the developer. He was convicted of a single count of honest services fraud and sentenced to prison for five years. He was also ordered to forfeit two parcels of real estate worth approximately \$9 million, as well as \$175,000 in cash.

However, in light of the U.S. Supreme Court's ruling in the Skilling case, Mr. Masilloti is presently challenging his honest services fraud conviction. So far, this effort has not proved successful, as a U.S. Circuit Judge for the 11th Circuit recently determined that the conviction would stand because Masilloti's crimes involved bribes and kickbacks. Mr. Masilloti was recently released from prison.

Mr. Masilotti's ex-wife also had to forfeit \$400,000 in cash, which she received in a divorce settlement, as the money came from one of the tainted land deals brokered by Masilotti. In addition, William Boose, a former land use attorney and lobbyist from Palm Beach, pleaded guilty for his involvement in Masilotti's land deals, and served 15 months in federal prison. Rather than being disbarred, Mr. Boose was suspended from the practice of law for three years.

In 2008, another former Palm Beach County commissioner, Warren H. Newell, was sentenced to five years in prison, followed by two years of supervised release, for conspiracy to commit honest services fraud. Newell concealed his financial interest in a "success fee contract" relating to the sale of certain property for a regional water storage project. The "success fee

contract” netted him approximately \$366,000. In addition, on another project that came before the county commission involving the purchase of a waterfront preservation easement for a yacht center, Mr. Newell concealed that he docked his boat at the yacht center and owed significant boat dockage fees (\$40,000), later receiving forgiveness of his dockage fees as a kickback. He also concealed his financial interest in another land deal which came before the commission. Newell’s sentence was subsequently reduced by two years for providing evidence against former Palm Beach County Commissioner Mary McCarty. He was released from prison in September 2010 after serving the reduced sentence.

On January 8, 2009, Palm Beach County Commissioner Mary B. McCarty resigned her post, stating that she had failed to disclose free and discounted hotel rooms provided to her by a company doing business with the county, and also had failed to recuse herself on county bond issues that benefited companies that employed her husband. The benefits to the McCarty’s were said to have been in the amount of \$300,000. Mrs. McCarty pleaded guilty to depriving the public of her honest services, and was sentenced on June 4, 2009, to serve a prison term of 42 months, to be followed by three years of supervised release, plus pay a fine in the amount of \$100,000. The McCarty’s had previously forfeited \$272,000 to the U.S. government. Mrs. McCarty was recently released from a Texas prison and is now serving the remainder of her sentence at a halfway house near West Palm Beach. Her husband was sentenced to a prison term of eight months.

The Palm Beach County Commission has adopted several ethics reforms, including the creation of an ethics commission and an inspector general as an independent “watchdog.” On November 2010, Palm Beach County voters approved an amendment to the Palm Beach County Charter that would expand the jurisdiction of the ethics commission and inspector general.

On March 17, 2011, "Operation Dirty Water," a sting operation of the Palm Beach County State Attorney's Office, netted the arrest of thirteen persons on bribery and racketeering charges. Investigators discovered that an engineering contractor gave \$90,000 worth of gifts -- including cruises, gift cards, sporting event tickets and jewelry -- to the public employees in exchange for water and sewer contracts with his firm. Those arrested included present and former public utility employees from Wellington, Port St. Lucie, Boynton Beach, West Palm Beach, Delray Beach, Sarasota County, and Palm Beach County. Boynton Beach Utilities Maintenance Manager Anthony Lombardi reportedly received \$600 in gift cards and tickets to a NASCAR race from the engineering contractor. Clifford Beatty, former deputy director of public works for Delray Beach and current deputy director of the Northern Palm Beach County Improvement District, is accused of receiving hunting trips and NASCAR race tickets from the contractor. Rodney Jones, Project Manager at Sarasota County, reportedly received jewelry, Caribbean cruises, and Disney vacations from the engineering contractor.

15. Levy County, Florida. On December 4, 2009, a jury found former Levy County Commissioners William Samuel Yearty and Robert Anthony Parker guilty on charges of one count of conspiracy to commit bribery and one count of bribery, in connection with their offers of approval for real estate developments in exchange for money and other inducements. Yearty was also convicted of one count of knowingly making a false or fraudulent statement to a federal investigator. Parker was sentenced to 6 months of house arrest, 5 years of probation, and 500 hours of community service. Yearty was sentenced to 33 months in federal prison, followed by 3 years of probation, and was fined \$10,000.

16. Dixie County, Florida. On August 6, 2009, former County Commissioners Alton Land and John Lee Driggers, along with retired building and zoning inspector Billy Keen, Jr.,

were convicted for solicitation of bribes, conspiracy to commit that offense, and lying to federal agents, for accepting money and other inducements to approve rezonings and real estate developments. Keen was also convicted of federal program fraud for obtaining grant funds in his girlfriend's name to renovate his personal home. Keen received a 78-month prison sentence, and was ordered to forfeit a house and pay \$32,010 in restitution. On January 13, 2010, Land and Driggers were both sentenced to 37 months in federal prison.

Two Cross City officials, Councilman Marcellus Dawson and City Superintendent Johnny Miller Green, were convicted on January 8, 2010 of conspiracy and accepting bribes. Greene was also convicted for making false statements to the FBI. The officials allegedly offered their approval of building projects to an undercover agent in exchange for money and other inducements. Dawson accepted \$1,600 and Greene accepted \$600 from the undercover agent. Green was sentenced to 6 months of house arrest, 5 years of probation, and 500 hours of community service. Dawson was sentenced to 27 months in prison to be followed by two years of probation.

On October 9, 2009, former Dixie County Attorney Joseph T. (Joey) Lander was convicted of six felony counts of mail fraud and 11 felony counts of money laundering, for fraudulently requiring developers to pay him personally for performance bonds for developments, plus using his position to entice others to invest in his start-up vitamin business. It is estimated that he pocketed over \$1 million during a period of 18 months. He was sentenced to 87 months in federal prison plus three years probation, ordered to pay a \$50,000 fine and \$1,600 in court costs, and had to forfeit his co-ownership in a local weekly newspaper.

17. St. Johns County, Florida. On July 31, 2009, former St. Johns County Commissioner Thomas G. Manuel pleaded guilty to one count of bribery for taking a \$10,000

bribe from a developer to obtain approvals for a development known as Twin Creeks. According to the Factual Basis filed in this case by the U.S. government, Mr. Manuel met with an attorney for the developer and the developer, and pressured the developer to make charitable donations to various organizations. The attorney and developer informed the FBI of this matter and began recording conversations with Mr. Manuel. Mr. Manuel continued to tell the developer to make contributions to various charitable organizations, or the developer's future business before the County Commission would be in jeopardy. Mr. Manuel subsequently accepted \$10,000 in cash and then \$50,000 in cash from the developer for Mr. Manuel's continued support. After accepting the \$50,000 cash payment, Mr. Manuel was immediately detained by the FBI and the \$50,000 was seized. He was sentenced to 21 months in prison, to be followed by 16 months of house arrest and three years probation.

18. Monroe County, Florida. In 2005 former Monroe County Mayor John L. "Jack" London pleaded guilty to one count of tax fraud for the receipt of a \$29,000 bribe from a lobbyist hired by a real estate developer to help obtain building permits for a Marathon hotel project. The funds were used to satisfy a real estate lien on property London owned in Ireland. As part of his plea Mr. London also agreed to testify in the government's case against former County Attorney James T. Hendrick, who had acted as a conduit between London and the lobbyist. However, prior to the trial of Hendrick, Mr. London died of natural causes. In 2007 Hendrick was found guilty of one count of conspiracy, one count of obstruction of justice, and two counts of witness tampering, and received five years probation. On appeal, the 11th Circuit Court of Appeals upheld the convictions but found the sentence to be unreasonable (i.e., not tough enough) and remanded the case for resentencing. On September 11, 2009, Mr. Hendrick

was re-sentenced to probation, plus house arrest, a \$50,000 fine, and 1,500 hours of community service.

19. Broward County, Florida. In the early morning of September 23, 2009, three Broward public officials were arrested in a federal sting dubbed “Operation Flat Screen.” Broward County Commissioner Josephus (“Joe”) Eggelletion was charged with conspiring to launder money and filing a false tax return, for his role in the laundering of more than \$900,000 through a Bahamas bank account. Mr. Eggelletion pleaded guilty to these charges and was sentenced to 30 months in prison. He agreed to cooperate with state prosecutors in the cases involving his co-conspirators.

Broward County School Board member Beverly Gallagher was charged with five counts of honest services fraud, one count of extortion and one count of bribery, for allegedly accepting \$12,500 in cash, boat trips and restaurant meals, to steer school board construction projects to undercover FBI agents posing as subcontractors. She subsequently pled guilty to the charge of bribery and was sentenced to 37 months in prison to be followed by three years of supervised release.

Former Miramar City Commissioner Fitzroy Salesman was also arrested for mail fraud, extortion and bribery, for allegedly receiving \$3,340 to steer two city construction contracts to undercover FBI agents. A videotape showed Salesman accepting cash from the undercover agents. A jury convicted him of two counts of bribery and two counts of extortion under color of official right, but acquitted him of the honest services mail and wire fraud charges. He was sentenced to 51 months in prison.

In 2007, former Broward County Sheriff Ken Jenne, who was also a former state prosecutor and former state senator, was convicted of one count of mail fraud and three counts of

income tax evasion, for receiving money and favors from various vendors, including his former law firm. He served 10 months in prison and was ordered to pay a fine and taxes due. He recently lost an appeal before the First District Court of Appeal to restore the state pension he forfeited following his conviction.

In September 2007, former City of Hollywood Commissioner Keith Wasserstrom was convicted on two felony counts of official misconduct for failing to disclose financial ties to a sludge company that won an \$18 million contract with the city. He was sentenced to 60 days in jail and four years probation, which he appealed. A state appeals court recently upheld the conviction.

On July 6, 2010, former Broward County Commissioner Diana Wasserman-Rubin was arrested on seven counts of unlawful compensation in violation of Section 838.016, Florida Statutes, for voting on several grant applications that were written by her husband, a grant writer. Approval of the grant applications resulted in bonuses of \$45,000 being paid to her husband. At other times she abstained from voting on the properties affected by the grants, but she did not state that she had a voting conflict, nor did she file Form 8B (Memorandum of Voting Conflict) as required by Section 112.3143, Florida Statutes.

On October 4, 2010, Broward County School Board Member Stephanie Kraft was charged with unlawful compensation, bribery, official misconduct, and conspiracy to commit unlawful compensation/bribery, in connection with helping a developer to reduce his development fees for a building project by more than \$500,000. Kraft's husband, Mitchell Kraft, also faces charges. It is alleged that the developer paid Mitchell Kraft to sway Stephanie Kraft, and pursuant to Mitchell Kraft's influence, Stephanie Kraft placed the developer's request for a reduction in development fees on the School Board's agenda.

In June of 2010, City of Tamarac Commissioner Patricia Atkins-Grad was arrested on charges of allegedly accepting \$6,300 from developers in exchange for voting in favor of their developments.

Former City of Tamarac Deputy Mayor Marc Sultanof was charged on November 2, 2010, with three counts of official misconduct, one count of bribery, one count of unlawful compensation, and one count of conspiracy to commit unlawful compensation, for allegedly accepting \$30,000 from two developers in exchange for voting in favor of their developments.

In 2010, the Broward County Commission adopted a more stringent code of ethics. The new code prohibits county commissioners as well as county staff from accepting gifts of any value from lobbyists, employers of lobbyists, vendors, or contractors of the county. This means that items as small as a mint or a cup of coffee cannot be accepted from lobbyists or vendors. In addition to the gift ban, county commissioners and staff must keep a disclosure log, which will be available online, of all contact with lobbyists. The code of ethics will be enforced by an inspector general, who will be hired in 2011.

20. Miami. On November 13, 2009, Miami Commissioner Michelle Spence-Jones was charged with grand theft of the second degree for allegedly funneling \$50,000 in grant funds to a family business. She was subsequently charged on another second degree grand theft charge, as well as a bribery charge, for allegedly accepting money for her vote on an ordinance to change the name of a street. In March of 2011 a jury acquitted her of the charges.

On November 13, 2009, Miami Commissioner Angel Gonzalez was charged with a misdemeanor count of exploitation of public position for orchestrating his daughter's employment at a construction company without her actually having to report for work. Earlier in

the year Gonzalez was cited for failing to report \$135,000 in rental income on his financial disclosure forms, but he amended the forms and paid a \$2,500 fine.

On November 30, 2009, City of West Miami Mayor Cesar Raul Carasa was charged with two counts of exploitation of official position, relating to his use of a city-issued cell phone to make personal long distance phone calls to the Dominican Republic and other locations outside the United States in excess of \$70,000.

21. Orange/Osceola County, Florida. Since 2001, the Government Accountability Unit of the Orange/Osceola State Attorney's Office has investigated nearly 50 public officials, political candidates and consultants, for public corruption and election law violations. Most of the cases were dropped, but three did result in guilty verdicts.

On April 27, 2010, Orange County Commissioner Mildred Fernandez was arrested by the Florida Department of Law Enforcement. She was subsequently indicted on 14 counts, for allegedly committing bribery and grand theft, and for accepting illegal cash campaign contributions to her mayoral campaign, in exchange for agreeing to push building projects through the Planning Department. Her case is expected to go to trial in May 2011.

In 2006, Ernest Page, a former Orlando City Commissioner, was convicted of bribery and corruption, for allegedly threatening to stop a condominium conversion project if the developers did not include him in the deal. He was sentenced to 3-1/2 years in prison.

In 2006, Robert M. ("Bob") Day, the former Osceola County Property Appraiser, was sentenced to six months in county jail following his conviction of felony grand theft. He allegedly utilized county employees to work on his re-election campaign and to perform repairs to his home while on county time.

22. Hillsborough County. Florida Senator Jim Norman, a former member of the Hillsborough County Commission, is presently under a federal grand jury investigation regarding a \$500,000 gift received by Norman's wife in 2006 from a late Hillsborough County businessman. The Norman's assert that the money was a loan to purchase a house in Arkansas; however, there is apparently no written agreement or repayment schedule for the loan.

VI. Other Developments.

Statewide Grand Jury. At the request of Governor Charlie Crist, the Supreme Court of Florida entered an order on December 2, 2009, directing the impanelment of a statewide grand jury for a period of 12 months to investigate crimes committed by local and state officials when acting in their official capacity. The Honorable Victor Tobin, Chief Judge in and for the Seventeenth Judicial Circuit (Broward County), was designated as the presiding judge over the statewide grand jury.

On December 29, 2010, the Statewide Grand Jury issued its First Interim Report entitled "A Study of Public Corruption in Florida and Recommended Solutions." The Report is 127 pages in length and is divided into three sections: (1) Criminal Revisions, which includes an examination of the anti-corruption crimes in Florida and suggests steps to expand and strengthen the existing laws; (2) Regulatory Enforcement, which includes recommending that the Commission on Ethics be authorized to self-initiate investigations; and (3) Education, Training and Culture, which recommends mandatory training in ethics. According to the Report, Florida has led the nation in the number of public officials convicted of a federal offense. The Report states that between 1998 through 2007, 824 public officials in Florida were convicted of a federal offense. New York was second with 704 convicted public officials, and Nebraska had the fewest.