

Attachment A
STATEMENT OF FACTS

The parties stipulate and agree that had this case gone to trial, the government would have proven the following facts beyond a reasonable doubt. The parties further stipulate and agree that these facts do not encompass all of the facts which would have been proven at trial.

Beginning on or about August 25, 2002, and continuing until on or about March 2, 2007, in the Southern Division of the District of Maryland and elsewhere:

1. The Defendant was employed by the National Library of Medicine ("NLM"), National Institutes of Health ("NIH"), United States Department of Health and Human Services ("HHS") as the Associate Director of the Division of Specialized Information Services ("SIS"). SIS provides information resources and services to the public and health professionals in the areas of toxicology, environmental health, chemistry, HIV/AIDS, and provides outreach to underserved or at-risk populations.
2. The Defendant was the senior NLM official at SIS and reported directly to the Director of the NLM. As Associate Director of SIS, the Defendant's duties included overseeing the development and implementation of SIS information products and databases; assisting with and overseeing the dissemination of web-based scientific, medical, public and environmental health products and services; collaborating with other agencies and entities to acquire and disseminate digital images related to environmental health, drugs, and toxicology; directing NLM's outreach and special populations activities; representing the NLM on a variety of committees; and overseeing SIS's strategic planning, budgeting, training, and other human resource issues.
3. Outside of his official duties with NLM, the Defendant held a variety of compensated and uncompensated positions with professional journal, associations, and educational institutes, such as the editorial board of the Journal of Legal Medicine, the board of the Annapolis Center for Science-Based Policy, and the George Washington University Law School.
4. Prior to his employment with NLM, the Defendant operated a sole-proprietorship litigation consulting business, Medico-Legal-Forensic Services ("MLFS"). The Defendant served as a consulting and testifying expert witness in a variety of subject matter areas, including toxicology, products liability, and occupational health, in criminal and civil matters in state and federal courts across the country. Upon the commencement of his employment with NLM, the Defendant was instructed by an NLM ethics employee to cease his litigation consulting business. However, unbeknownst to NLM, the Defendant continued to operate MLFS and earn outside income throughout his employment with NLM.
5. As an HHS employee, the Defendant was required under federal law and regulations to seek approval for participation in outside activities. For each outside activity, the Defendant was required to submit an HHS-520 form, entitled "Request for Approval of Outside Activity," for review and approval by supervisory and ethics NLM officials. This requirement

applied to, among other things, all "outside employment, including self-employed business activities, or other outside activities in which the employee seeks to . . . [p]rovide consultative or professional services, including service as an expert witness" 5 C.F.R. § 5501.106(d)(1)(i).

6. The Defendant was also required under federal law and regulations to prepare and file an HHS-521 form, entitled "Annual Report of Outside Activity," which, among other things, summarized the Defendant's participation in outside activities and detailed any compensation received in connection with these activities.

7. The Defendant was also required under federal law and regulations to prepare and file an annual financial disclosure report, or OGE Form 450 (2002), entitled "Executive Branch Confidential Financial Disclosure Report," and SF 278 (2003-2006), entitled "Executive Branch Personnel Public Financial Disclosure Report." On both of these forms, the Defendant was required to report income, reimbursements, and compensation from outside activities.

8. During the Defendant's tenure at NLM, NLM officials sent several agency-wide e-mails, advising NLM staff, including the Defendant, of changes to ethical rules and requesting that all NLM employees disclose their participation in outside activities and seek permission for their continued involvement in such activities. For example:

a) On or about February 9, 2004, NLM officials sent a broadcast e-mail informing all NLM employees that, due to significant media and congressional attention surrounding the outside activities and awards of NIH employees, NIH recently created the NIH Ethics Advisory Committee to further review certain categories of employees and activities. These included, among other things, activities by NIH senior staff and directors or compensation to any NIH employee in excess of certain threshold amounts. The broadcast e-mail further set out instructions and deadlines for the requisite review of outside activities.

b) On or about June 29, 2004, the Director of NIH sent a broadcast e-mail informing all NIH employees that, as a result of a congressional inquiry into the outside activities and consulting arrangements of NIH employees, NIH employees were required to review their records from January 1, 1999, through the date of the broadcast e-mail and consult with the Deputy Ethics Counselor by July 9, 2004 regarding "any and all outside activities that you engaged in during the relevant time period for which you did not seek and receive prior approval or for which you did not report the activity or income on your financial disclosure report . . . Your [Deputy Ethics Counselor] will determine whether prior approval was necessary. If we do not receive any additional information from you by the deadline, we will assume for the record that you did not engage in outside activities without the appropriate approval and . . . your financial disclosure report is accurate . . . NIH's integrity and the integrity of its employees are paramount to the credibility of our science and, thus, our ability to advance the public health. Accordingly, I ask you to make this request a top priority."

c) On or about March 2, 2005, NLM officials sent a broadcast e-mail informing all NLM employees that they had until the close of business on March 7, 2005, to file an extension request or certify that they had stopped activities prohibited under the new NIH Conflict of Interest Rules.

d) On or about April 1, 2005, NLM officials sent a broadcast e-mail informing all NLM employees that the deadline for the comment period on the new NIH Conflict of Interest Rules was April 4, 2005.

e) On or about May 19, 2005, NLM officials sent a broadcast e-mail informing all NLM employees that "HHS employees are required by the interim final Supplemental Financial Disclosure Requirements (5 CFR 5502) to submit an Annual Report of Outside Activities (Form HHS 521). This form requires you to report any and all outside employment or activities that you conducted at any time during the previous calendar year, regardless of whether you actually obtained advance approval to do so. It is now time for you to submit that report for Calendar Year 2004." The e-mail further advised NLM employees that the filing deadline for the HHS-521 was June 13, 2005, and provided links to the form and corresponding instructions.

f) On or about June 6, 2005, NLM officials sent a broadcast e-mail informing all NLM employees that anyone who participated in or received approval for an outside activity during 2004 was required to complete a new form, HHS-521, entitled "Annual Report of Outside Activity," by June 13, 2005. The e-mail further advised NLM employees that outside activities would have to be re-approved each year.

g) On or about November 21, 2005, NLM officials sent a broadcast e-mail informing all NLM employees of the revised ethics forms and the new deadlines for the submission of such forms.

9. During his employment with NLM, the Defendant submitted several HHS-520 requests for approval of outside activities, filed HHS-521 annual reports disclosing the participation in and income from other outside activities, filed an OGE Form 450 annual financial disclosure report, and filed SF-278 annual financial disclosure reports.

10. Although federal law and regulations required him to do so, at no time during his employment with NLM did the Defendant: (1) submit an HHS-520 requesting approval for his consulting with MFLS; (2) include his participation in or income from MLFS on his HHS-521 reports; or (3) report on his OGE Form 450 or SF-278 his participation in and income from MFLS.

11. On his federal income tax return for 2003, the Defendant reported to the Internal Revenue Service: (1) gross wages of approximately \$150,485 from NLM, and (2) gross income of approximately \$192,218 from MLFS.

12. On his federal income tax return for 2004, the Defendant reported to the Internal Revenue Service: (1) gross wages of approximately \$152,809 from NLM, and (2) gross income of approximately \$231,998 from MLFS.

13. On his federal income tax returns for 2005, the Defendant reported to the Internal Revenue Service: (1) gross wages of approximately \$165,516 from NLM, and (2) gross income of approximately \$165,234 from MLFS.

14. The Defendant knowingly and willfully filed the following reports with NLM, on which he made materially false, fictitious, and fraudulent statements or representations, to wit: omitting his participation in and income from MLFS: a) 2003 SF-278 annual financial disclosure form, filed on or about October 15, 2004; b) 2004 SF-278 annual financial disclosure form, filed on or about May 20, 2005; c) 2004 HHS-521 annual report of outside activities, filed on or about June 13, 2005; d) 2005 HHS-521 annual report of outside activities, filed on or about February 28, 2006; and e) 2005 SF-278 annual financial disclosure form, filed on or about May 23, 2006.

15. In his capacity as Associate Director of NIH, the Defendant was required to spend eighty (80) hours per two-week pay period in the performance of his official duties as Associate Director of SIS. At the end of each pay period, the Defendant was required to electronically submit a time and attendance form certifying that he spent the requisite 80-hour period of time, less any annual or sick leave taken, in the performance of his official duties.

16. As indicated on the supplemental form to the HHS-520 for approval of participation in outside activities, consulting work was to be performed "only on non-duty time, annual leave, or leave without pay." This form further advised the preparer that "client support, including telephone calls, will not be provided during working hours at NIH"

17. Notwithstanding these prohibitions, the Defendant utilized NIH time and physical resources to carry out his outside business activities. The Defendant received a substantial number of telephone calls and facsimiles at his NIH workplace related to his MLFS. The Defendant also used his NIH-assigned computers, to include a desktop and a laptop computer, to prepare expert reports and invoices in connection with matters in which the Defendant had been retained as a consulting and/or testifying expert.

18. In addition, the Defendant traveled to various locations throughout the United States to meet with attorneys, prepare to testify, and testify as a witness in litigation during NIH business hours without taking annual leave, as would ordinarily be required. For example:

a) On or about March 17, 2004, the Defendant traveled to Portland, Maine where he reviewed documents and prepared to testify as a witness at trial. The following day, on or about March 18, 2004, the Defendant testified in federal district court. NIH time and attendance records reveal that the Defendant did not take annual leave for either of these two (2) workdays.

b) On or about November 9, 2004, and November 10, 2004, the Defendant prepared for and testified in trial in connection with another case. NIH time and attendance records reveal that the Defendant did not take annual leave for either of these two (2) workdays.

19. NIH time and attendance records reflect that during the first three (3) years of the Defendant's tenure with NIH the Defendant used only twenty-four (24) hours, or three (3) days, of annual leave. These three (3) days were taken during 2003. No annual leave was taken in 2004. From 2005 through the date of his resignation from NIH, March 2, 2007, the Defendant utilized an additional 136 hours, or seventeen (17) days, of annual leave. Upon leaving NIH,

Defendant was paid \$22,738.32 for 264 hours of unclaimed annual leave.

20. On or about February 19, 2007, the Defendant was deposed in connection with a case in which he had been retained as a consulting and testifying expert. During this deposition, the Defendant made several misstatements of fact regarding his employment at NIH and NIH knowledge and approval of the Defendant's litigation consulting business. For example:

a) The Defendant stated that he was both a "contractor" and "a part-time employee" of NIH. In reality, the Defendant knew he was a full-time, salaried employee of NIH.

b) The Defendant initially stated that NIH had approved his outside consulting work, but then later stated that no one at NIH had approved of his involvement in the instant case for which he was being deposed.

c) The Defendant further asserted that he was not aware of a formal approval process for his involvement in outside consulting work and that instead, he himself would determine whether or not a conflict of interest existed. To the contrary, the Defendant knew there was a formal review process for the approval of outside activity.

d) The Defendant stated during the deposition that he sought approval "a couple of times ... early on" for his outside consulting activity. In fact, at no time did the Defendant inform NIH of his continued engagement in his litigation consulting business, nor did he report the substantial income he earned as a result.

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I have read this statement of facts, and carefully reviewed it with my attorney. I acknowledge that it is true and correct.

10/31/08
Date

Jack W. Snyder
JACK W. SNYDER

I am Mr. Snyder's attorney. I have carefully reviewed the statement of facts with him.

10/31/08
Date

David Schertler
David Schertler, Esq.