



U.S. Department
of Transportation
Federal Aviation
Administration

Memorandum

Subject: Discussions with Prospective Employers

Date: March 31, 2004

From: Andrew B. Steinberg
Chief Counsel (AGC-1)

Reply to
Attn. of:

To: All Employees

Last December, we received two stark reminders of the very serious restrictions that apply to us when we are **discussing potential employment** with a private sector company. The first was a high-profile news story involving Boeing's termination of a former DOD official and the company's chief financial officer, who had hired her, after discovering an allegedly serious breach of ethics involving her participation at DOD in a Boeing matter while she was discussing a job with the company. (See Attachment 1). The second reminder received less publicity but directly involved a former FAA employee – a flight inspector who was penalized by a federal court for violating ethics laws by negotiating with an airline over employment at the same time he was reviewing their certificate (See Attachment 2).

This memorandum is designed to help you understand these restrictions, which apply to FAA employees who may be contemplating retirement or departure from the agency and who are looking to continue their careers in the private sector. Importantly, they go beyond the one-year ban that applies to certain SES employees and others on lobbying the agency. The restrictions are found in Title 18, United States Code, Section 208, and in the Procurement Integrity Act. Violations may be prosecuted criminally.

CONFLICT OF INTEREST STATUTE: 18 USC 208

What restrictions apply?

Section 208 of the Ethics in Government Act prohibits a government employee from participating personally and substantially in any way (through decision, approval, disapproval, advice, recommendation, investigation, or otherwise) in his or her official capacity in particular matters. Such matters include those that the employee knows could affect the financial interest of **any organization with which the employee is negotiating over, or making arrangements concerning, future employment.**

Although the term "negotiating" might suggest ongoing discussions and an active interest on *both* sides regarding the prospective employment, it has been interpreted more broadly. **Prohibited "negotiations" encompass situations in which an employee or a prospective employer has simply made a unilateral expression of interest -- and such expression of interest has not yet been rejected.** Thus, a simple rejection will serve to insulate an employee from future jeopardy under Section 208 in circumstances where he/she may have received an unsolicited and unilateral expression of interest from a prospective employer.

The phrase "arrangement concerning future employment" is broad enough to encompass an informal or tacit understanding that an employee will join a particular firm, corporation, or other organization after leaving the Government.

What kinds of "particular matters" trigger this conflict of interest prohibition?

These can include both matters which clearly focus on the prospective employer-- adjudication, contract negotiations, bids, and the like--and matters of a more general applicability that can affect the financial interests of a discrete and identifiable class of entities that includes the prospective employer. For example, if an employee is discussing future employment with an aircraft manufacturer, he/she may not participate in consideration of a policy that could affect the financial interests of all aircraft manufacturers.

The law provides criminal penalties of up to five years in jail and fines of up to \$5,000, or both, as well as civil penalties of up to \$50,000, for violation of Section 208.

PROCUREMENT INTEGRITY ACT (41 USC 423(d))

The Procurement Integrity Act provides that if an FAA **employee who is participating in a procurement contacts, or is contacted by, a bidder or offeror regarding possible employment**, the employee must immediately give a written report to his/her supervisor and to the agency's Chief Ethics Officer. In addition, the employee must immediately either reject the possibility of employment, or be disqualified from the procurement until the employment discussion is resolved. If the discussion ends with anything other than a mutually understood, and final, withdrawal of the employment solicitation the disqualification must continue. It is not permissible to continue participating in the matter if you put the discussion "on hold" until a later time. The statute provides severe criminal and civil penalties for violation

CAVEAT

These laws are complex and the penalties for violation are severe. When faced with situations that seem to be covered by these statutes, employees would be well advised to contact their local FAA legal office.

How Two Officials Got Caught By Pentagon's Revolving Door

Amid Lease Deal, Ms. Druyun
At Air Force Talked Jobs
With Boeing's Mr. Sears

By ANNE MARIE SQUEO and J. LYNN LUNSFORD
Staff Reporters of THE WALL STREET JOURNAL

Darleen Druyun was a hot prospect when she retired from the Department of the Air Force in November 2002.

In three decades in various acquisition roles there, the lanky, no-nonsense civilian administrator had negotiated billion-dollar weapons contracts and amassed valuable insights into Pentagon policy and the strengths and weaknesses of defense contractors. At a retirement lunch at an Italian restaurant in northern Virginia near the Pentagon, more than a hundred industry executives and government officials gathered, some anxiously scanning the room for clues as to where she might land next.

By that Nov. 21 fete, Ms. Druyun had quietly talked about job opportunities with three of the nation's largest defense contractors -- **Boeing Co.**, **Lockheed Martin Corp.** and **Raytheon Co.** Lockheed President Robert Stevens attended. So did Boeing Chief Financial Officer Michael Sears and James Albaugh, the head of the company's space and defense businesses. When Mr. Sears sat down at Ms. Druyun's table to chat with her family, other executives in the room took note.

A year later, the winner in the race to land Ms. Druyun -- Boeing -- turned out to be the big loser. Actions related to Ms. Druyun's hiring in January 2003 are now the subject of Pentagon and Justice Department probes as well as Congressional scrutiny into the nation's No. 2 defense contractor. Boeing fired both Mr. Sears and Ms. Druyun for what it called "unethical" conduct in late November. Their dealings were a major factor in the resignation a week later of the company's chairman and chief executive, Phil Condit.

Talk of a job at Boeing for Ms. Druyun began as early as Sept. 3, 2002, more than two months before she recused herself from overseeing Boeing contracts, according to people familiar with the investigation.

While those job negotiations were under way, she was also continuing to push a controversial \$21 billion plan to have the government lease and later buy 100 Boeing-made airplanes. Separately, Pentagon investigators are looking into whether Ms. Druyun broke the law by sharing a rival company's information with Boeing.

Federal law bars government acquisition officers from discussing jobs with outside companies unless they disqualify themselves from contract decisions connected to those companies. The law also bans contractors from having job talks with an official if they know that he or she still has authority over contracts linked to them. The criminal part of the probe, which could result in jail time, centers on obstruction of justice charges related to alleged efforts in recent months by Mr. Sears and Ms. Druyun to cover up their early discussions.

Ms. Druyun's attorney didn't respond to repeated phone calls for this article. In an October interview that predated Ms. Druyun's firing, her attorney defended her career as beyond reproach. Mr. Sears's attorney also declined to comment; after the firing, Mr. Sears in a statement said he had done nothing wrong.

The ethics scandals at Boeing, the world's largest aerospace company, are sending tremors through the industry as other companies fear intensified scrutiny over the revolving door between the Pentagon and the industry. The Boeing-Druyun relationship highlights the longstanding coziness between military contractors and their No. 1 customer and major overseer: the Pentagon. In 1961, President Dwight Eisenhower warned of a military-industrial complex and its "potential for the disastrous rise of misplaced power." In the 1980s, the military came under fire for such things as paying \$435 for hammers and sharing internal, often classified, documents with industry executives vying for Pentagon work.



Darleen Druyun

PLANE DEALING

Darleen Druyun's recent ties to Boeing.

Late 2001: Ms. Druyun, a senior Air Force acquisition officer, begins negotiating controversial plan to lease Boeing jets as refueling tankers.

Sept. 2002: Her daughter, a Boeing employee, e-mails Boeing CFO Michael Sears about her mother's retirement and job search.

Oct. 2002: Ms. Druyun negotiates a NATO aircraft

order that went to Boeing. Two days later, she and Mr. Sears meet to discuss employment. She agrees to sell her house to a Boeing attorney working on tanker deal.

Nov. 2002: Ms. Druyun officially recuses herself from Boeing decisions, retires mid-month.

Jan. 2003: Boeing announces Ms. Druyun joined its missile-defense operation.

Summer 2003: Under scrutiny by Justice Department and Pentagon, Boeing launches internal probe of ethics policies.

Sept. 2003: Pentagon launches probe of whether Ms. Druyun discussed a rival's pricing with Boeing.

Nov. 2003: Boeing fires Ms. Druyun and Mr. Sears. U.S. attorney in Virginia launches criminal probe, which could lead to jail time.

Now critics say the situation is worse than ever. Post-Cold War consolidation melded dozens of smaller defense contractors into a handful of giants. As the government modernizes its armed forces, it has become increasingly reliant on contractors such as Boeing to pull together sophisticated weapons systems with products and services from different companies; military officials admit they lack the technical expertise for the job. And because weapons programs cost billions and can take a decade to come to fruition, their official overseers often find their interests closely aligned with the companies they are supposed to police.

Mr. Sears and Ms. Druyun, now both 57 years old, entered the military-procurement world around 1970. With the U.S. deep into a losing war in Vietnam and facing mounting fears about Soviet military power, the military and

defense industry were under pressure to modernize. Both executives climbed the career ladder, Ms. Druyun as a civilian at the Air Force and Mr. Sears as an avionics engineer at McDonnell Douglas Corp., later purchased by Boeing. Throughout her career, Ms. Druyun stood out in the nearly all-male world of defense acquisition. The industry is dominated by swaggering, cigar-smoking men who are members of a secretive, all-male group of senior aerospace executives called the Conquistadores del Cielo (Conquerors of the Sky). But Ms. Druyun, with her short brown hair, navy-blue suits and plain style, had immense power over their fates. As the Air Force's senior acquisition officer, she evaluated competing bids for contracts and had great influence in deciding winners.

If Ms. Druyun saw problems in a program, she didn't mince words. If she didn't like a person assigned to work on a program under her charge, she'd pressure the company to replace him. In September 1999, when Lockheed was experiencing financial setbacks and problems managing its weapons programs, Ms. Druyun met with the then-head of Lockheed's aerospace unit, James "Mickey" Blackwell. In a memo on the meeting that turned up shortly afterward on the Internet, Mr. Blackwell wrote that Ms. Druyun said Lockheed had lost one major satellite contract because of "crappy design" and warned she better not "detect B.S." on another bid or Lockheed "would go to the bottom of the chart." Mr. Blackwell has confirmed the memo was his.

Mr. Sears, meanwhile, moved up from engineer to manager to high-level executive. A brawny man with an iron-grip handshake, he became known as someone who could size up any situation and turn it to his advantage. When McDonnell Douglas brought in Harry Stonecipher, a former General Electric Co. executive, as its CEO in 1994, Mr. Sears became his protege and confidant, keeping his new boss informed about developments around the company, according to people who know both men.



AP/Wide World Photo

Drawing of a 767 tanker refueling a fighter jet.

Over the years, the paths of Mr. Sears and Ms. Druyun crossed frequently. Both worked on a program to develop the F-15 Eagle fighter jet in the 1970s. Ms. Druyun proclaimed herself "the godmother" of McDonnell Douglas's C-17 military cargo plane, whose development program she was overseeing in the late 1980s. A 1993 report released by the Pentagon named Ms. Druyun as one of five Air Force officials who secretly funneled \$500 million to a near-bankrupt McDonnell Douglas in 1990 to stave off a cash crisis; at the time, the company was behind schedule and over budget on its C-17 cargo plane. The Air Force and the company denied any wrongdoing, but then-Defense Secretary Les Aspin fired one Air Force general and disciplined two others over the matter. Ms. Druyun was later exonerated.

Ms. Druyun and Mr. Sears had something else in common. While being steadily promoted in their respective organizations, both failed to snare top spots. In 2001, Ms. Druyun was passed over for the top civilian acquisition job at the Air Force even though



Michael M. Sears

she had held that role in an acting capacity. For his part, Mr. Sears had been positioning himself to be Mr. Condit's successor. Despite lobbying Mr. Condit for more responsibility and building a base of allies within the company, it had become clear by this year that Mr. Sears would be unlikely to succeed Mr. Condit.

Ms. Druyun remained a high-profile champion of the defense industry during the 1990s cutbacks in military spending. In the wake of the Sept. 11 terrorist attacks and the subsequent slump in the aviation industry, Ms. Druyun became an active promoter of a plan to have the Air Force lease 100 modified Boeing jets as air-refueling tankers. Critics of the plan said it was merely a bailout for Boeing and would cost taxpayers billions more than buying the planes outright. Top Air Force officials, including Ms. Druyun, contended the tankers were urgently needed to replace an aging fleet and that leasing would get them into service sooner.

On Sept. 3, 2002, an e-mail arrived in Mr. Sears's inbox. The sender, a 26-year-old employee in Boeing's St. Louis operation named Heather McKee, wrote that "mom" was making post-retirement plans. In a tone described by people familiar with it as a "friendly heads-up," the note told Mr. Sears that the woman was negotiating with other companies but would rather "live in Chicago," where Boeing is based.

The mom was Ms. Druyun. Ms. McKee is her daughter, who started working in Boeing's human-resources department in 2000. Mr. Sears tapped out a quick response, asking her to keep him informed. Over the next six weeks, Ms. McKee and the Boeing senior executive exchanged several more e-mails.

People familiar with the company's continuing internal probe into the Druyun-Sears relationship say Ms. McKee's role is still being reviewed. The investigation is trying to determine whether Ms. Druyun used her daughter as an intermediary rather than approaching Mr. Sears directly, in an attempt to sidestep the law. The daughter's hiring by Boeing had been cleared, at Ms. Druyun's request, by Air Force ethics officials. Ms. McKee declined to comment.

On Oct. 15, Ms. Druyun wrapped up negotiations on a \$278 million NATO aircraft contract that was awarded to Boeing. Two days later, Mr. Sears and Ms. Druyun met at a restaurant in Orlando, Fla. Both were in town for a meeting of the Air Force Association, a civilian nonprofit that promotes aerospace interests. The two discussed a possible job for Ms. Druyun, according to people familiar with the investigation.

The following week, on Oct. 21, Ms. Druyun and her husband William, a mid-level manager at military contractor General Dynamics Corp., signed a contract to sell their four-bedroom house in Dunn Loring, Va., to Boeing attorney John Judy and his wife for \$692,000. They'd purchased the house 14 months earlier for \$614,523, according to real-estate records. At the time, Mr. Judy, who'd been overseeing legal aspects of the aircraft tanker lease, was relocating to Boeing's Washington office.

On Nov. 5, two months after her daughter's first e-mail to Mr. Sears, Ms. Druyun submitted a letter to the Air Force ethics office, recusing herself from further negotiations with Boeing. Pentagon and federal investigators now are examining all conversations between Ms. Druyun and Boeing during those two months as well as contract decisions dating back several years. Ms. Druyun had submitted recusal letters on Aug. 29 covering both Lockheed and Raytheon.

Five days after her retirement luncheon, on Nov. 26, Lockheed upped the ante and made her a written job offer, people familiar with the offer said. After several weeks of stalling, Ms. Druyun declined. On Jan. 3, 2003, Boeing announced that she was taking the post of deputy general manager for the company's missile-defense unit, which plays a lead role among contractors in assembling the Bush administration's national antimissile shield. By law, she couldn't work on Air Force programs for at least a year after her retirement. Her job wouldn't fall into that category because there is a separate missile-defense agency within the Pentagon.

That same day, Ms. Druyun finalized the sale of her home to her new colleague, Mr. Judy, making a 12.6% gross profit after 14 months of ownership. Both Mr. Judy and Ms. Druyun's attorney have previously said that his purchase of her home had nothing to do with their work relationship and was one of many shown to him by a real-estate agent. Asked about the house sale, an Air Force ethics officer says the service had no objection to it.

As she was settling into her new job, Ms. Druyun's new employer was coming under harsh scrutiny. In May, The Wall Street Journal disclosed Boeing was being investigated for having obtained thousands of pages of proprietary Lockheed documents during the course of a 1998 competition for a rocket contract.

In July, the Air Force stripped Boeing of \$1 billion in business after concluding that the documents had been improperly obtained. The same month, Boeing launched a sweeping internal probe of its ethics policies.

The revelations about the documents buttressed the arguments of Arizona Republican Sen. John McCain, a senior member of the Senate Armed Services Committee and the loudest detractor of Boeing's leasing deal. The number of planes to be leased has now been cut back to 20 from 100. This year, Mr. McCain has subpoenaed documents from Boeing, the Pentagon and the Air Force related to the tankers and held public hearings. The Pentagon has refused to turn over many documents related to the lease.

But Boeing turned over more than 8,000 e-mails, including many involving Ms. Druyun. Many of the e-mails, which Mr. McCain later made public, indicated that internal Air Force memos about the tanker negotiations were passed on to senior Boeing executives. One April 2002 e-mail from a Boeing executive working on the deal to a colleague said that Ms. Druyun had told Boeing executives about rival company bids. The e-mail said that Ms. Druyun had told the company "several times" that rival European Aeronautic Defense and Space Co.'s offering of Airbus planes "was \$5 million to \$17 million cheaper" per aircraft than Boeing's tanker bid.

Following the release of this e-mail, the Pentagon launched a formal probe in September to investigate whether Ms. Druyun violated federal procurement laws, which forbid the disclosure of bid data. Boeing officials have said the company didn't receive privileged data from Ms. Druyun or any other Air Force official.

Boeing has hired an outside law firm to investigate the events surrounding Ms. Druyun's hiring. The company gave the firm authority to look at e-mails and interview executives of their choosing. A Boeing spokesman declined to name the firm.

The company's investigators found Ms. Druyun had sent Mr. Sears a lengthy e-mail in July laying out a chronology of the employment courtship. An e-mailed response from Mr. Sears affirmed the sequence. The order of events differed from what investigators had found during their reconstruction of contacts between the two, according to people familiar with the contents.

On Nov. 24, a Monday morning -- just over a year after the retirement lunch they had both attended -- Mr. Sears and Mr. Druyun were fired when they arrived at work. Soon afterward, the U.S. attorney in northern Virginia launched a criminal probe into whether the two broke government procurement laws or obstructed justice.

Next March was the scheduled publishing date for a book of management tips by Mr. Sears, called "Soaring Through Turbulence." The book offered, among other things, advice on ethical conduct. As a leader, Mr. Sears wrote, "Your job is not only to tell people to be ethical, to take the high road, but also to tell them where the lane lines are." The book has since been pulled from release by its publisher.



FAA Employee Sentenced for 18 U.S.C. §208 Violation

A former employee of the Federal Aviation Administration ("FAA"), James Moore, was sentenced in the U.S. District Court for the Eastern District of New York for negotiating employment with an airline while employed by the government to inspect the airline.

Moore pleaded guilty to a one-count information charging him with the misdemeanor offense of engaging in a financial conflict of interest in violation of 18 U.S.C. §208 [EGR 1-004.43]. According to a press release, Moore worked for the FAA in the New York Flight Standards Division Office in Garden City, New York. Moore worked as the FAA's principal operations inspector for an airline that was seeking to upgrade its

FAA Operating certification. While working in this position, Moore negotiated with the airline regarding future employment. Moore then left the FAA and became the President of the airline. The airline is no longer in business.

The Federal Bureau of Investigation and the Department of Transportation Office of Inspector General investigated the case. Assistant U.S. Attorney Martin Coffey represented the government in this case. On December 13, 2002, Magistrate Judge Robert M. Levy ordered Moore to pay a \$200 fine. *United States v. Moore*, Cr. No. 02-01035 (E.D. N.Y. 2002). ■

—Susan Kavanagh