

# Ethics for an Outsourced Government

Kathleen Clark

Professor of Law, Washington University in St. Louis

[kathleen@wustl.edu](mailto:kathleen@wustl.edu)

June 17, 2011

Administrative Conference of the United States

# An Illustration of the Problem

- Dan Jester
  - Advised Treasury on AIG bailout
  - Owned Goldman Sachs stock
  - Handled AIG bailout in a way that benefited Goldman Sachs -- and himself

# Criminal Conflict of Interest Statute

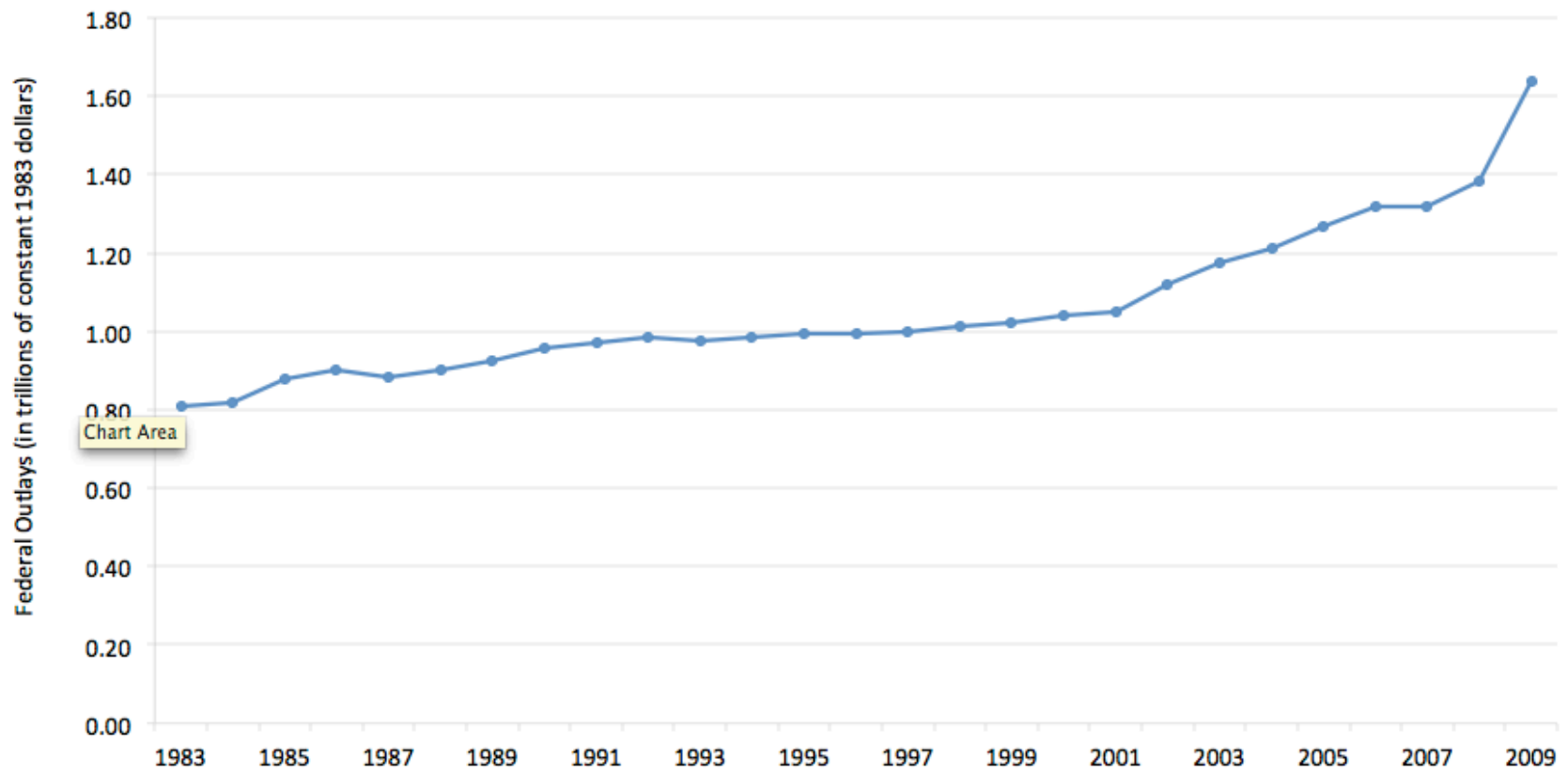
18 U.S.C. § 208(a) (excerpt)

. . . [W]hoever, being **an officer or employee** of the executive branch . . . **participates personally and substantially . . . through** decision, . . . recommendation, **the rendering of advice, . . . in a . . . particular matter in which, . . . he . . . has a financial interest--**

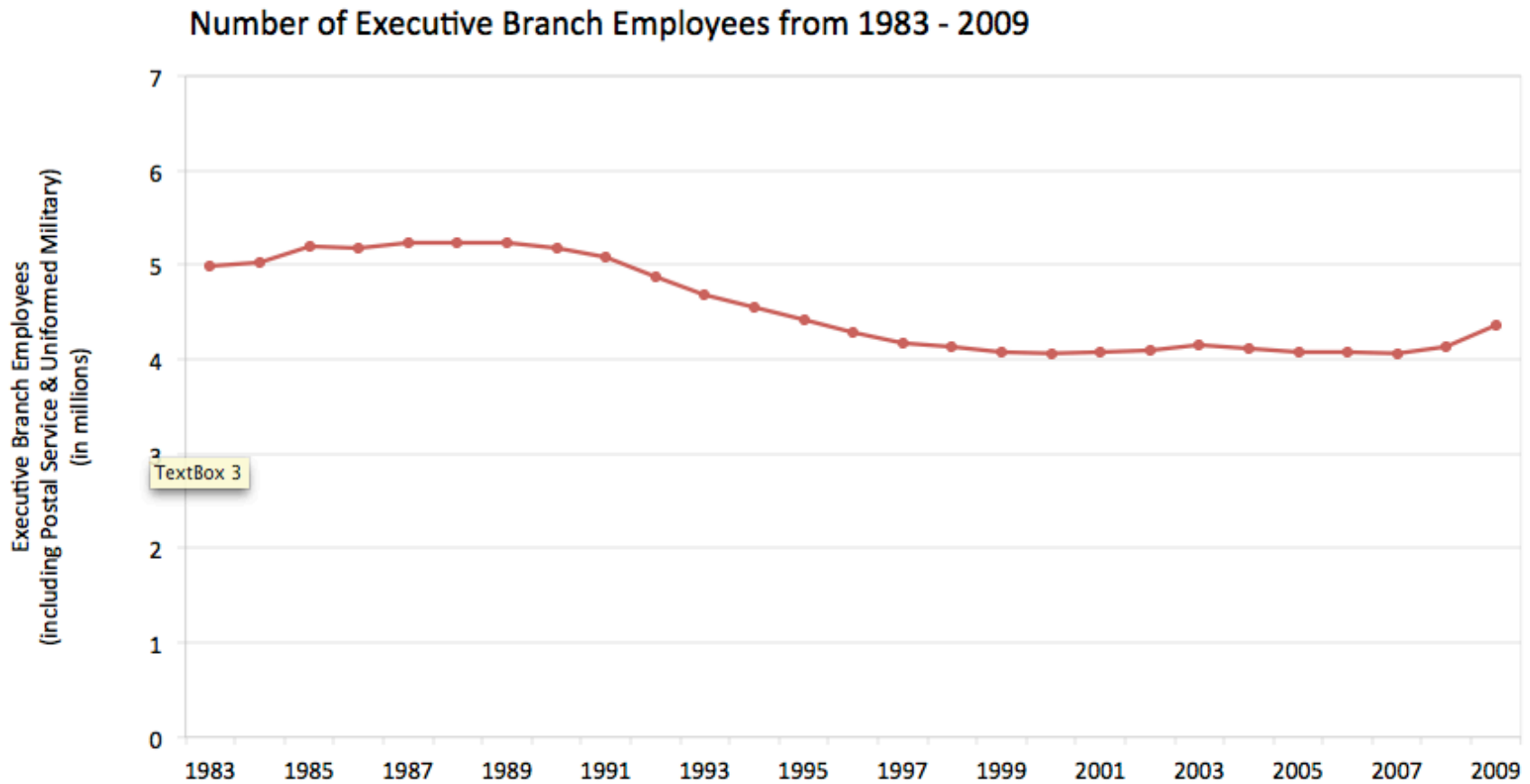
Shall be subject to the penalties set forth in section 216 of this title.

# Federal Government Spending

Expansion of Federal Government Spending from 1983 - 2009



# Number of Federal Employees



# Spending on Service Contracting



# Restrictions on Govt. Employees

- **financial influences** on an employee's government work;
- the **use of government position** for non-government purposes;
- an employee's **outside activities**;
- an employee's **post-government** employment; and
- restrictions based on an employee's **pre-government** employment.

# Key Principles Underlying Government Ethics Restrictions

- 1) Fiduciary nature of public office
- 2) Need to maintain public's confidence in government



# Few Ethics Restrictions on Govt. Contractor *Personnel*

- A few agencies have narrow regulations re: Contractor Employee Personal Conflicts of Interest (“PCI”)
- Proposed Regulation for PCI in “Metacontracting” -- Contractors who assist the government in contracting
- One agency – FDIC – has comprehensive ethics standards for contractor personnel
- Regulation of Contractors’ *Organizational* Conflicts of Interests (“OCI”)
- Contractors’ Internal Ethics Codes

# Methodology

90+ interviews with:

- Executive Branch officials:
  - » Procurement
  - » Ethics
- Government Investigators
  - » IGs
  - » GAO
- Contractors & their trade associations
  - » Professional Services Council (PSC)
  - » Defense Industry Initiative (DII)
- NGOs
  - » good government groups
  - » unions
- Hill staffers
- False Claims Act lawyers