

**Service Contracting  
and  
Government Ethics Standards**

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**Acknowledgment**

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(ACUS)

**Methodology**

90+ interviews with:

- Executive Branch:
  - Ethics
  - Procurement
- Government Investigators
  - IGs
  - GAO
- Contractors
  - PSC
  - DII
- NGOs
  - unions
  - POGO et al.
- Capitol Hill
- False Claims Act lawyers

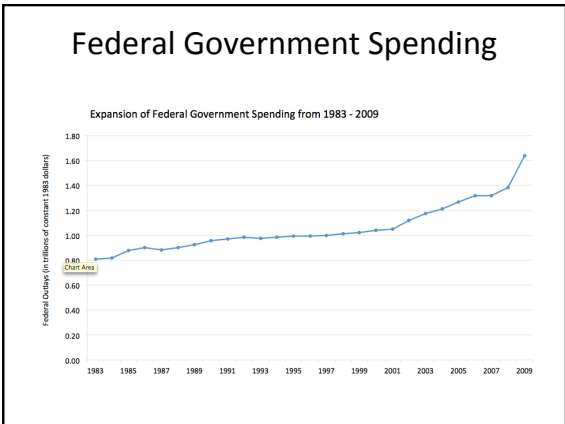
**An Illustration of the Problem**

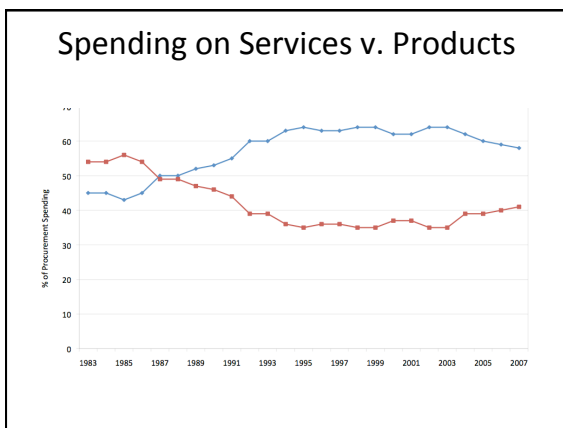
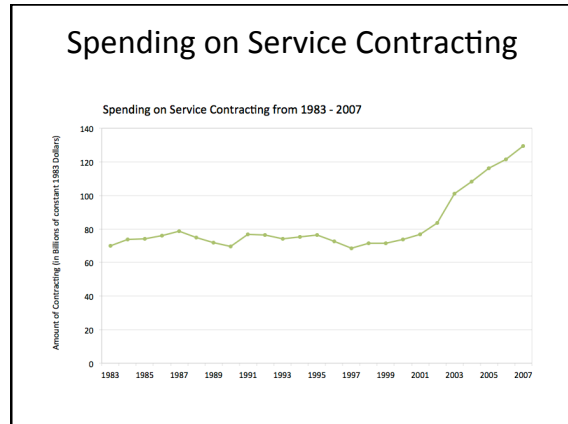
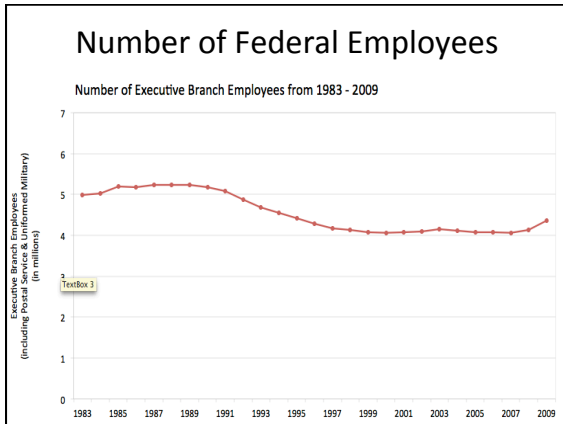
Dan Jester

- 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)

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”**





- ### Ethics Restrictions on Government Employees
- financial influences
  - use of government position
  - outside activities
  - post-government employment
  - pre-government employment

- ### One Size Does Not Fit All
- Stricter Rules - Sensitive Positions
    - High-Level
    - Procurement
    - Bank Examiners
  - Looser Rules - Temporary Employees  
"Special Government Employees" or SGEs

- ### Principles Underlying Government Ethics Restrictions
- (1) **Fiduciary** nature of public office
  - (2) **Public's confidence** in government
  - (3) Congressional and executive branch **control** of federal resources
  - (4) Devote **adequate attention**

**Few Ethics Restrictions on Government Contractor *Personnel***

- A few agencies - *narrow* regulations re: contractor PCI
- Government-Wide Regulations re: Contractors' OCI
- Contractors' Internal Ethics Codes

**Exception: FDIC**

- Deems some contractor personnel to be government employees
- Comprehensive regulations for contractors personnel
  - *Financial influences* - including family
  - *Misuse of government resources* - including info
  - *Outside activities*
  - *Post-employment*

**ACUS Recommended:**

Optional FAR clauses for contracts with high risk of:

- personal conflicts of interest (PCI)
- misuse of non-public information

Contractors must:

- train
- internally report PCIs
- screen employees
- externally report (to government) violations

**New FAR Clause on PCI**

Contractor personnel who perform acquisition functions closely associated with inherently governmental functions

**Publications**

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*Fiduciary Standards for Bailout Contractors: What Treasury Got Right and Wrong in TARP,*  
95 Minn. L. Rev. 1614 (2011)

*Financial Conflicts In and Out of Government: Ethics, Employees and Contractors,*  
62 Alab. L. Rev. 955 (2011)

Ethics for an Outsourced Government  
Administrative Conference of the United States (2011)

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