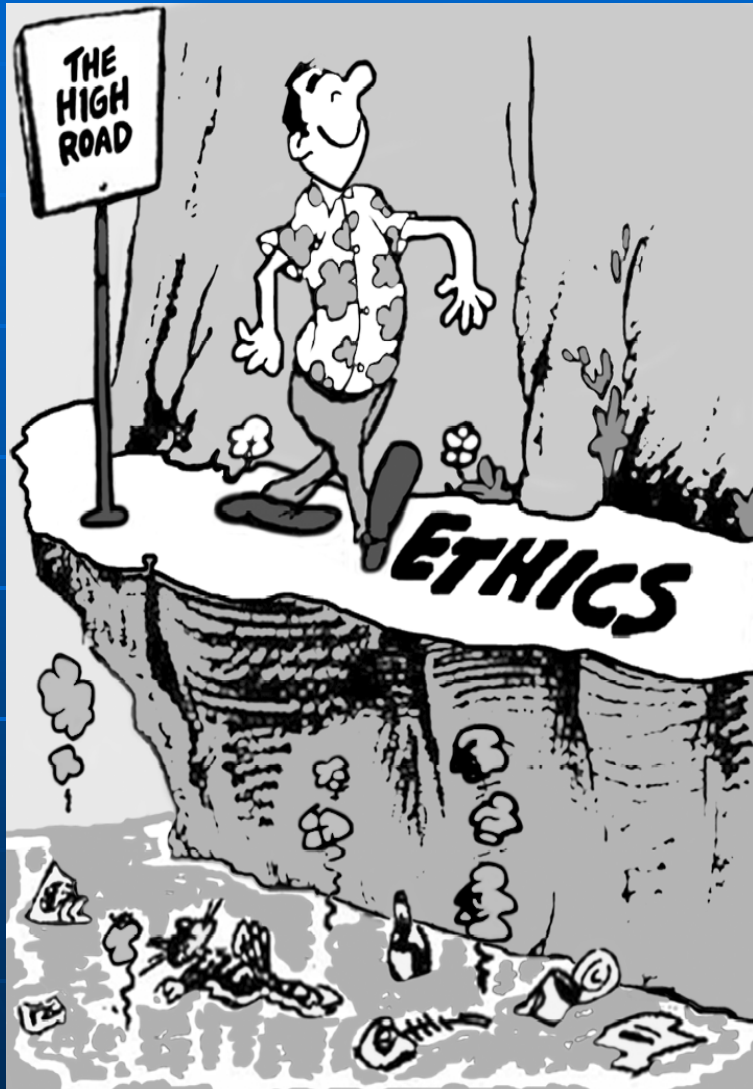


HOBBS ACT, HONEST SERVICES ACT & MORE





Ethics: "Of or relating to moral action, conduct, motive or character... [p]rofessionally right or befitting."

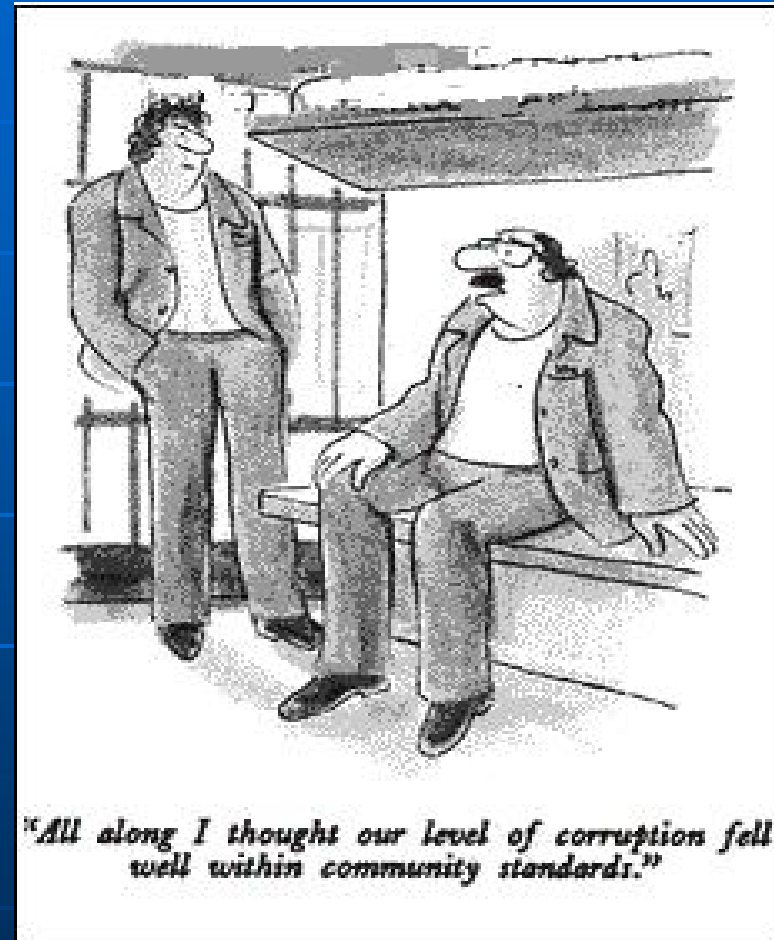
"Ethics is knowing the difference between what you have the right to do and what is the right thing to do."

Federal Public Corruption Convictions from 2003-2013

Texas: 870

California: 678

Florida: 622



HOBBS ACT

Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years, or both



Extortion means “the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right”

This law was primarily enacted to combat racketeering but it is also used in public corruption cases

Conviction under Hobbs Act will be sustained based upon proof that a public official obtained payment in cash and/or property and *generally* intended to use his or her influence to benefit the payor as opportunities arose

No. 14-361

In the
Supreme Court of the United States

SAMUEL OCASIO,

PETITIONER,

v.

UNITED STATES OF AMERICA,

RESPONDENT.

Supreme Court affirmed convictions of Baltimore police officer for extortion and conspiracy to commit extortion

Officer participated in a scheme to get car owners who were involved in accidents to take their vehicles to the Majestic Body Shop in exchange for a \$150 - \$300 referral fee

Body shop owners were extorted, yet were also part of the scheme

Supreme Court found that to be convicted under the Hobbs Act it was not necessary to extort money or property from persons who were not part of the conspiracy

Honest Services Act

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 mail, 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 (18 U.S.C. §§ 1341 & 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)

Then Came Skilling

Jeffrey K. Skilling, former Enron CEO...

Enron was worth over \$60 billion and its stock sold at \$90 per share, but fraud and faulty accounting led to the 6th largest bankruptcy in U.S. history

Skilling was convicted of one count of conspiracy (premised on honest services fraud), 12 counts of securities fraud, 5 counts of making false representations to Enron's auditors, & 1 count of insider trading

He appealed his convictions, arguing that the honest services law was unconstitutionally vague...



Supreme Court Decision

In Skilling v. United States, 130 S. Ct. 2896 (2010), the U.S. Supreme Court held that § 1346 (mail fraud statute) criminalizes **only** those schemes that involve bribes or kickbacks

Court found that non-disclosure of a conflict of interest is **not** a violation of the honest services fraud statute

Therefore, honest services fraud statute is **not** unconstitutionally vague when properly confined to bribery and kickback schemes

Skilling Epilogue

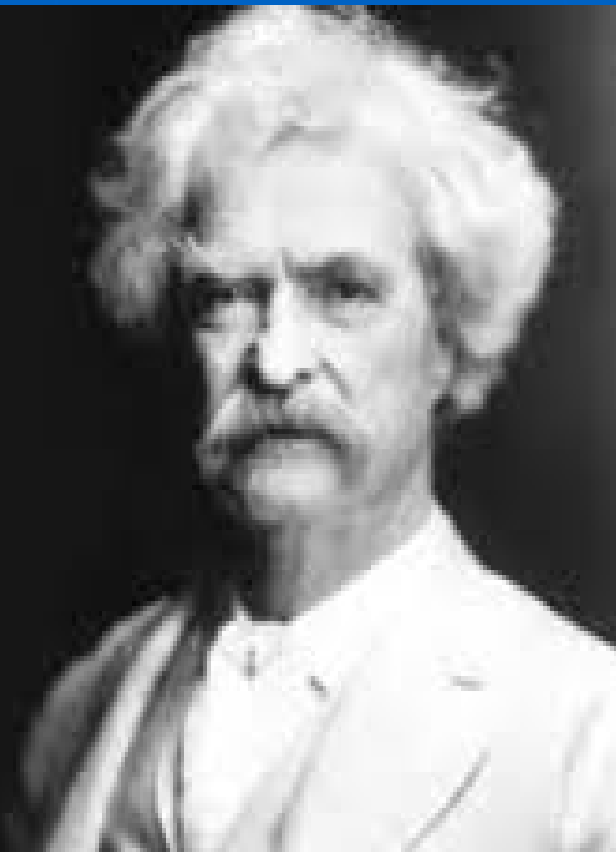
Jeffrey Skilling has been in jail since 2006, and after years of legal wrangling, a deal was reached

Skilling's sentence was reduced from 24 years to 14 years

More than \$40 million of his fortune (which had been frozen since 2006) will be distributed to victims of Enron's collapse

It had been speculated that the Skilling case would significantly curtail honest services fraud convictions, but...

The reports of the
death of honest
services fraud
have been greatly
exaggerated.



On September 4, 2014, former Virginia Governor Robert F. (Bob) McDonnell and his wife, Maureen G. McDonnell, were found guilty of several counts of public corruption

Allegedly participated in a scheme to use his official position to obtain over \$170,000 in loans & gifts, including cash, golf outings & equipment, Rolex watch, designer clothes, trips, etc., from a businessman in exchange for promoting diet supplements

He was sentenced to 2 years; she was sentenced to one year and a day



BUT, the former Governor appealed to the U.S. Supreme Court

Court rejected arguments that the Honest Services and Hobbs Act are unconstitutionally vague

However, the Court did vacate the Governor's convictions due to incorrect jury instructions concerning the term "official act"

"Official act" is more than just setting up a meeting, calling another public official or hosting an event to discuss a particular issue



State Ethics Laws

All of the states have enacted laws to uphold ethical conduct in public service and to assess penalties for public corruption

Typically pertain to financial disclosure, conflicts of interest, nepotism, gifts & honoraria, campaign finance, lobbying, & felony offenses such as embezzlement & bribery

A frequent complaint about state ethics laws is lack of oversight & enforcement

In Florida (& likely in other states) it is unlawful for a person to pay or receive a commission, bonus, kickback, or rebate, or engage in any split-fee arrangement with a physician, surgeon, organization, or person, either directly or indirectly, for patients referred to a particular hospital

And unlawful for a health care provider or provider of health care services to offer, pay, solicit, or receive a kickback for referring or soliciting patients

These laws might come into play if a city or county runs a hospital or ambulance service



State Ethics Commissions

Hawaii was the first state to create an independent ethics commission

41 states have independent ethics commissions

Issue advisory opinions; investigate complaints of ethics violations; administer financial & gift disclosure laws; administer lobbyist registration and reporting laws; & educate elected officials & the public on ethics

9 states do not have an independent ethics commission, including New Mexico, Idaho, Arizona, North Dakota, South Dakota, Vermont, Virginia, Wyoming, & New Hampshire



Sweeping ethics reforms in Florida

Authorized the Commission on Ethics to investigate alleged ethics violations based upon a written referral from Governor, Dept. of Law Enforcement, state attorney, or U.S. attorney

Required constitutional officers & elected municipal officers to annually complete 4 hours of training on ethics, open meetings & public records laws

Gave the Commission more tools to collect unpaid fines for ethics violations (wage garnishment, collection agency)

Increased the statute of limitations for collecting unpaid fines to 20 years

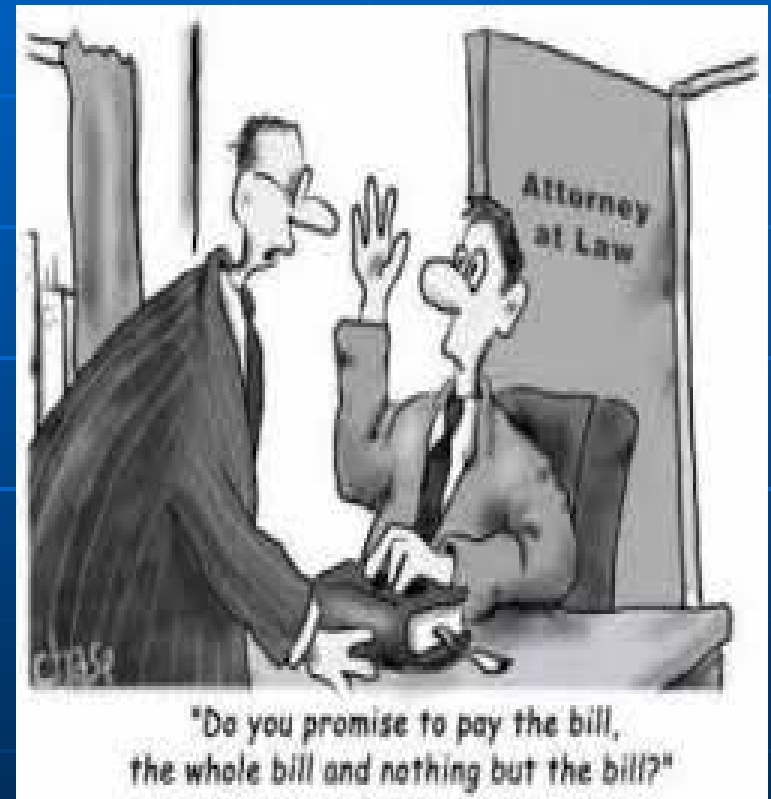


Defense of Actions

State & local governments are typically authorized by state law to defend civil actions for damages or injuries suffered as a result of any act of omission of its officers, employees or agents arising out of their official duties and while serving a public purpose

Principles of common law also provide indemnification for successful defense of criminal charges

Without this, there could be a chilling effect on public service



Sansom Case

On February 26, 2015, a non-jury trial was held in Tallahassee concerning the payment of legal fees incurred in the defense of Raymond Sansom

Sansom, who served briefly as the Speaker of the Florida House of Representatives, had been charged with official misconduct, perjury, theft and conspiracy to commit theft, but the charges were dropped

Judge ruled that the state must pay the legal fees incurred by Sansom to defend the charges

Parties agreed to settle the matter for \$600,000

Leon County Cases

Maloy v. Board of County Commissioners of Leon County, 946 So. 2d 1260 (Fla. 1st DCA 2007), *rev. den.* 962 So. 2d 337 (Fla. 2007)

- Although the commissioner was successful in defending an ethics charge, his conduct did not serve a public purpose and the County did not have to pay his attorney's fees

Leon County v. Stephen S. Dobson, III, P.A., 957 So. 2d 12 (Fla. 1st DCA 2007), *rev. den.* 962 So. 2d 337 (Fla. 2007)

- Commissioner was successful in defending criminal charges arising out of official duties and was entitled to payment of his attorney's fees

High Profile Cases

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

October 2012 Grand Jury

CR 14-0103

UNITED STATES OF AMERICA,

Plaintiff,

v.

RONALD S. CALDERON and
THOMAS M. CALDERON,

Defendants.

CR No. 14

I N D I C T M E N T

[18 U.S.C. § 1341: Mail Fraud; 18 U.S.C. § 1343: Wire Fraud; 18 U.S.C. § 1346: Honest Services Fraud; 18 U.S.C. § 666: Bribery Concerning Programs Receiving Federal Funds; 18 U.S.C. § 1956(h): Conspiracy to Commit Money Laundering; 18 U.S.C. § 1956(a)(1)(B)(i): Money Laundering; 26 U.S.C. § 7206(2): Aiding in the Filing of False Tax Return]

The Grand Jury charges:

Former California State Senator Ronald S. Calderon recently pleaded guilty to one count of honest services mail fraud

Accepted bribes from the owner of a Long Beach hospital in exchange for agreeing to support legislation that would help the owner maintain a massive health care fraud scheme

Also accepted payments from undercover FBI agents who were posing as film studio agents, in exchange for agreeing to support legislation that would help the studio

His brother also pleaded guilty to money laundering

Sentencing is forthcoming

Sheldon Silver, former Speaker of the N.Y. State Assembly, sentenced to 12 years in prison following conviction for honest services fraud, money laundering & extortion

Received over \$4 million in legal fees in exchange for official acts to benefit a cancer researcher and two real estate developers

Also ordered to forfeit \$5.2 million and pay \$1.75 million in fines



Kwame Kilpatrick, former Mayor of Detroit, was found guilty of 24 counts of extortion, mail fraud, racketeering, and tax violations

Extorted city vendors, rigged bids, took bribes, & defrauded the state & non-profit donors, to enrich himself, friends & family

Sentenced to 28 years

32 others, including his father, were also convicted

Has appealed to the Supreme Court



Former Illinois Governor Rod R. Blagojevich...



Convicted of honest services fraud & Hobbs Act violations

Allegedly 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)

Is serving a 14-year sentence in Colorado at the same prison where Jeffrey Skilling is serving time

Ray Nagin, former mayor of New Orleans, was found guilty in federal court of 20 counts of bribery, wire fraud, & filing false tax returns

Allegedly accepted over \$200,000 in bribes & kickbacks from businessmen in exchange for city contracts & favors... evidence also showed that he participated in a money laundering conspiracy & filed false tax returns

Sentenced to 10 years in prison, ordered to pay \$84,000 restitution, ordered to forfeit \$501,000



DON SIEGELMAN **FORMER GOV. OF ALABAMA**

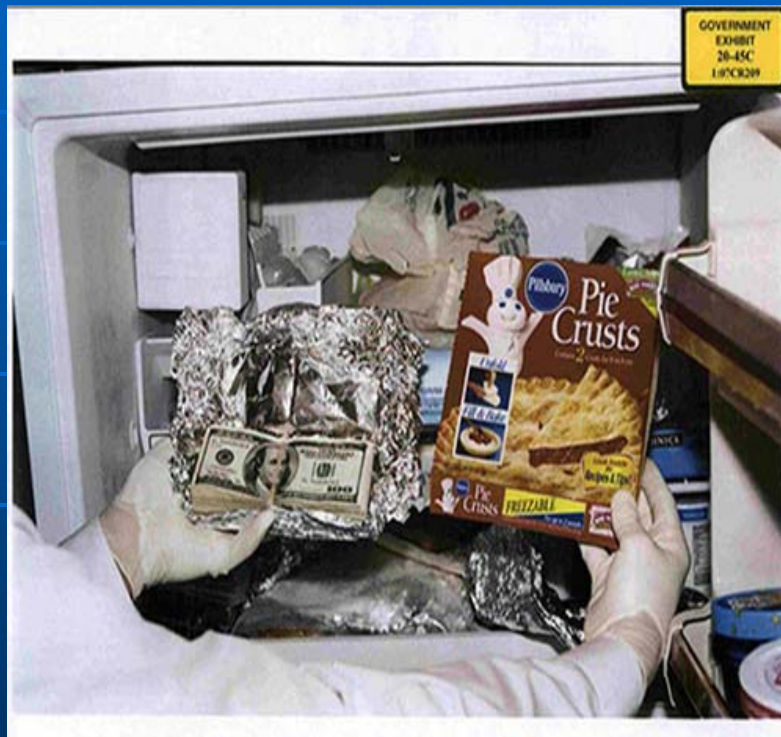
Convicted of bribery, conspiracy to commit mail fraud, mail fraud & obstruction of justice, for receiving \$500,000 donation to establish state lottery, in exchange for appointing the donor to a public board

Sentenced to 7 years in prison but appealed...

Re-sentenced to 78 months in prison, less time already served



Other Cases of Note



Former Louisiana Congressman William J. (Bill) Jefferson

Convicted of bribery, money laundering, honest services fraud, & using his office as a racketeering enterprise

Accepted \$478,000 in bribes to promote business ventures in Africa

Sentenced to 13 years

Operation Blighted Officials

FBI sting in Louisiana



FBI operatives posed as businessmen & offered bribes to public officials for their official support of a fictional garbage can sanitation service called “CIFER 5000”

Seven public officials in the Baton Rouge area were convicted

George L. Grace, Sr. sentenced to 20 years for being the central organizer of four bribery schemes

Operation Bid Rig III

FBI sting netted the arrest of 46 prominent political, business & religious leaders in New York & New Jersey...

34 pleaded guilty & 4 were convicted

Peter Cammarano III, youngest ever elected mayor of Hoboken... Pleaded guilty, 2-year prison sentence

Dennis Elwell, former mayor of Secaucus... Found guilty of bribery, sentenced to 30 months

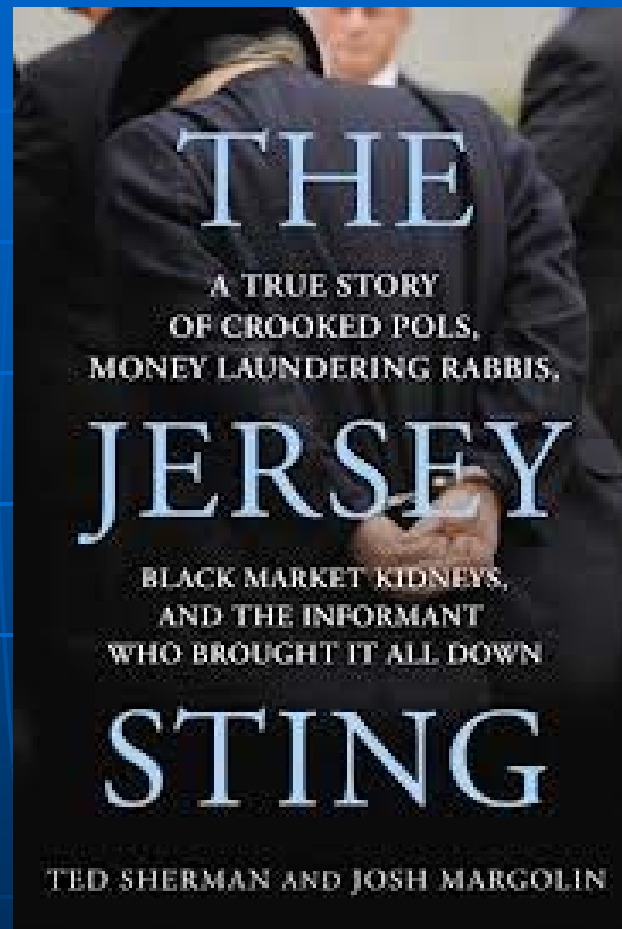


**Leona Beldini, former deputy mayor
of Jersey City...**

**Found guilty of bribery, received a 3-
year prison sentence**

**Also, Levy Rosenbaum, a black
market kidney dealer, was
sentenced to 2-1/2 years for
agreeing to procure a kidney for
\$160,000**





THE

A TRUE STORY
OF CROOKED POLS,
MONEY LAUNDERING RABBIS,

JERSEY

BLACK MARKET KIDNEYS,
AND THE INFORMANT
WHO BROUGHT IT ALL DOWN

STING

TED SHERMAN AND JOSH MARGOLIN

Florida Cases

Congresswoman Corrine Brown of Jacksonville & her Chief of Staff were charged with a 24-count indictment in early July

Charges include: mail & wire fraud, conspiracy to commit mail & wire fraud, concealing material facts on financial disclosure forms, theft of government property, obstruction of the due administration of internal revenue laws, filing false tax returns

Allegedly solicited & received donations to One Door for Education, a supposedly charitable organization, but diverted the funds for personal & professional use, including personal expenses, plane tickets, personal automobile repairs, vacations, receptions, & luxury boxes at a Beyoncé concert & NFL game

President of One Door for Education recently pleaded guilty for her role in the scheme



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One Door for Education The Amy Anderson Scholarship Fund

Providing scholarships and opportunities to students pursuing a degree in Education as well as opening doors in the community.



In late 2013, Mayor Manuel Maroño of Sweetwater pleaded guilty to one count of conspiracy to commit honest services wire fraud

Mayor admitted he agreed to help a company obtain federal grant funds to prepare an economic development study for Sweetwater, in exchange for kickback of \$30,000

The company was an undercover FBI entity

Received a 40-month prison sentence



Sweetwater



Tony Devaughn Nelson, former chairman of the Jacksonville Port Authority, was found guilty of 36 corruption-related charges, including honest services mail fraud, bribery, money laundering, and lying to the FBI

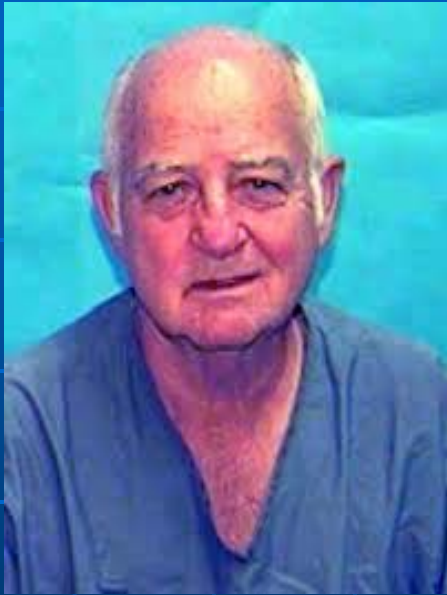
Reportedly solicited & received \$140,000 in bribes from a dredging company that had ongoing business with the JPA

Sentenced to 40 months in federal prison

Appealed, but was unsuccessful



W.D. CHILDERS, former president of the Florida Senate and chairman of the Escambia County Commission...



Convicted by a jury in 2003 of Sunshine Law violations for discussing public business in private with other commissioners; served 49 days in jail

Found guilty in 2006 of two charges of bribery and unlawful compensation

Served 3-1/2 years in prison

Operation Dirty Water

13 arrested on bribery & racketeering charges, most entered plea deals

Engineering contractors gave gifts to public utility employees in exchange for water & sewer contracts

Included current / former employees of Wellington, Port St. Lucie, Boynton Beach, West Palm Beach, Delray Beach, Sarasota County & Palm Beach County



Former Dixie County Attorney JOSEPH T. (JOEY) LANDER...

Convicted of six felony counts of mail fraud & 11 felony counts of money laundering, for requiring developers to pay him personally for performance bonds... also used his position to entice others to invest in his start-up vitamin business

He was sentenced to 87 months in federal prison & ordered to pay \$50,000 fine, \$1,600 in court costs, & forfeit co-ownership in local newspaper

Successfully appealed 12 of the convictions, but not the mail fraud conviction for the vitamin company scheme



Operation Flat Screen

Former Broward County Commissioner Josephus Eggleton pled guilty to conspiring to launder money & filing a false tax return, sentenced to 30 months in prison

Former Broward County School Board member Beverly Gallagher pled guilty to bribery, sentenced to 37 months in prison

Former Miramar City Commissioner Fitzroy Salesman convicted of two counts of bribery, two counts of extortion, but acquitted of honest services fraud, sentenced to 51 months in prison



FORMER PALM BEACH COUNTY COMMISSIONERS



- ▶ Anthony R. Masilotti
- ▶ Warren H. Newell
- ▶ Mary B. McCarty

Conclusion

