

Ethics for an Outsourced Government

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Acknowledgment

(my own conflict of interest?)

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Methodology

90+ interviews with:

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

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

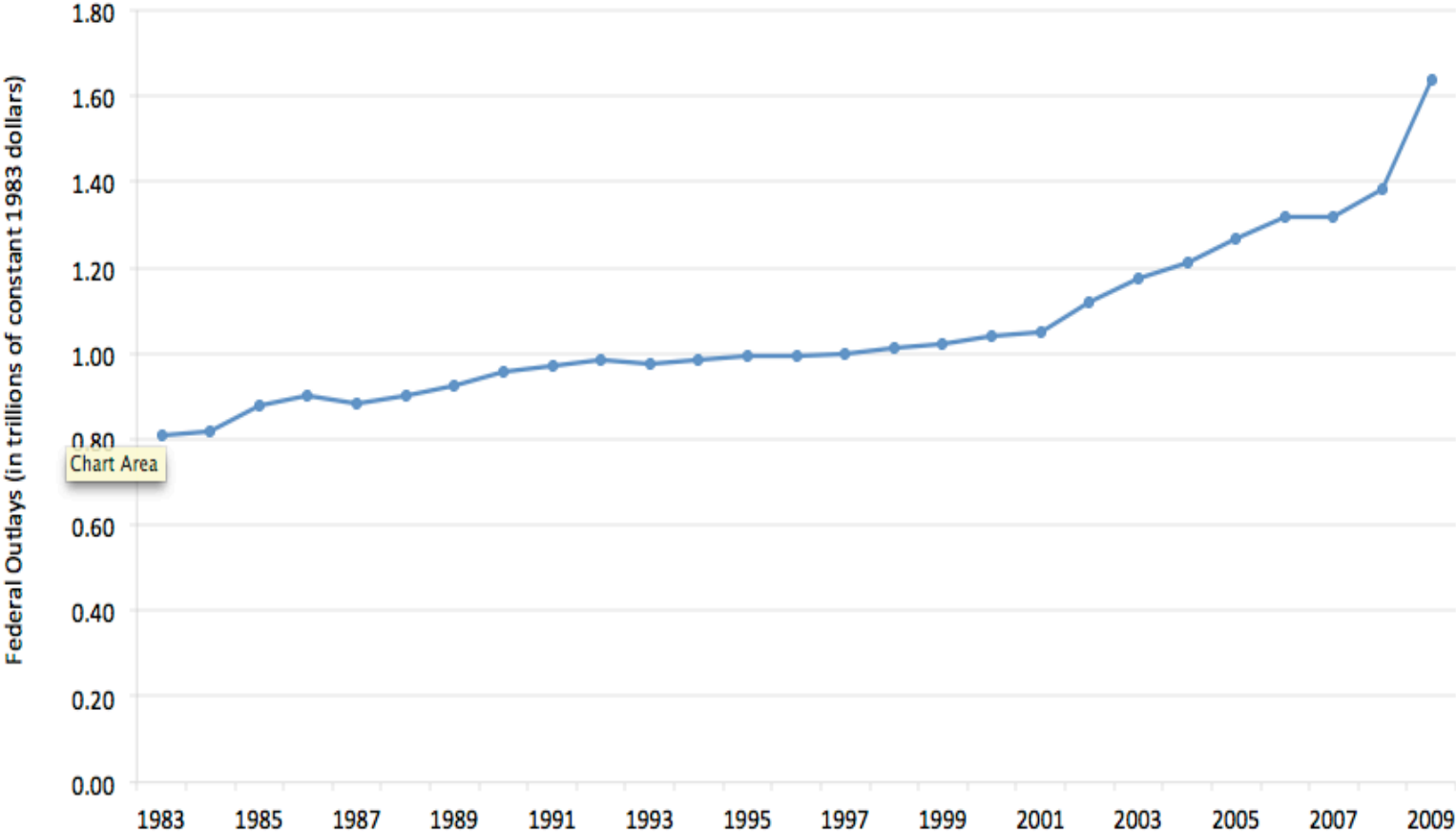
Criminal Conflict of Interest Statute

18 U.S.C. § 208(a) (excerpt)

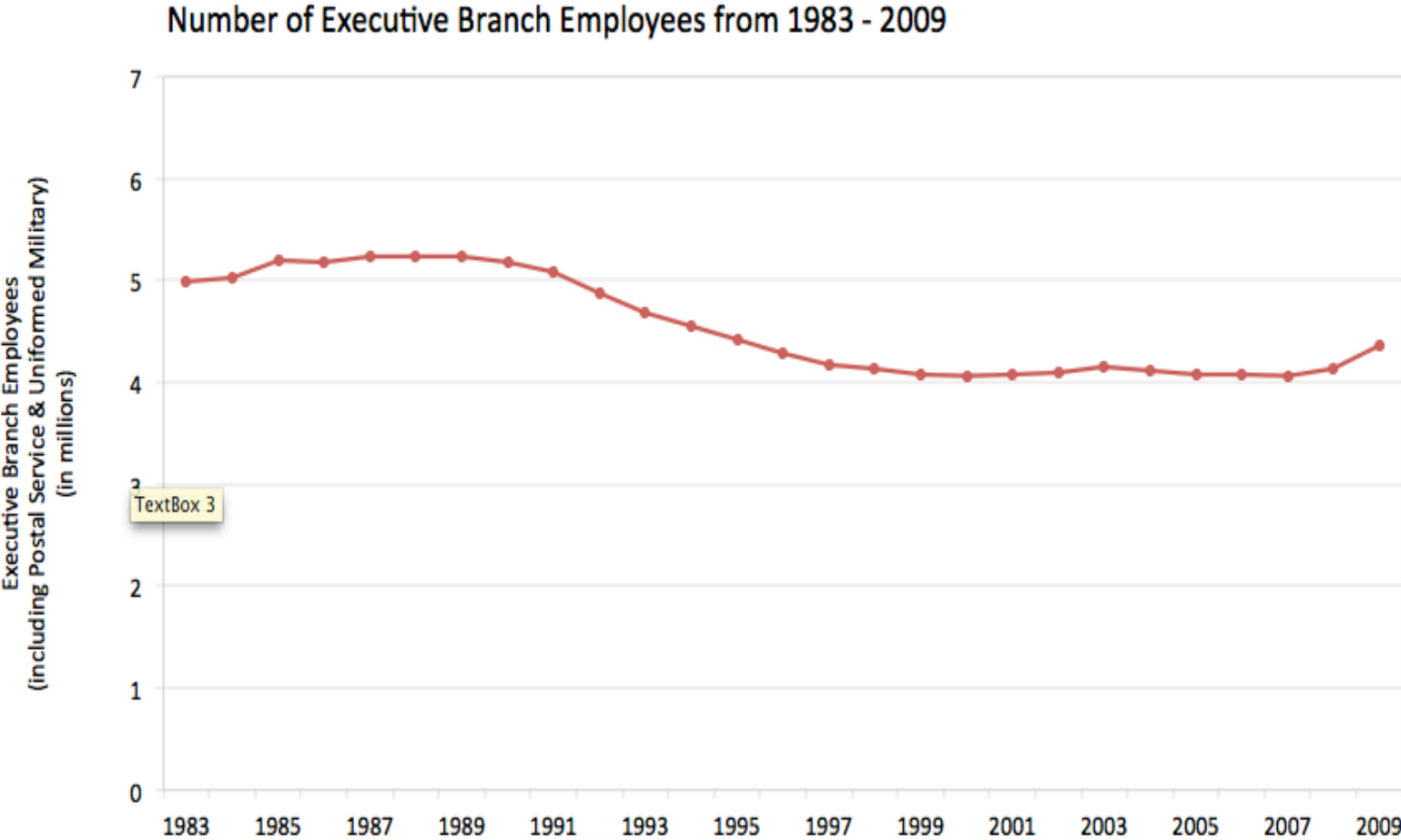
“ . . . [W]hoever, being **an officer or employee** of the executive branch . . . **participates personally and substantially . . . through . . . the rendering of advice, . . . in a . . . particular matter in which, . . . he . . . has a financial interest**”

Federal Government Spending

Expansion of Federal Government Spending from 1983 - 2009



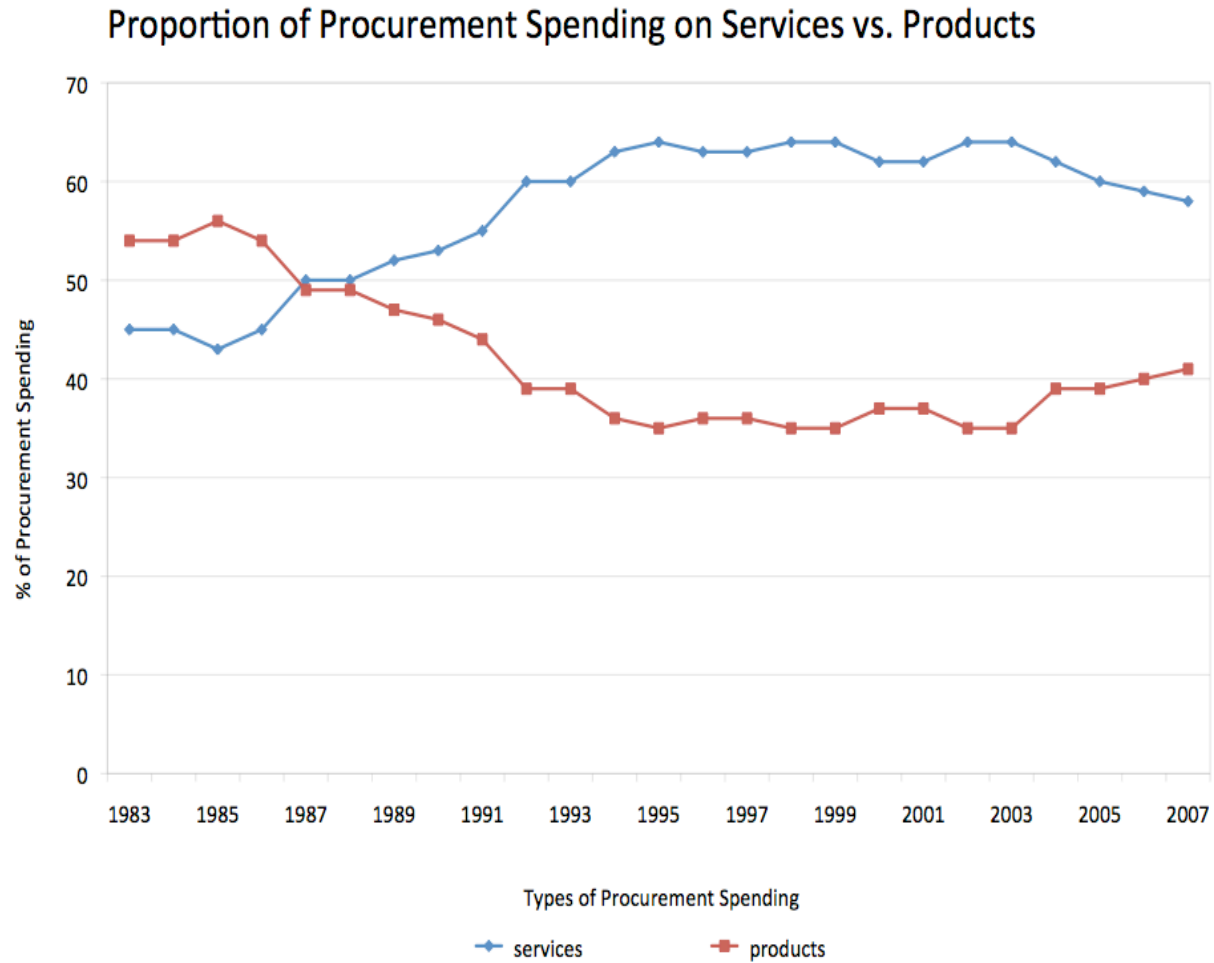
Number of Federal Employees



Spending on Service Contracting



Spending on Services v. Products



Ethics Restrictions on Government 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.

One Size Does Not Fit All

- Stricter Ethics Rules for Employees in Sensitive Positions
 - High-Level Officials
 - Procurement Officials & Bank Examiners
- Looser Rules for Temporary Employees (“Special Government Employees” or SGEs)

Principles Underlying Government Ethics Restrictions

- (1) Express **fiduciary** nature of public office
- (2) Shore up **public's confidence** in government
- (3) Maintain Congressional and executive branch **control** of federal resources; and
- (4) Ensure that officials devote **adequate attention** to their responsibilities.

Few Ethics Restrictions on Government Contractor *Personnel*

- A few agencies have narrow regulations re: Contractor Employee Personal Conflicts of Interest (“PCI”)
- Proposed Regulation for PCI in “Meta–contracting”
-- Contractors who assist the government in contracting
- Government–Wide Regulations re: Contractors’ *Organizational* Conflicts of Interests (“OCI”)
- Contractors’ Internal Ethics Codes

Exception: FDIC

- Deems contractor personnel who are supervised by government managers to be government employees
- Has comprehensive ethics regulations for its contractors' personnel
 - *Financial influences* (including interests of close family members)
 - *Misuse of government resources* (including information)
 - *Outside activities*
 - *Post-employment*

For more information:

Ethics for an Outsourced Government

ACUS

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1840629

*Fiduciary-Based Standards for Bailout Contractors:
What Treasury Got Right and Wrong in TARP*

MINN. L. REV.

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1860184

Financial Conflicts of Interest In and Out of Government

ALAB. L. REV.

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1785520

ACUS Recommendations:

- (1) Optional FAR clauses for contracts with high risk of:
 - personal conflicts of interest (COIs) or
 - misuse of certain non-public information.

- (2) Contractors must:
 - train employees to recognize their own COIs
 - require employees to report COIs internally
 - screen conflicted employees from contract work
 - disclose employee misconduct (& resulting discipline) to government

- (3) These clauses will not supplant already existing agency contractor ethics programs

- (4) Agencies not covered by the FAR should consider using these clauses

A continuing discussion . . .

Questions

Comments

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