



# **FRAUD FACTS**

## **Air Force Deputy General Counsel Contractor Responsibility**

*Volume I, Issue 4 • December 2004*

### **ABOUT FRAUD FACTS**

*Fraud Facts* is published by the Air Force Deputy General Counsel (Contractor Responsibility) to present current information about selected fraud, suspension and debarment actions, and issues of interest. Many different agencies contribute to the investigation, prosecution, and completion of a case, including, but not limited to, the Air Force Office of Special Investigations, the Defense Criminal Investigative Service, and the Air Force JAG Corps. We thank you for your continued support and assistance in protecting the government's contracting interests.

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### **THE MEANING OF NUMBERS**

*STEVEN A. SHAW, DEPUTY GENERAL COUNSEL*

The end of the year is a good time for all of us to step back out of the weeds, and to ponder the “big picture.” What were our goals last year, and how well did we meet them? What measures are we using to determine success in meeting our goals, and are they the right measures? Speaking for myself, this kind of thinking usually takes until the end of the next fiscal year, but the exercise is worth doing.

One measure used by GCR, perhaps the only empirical one, is the number of suspension and debarment actions brought by the Air Force disqualifying its contractors from eligibility for new federal government contracts. Before we get carried away, we need to recognize that these types of numbers can be misleading in a number of respects. First, they are not the most important measure of the Air Force's success in preserving contractor integrity—merely the easiest to calculate. Fuzzier measures—such as how we are viewed by our clients and by our contractors; and the soundness of our legal judgments, evidenced in part by the very few legal actions brought by contractors contesting our actions—are more important than are statistics.

Second, to the extent that year end statistics have any meaning, we need to keep in mind that they gauge only our success in addressing non-responsible contractors who “don't get it,” and are incapable, or unwilling to change. GCR's greater impact is the work we do to assist responsible contractors to overcome the occasional misconduct of an errant employee. If a contractor's management sincerely recognizes the seriousness of a problem, and genuinely wishes to improve its business to limit the likelihood of future misconduct, we will assist them in making those improvements without taking any suspension or debarment action. The important work that we do to help responsible contractors, through administrative agreements and otherwise, does not get recorded in a statistic; thus, another reason that the year end statistics do not fully measure the Air Force's success.

Third, the number of suspension and debarment actions reflects only the Air Force's exercise of its administrative remedies. GCR's Office of Fraud Remedies has, in numerous cases, throughout the year insured that

the Air Force has exercised not only its administrative remedies, but all of its criminal, civil and contractual remedies as well. The actions do not merely recover the Air Force's losses, but they also deter future contractor misconduct. Finally, tracking the number of debarment actions can also be misleading if viewed solely as a measure of GCR's success. The fact is, statistics are a measure of the success of the Air Force's procurement integrity program as a whole. This translates this year into kudos for AFOSI investigators, JAG's, the Air Force contracting community, and commanders throughout the Air Force.

**All these attorney-like qualifiers aside, congratulations to all for a banner year!** The Air Force initiated new suspension and debarment actions against 573 Air Force contractors during the fiscal year ending 30 September 2004. This represents a full 44% increase over the number of such actions brought in FY03, with no change in GCR personnel. We do not conclude from this that GCR worked 44% harder this year. The dramatic increase is attributable, rather, to the terrific support we continue to receive from JAG's, OSI, DCIS, DCMA and numerous others. You are increasingly thinking of debarment proactively as an action that is best taken early in the process, rather than as an afterthought following exhaustion of all other remedies.

The trend illustrated by the following numbers illustrates the evolution in the way the Air Force is continuing to view debarment:

<b>AIR FORCE SUSPENSION &amp; DEBARMENT ACTIONS FOR 2001- 2004</b>				
<i>Fiscal Year</i>	<i>Suspend</i>	<i>PFD*</i>	<i>Debar</i>	<i>Total Actions</i>
2001	108	96	75	<b>279</b>
2002	10	151	74	<b>235</b>
2003	70	168	159	<b>397</b>
2004	94	246	233	<b>573</b>

\* PFD is a proposal for debarment.

The increase in proposed debarments means that the Air Force aggressively pursues misconduct of contractors in appropriate cases based upon evidence, both prior to DoJ action and where DoJ has declined to take any action. We have the responsibility and the tools

to protect ourselves from non-responsible contractors, regardless of how other agencies such as DoJ may view particular cases.

This philosophy, combined with terrific field support, has not only lead to dramatic increases in the number of recent Air Force actions over those in previous years. It has also resulted in a favorable number of actions within DoD, even with the Air Force's more limited resources:

<b>FISCAL YEAR 2004 DoD SUSPENSION AND DEBARMENT STATISTICS</b>				
	<i>Suspend</i>	<i>PFD</i>	<i>Debar</i>	<i>Total Actions</i>
<b>Air Force</b>	94	246	233	<b>573</b>
<b>Army</b>	68	113	90	<b>271</b>
<b>Navy</b>	2	27	33	<b>62</b>
<b>DLA</b>	12	147	133	<b>292</b>

The Air Force's continued willingness to take fact-based administrative actions, to pursue all other remedies against non-responsible contractors, and its desire to assist responsible contractors in avoiding future misconduct, are the true measures of the success of its procurement integrity program.

<b>FRAUD REMEDIES REFERENCE GUIDE AVAILABLE</b>	
<p>SAF/GCR recently published a Fraud Remedies Reference Guide discussing the elements of criminal and civil statutes relevant to prosecuting procurement fraud. The reference guide includes chapters on the role of the Acquisition Fraud Counsel, the preparation of fraud remedies plans, and the procedures for handling <i>qui tam</i> cases. The reference guide has an appendix with the revised and simplified format for fraud remedies plans. If you would like an electronic copy of the Fraud Remedies Reference Guide, it can be found on SAF/GCR's websites as listed on page 7.</p>	



## **ARMS EXPORT CONTROL ACT VIOLATIONS—**

### *Wisconsin*

In November 2003, Jami Siraj Choudhury, founder and principle manager of NexGen, LLC, pled guilty to one count of violating the Arms Export Control Act and was sentenced to thirty-seven months in prison, supervised release for three years, a fine of \$2,000, and an assessment of \$100. Choudhury devised and executed a scheme to illegally export defense articles from the United States without first obtaining the proper license from the State Department. He and his company, NexGen, were debarred by the Air Force on November 4, 2004, pursuant to FAR 9.406-2(a)(5) and (c), which permits the Air Force to debar a contractor for improper conduct of so serious and compelling a nature that it affects their present responsibility to be government contractors or subcontractors. A special thanks to AUSA Lisa Warwick in Milwaukee, Wisconsin.

### *North Carolina*

Equipment & Supply, Inc., a North Carolina corporation engaged in the business of manufacturing and supplying ground support equipment for military and commercial aircraft, and its president and chairman, Andrew A. Adams, were suspended on January 16, 2003, and subsequently debarred by the Air Force on November 24, 2004.

E&S and Adams were found to have violated the Arms Export Control Act for having attempted to export unlicensed defense articles to a Vienna, Austria company. E&S pled guilty and was sentenced to two years probation, ordered to pay a fine of \$50,000, and a special assessment of \$400. Adams' indictment was dismissed after he agreed to plead guilty to a one count Information for attempting to commit depredation against a property manufactured for the United States, a violation of 18 U.S.C. § 1361. He was sentenced to three years probation with additional terms prohibiting him from obtaining export licenses or government contracts, ordered to pay a \$25 special assessment, and a \$25,000 fine. A special thanks to AUSA Lisa Warwick in Milwaukee, Wisconsin.

## **STOLEN COMPUTER EQUIPMENT—Wright Patterson Air Force Base**

Between October 2003 and February 2004, James A. Wyszynski was employed at the Air Force Research Laboratory (AFRL), Wright Patterson Air Force Base,

Ohio. During his employment at AFRL, Wyszynski stole approximately \$15,000 worth of Air Force video and computer equipment such as laptop computers and various software programs. On April 23, 2004, an Information was filed against Wyszynski in the United States District Court for the Southern District of Ohio for one count of violating 18 U.S.C. § 641—embezzling, stealing, purloining, or knowingly converting money, property, or records belonging to the United States. On November 8, 2004, the Air Force debarred Wyszynski from contracting with the federal government. A special thanks to SA Scott Keller for his help on this case.

## **COLONEL DEBARRED FOR IMPROPER CONTRACTING PROCEDURES—Wright Patterson Air Force Base**

On August 19, 2004, the Air Force debarred Jerry Greenwood (Greenwood) and his company, J. Greenwood Limited, for participating in a contract in which they had a personal financial interest. Greenwood was a civilian employee in the Special Programs Division at Air Force Materiel Command. Greenwood was about to retire when he drafted contracting documents for a sole source contract that he would eventually be awarded. On November 9, 2004, the Air Force debarred Colonel Frank Plum, III, (ret.) for one year. Plum was the chief of the Special Programs Division at Air Force Materiel Command. During Plum's tenure he failed to insure that the contracting process was conducted properly. Moreover, he failed to insure that Greenwood did not participate in the contracting process and Plum was instrumental in having the contract awarded sole source, regardless of the fact that it should have been competed. Upon his retirement, the Air Force debarred Plum pursuant to FAR 9.406-2(a)(1) and (5) and (c), which permits the Air Force to debar a contractor for improper conduct of so serious and compelling a nature that it affects their present responsibility to be government contractors or subcontractors. Special thanks to Special AUSA Robert Bartlemay and SA Lance Novak.

## **EXTORTION & MONEY LAUNDERING—Washington, DC**

In December 2003, Robert Neal, Jr., the former Director of the Office of Small and Disadvantaged Business Utilization, United States Department of Defense, and his executive assistant, Francis Jones, were each sentenced by the United States District Court for



the Eastern District of Virginia to serve twenty-four years for conspiracy, money laundering, extortion, and making false statements. Using their government positions, Neal and Jones orchestrated multiple schemes to receive kickbacks and to extort funds from small businesses. In January 2004, the Air Force debarred Neal, Jones, and several of their affiliates pursuant to FAR 9.406-2(a)(1), which provides for the debarment of a contractor after the conviction of a crime in connection with public contracting.

**UPDATE**—as of October 2004, the Air Force has debarred 16 entities and individuals involved in the Neal and Jones' conspiracies. The majority of those individuals and entities were debarred pursuant to FAR 9.406-2(c), which permits the Air Force to debar a contractor for any cause that is so serious or compelling that it adversely affects the contractor's present responsibility. A special thanks to DCIS Agent Cynthia Stroot, FBI Agent Harvey Barlow, and AUSA Steve Learned and his office for their continued assistance in this case.

## **INTERNATIONAL BRIBERY, EXTORTION & FRAUD**

AM-AR International was a Department of Defense (DoD) subcontractor that sold parts at grossly inflated prices to the Royal Saudi Air Force under the Foreign Military Sales (FMS) program between 1995 and 1997. The FMS program is a DoD effort to provide friendly foreign nations access to military material from United States suppliers. In order to conceal the grossly inflated prices of the parts, AM-AR formed several bogus distributorships to create the illusion of adequate competition. AM-AR also paid kickbacks to military equipment contractors and procurement personnel in violation of the Anti-Kickback Act in order to secure their illegal cooperation in the scheme. The AM-AR conspiracy spanned the globe, extending from the United States into Canada, England, Saudi Arabia, and Thailand.

On January 18, 2000, the Air Force suspended thirty-one individuals and entities associated with the AM-AR conspiracy. On April 14, 2004, the Air Force proposed for debarment ninety-six individuals and entities associated with the AM-AR conspiracy.

**UPDATE**—To date, the Air Force has debarred fifty-one individuals and entities involved in the AM-AR conspiracy. The debarments were imposed pursuant to FAR 9.406-2(c), which permits the Air Force to debar a contractor for any cause that is so serious or compelling that it adversely affects the contractor's present

responsibility. Some of the debarred people and companies related to the AM-AR conspiracy include:

➤ *Osama Al-Sayed*—a principal of Four Corners International and Four Corners United, both economic partners of AM-AR, used Four Corners and his influence in Saudi Arabia to extort a Wisconsin defense contractor by threatening to interfere with its contract with the Royal Saudi Air Force. Al-Sayed ultimately succeeded in securing from the defense contractor a "procurement agreement" that set aside several million dollars in parts for AM-AR to supply to the extorted defense contractor. Al-Sayed realized substantial ill-gotten profits from this "agreement." Al-Sayed, Four Corners International, and Four Corners United were debarred on September 15, 2004.

➤ *David A. Klemenz*—the Chief Financial Officer of AM-AR, was convicted of engaging in a kickback scheme and aiding and abetting in connection with the AM-AR scheme. He was debarred on September 15, 2004.

➤ *Larry L. May*—the Vice President of AM-AR International and JAIR, pled guilty to conspiracy to commit mail fraud and to pay kickbacks, provide kickbacks, mail fraud, money laundering, racketeering and forfeiture, and false tax returns in connection with the AM-AR scheme. He was debarred on September 15, 2004.

➤ *John Demeritt*—a site manager for a prime Government contractor, accepted kickbacks from AM-AR in exchange for providing preferential treatment in the award of purchase orders to AM-AR, which sold parts kits to the United States Air Force at inflated prices. Demeritt was convicted of conspiracy to pay kickbacks, in violation of the Anti-Kickback Act and mail fraud in connection with the scheme designed to defraud the Government and the Kingdom of Saudi Arabia. Demeritt was debarred on September 15, 2004.

## **FRAUD REMEDIES BULLETINS & UPDATES AND PREVIOUS FRAUD FACTS**

Fraud Remedies Bulletins and Fraud Remedies Updates (formerly called Anti-Fraud Bulletins & Updates) are insightful tools addressing pertinent issues facing investigators and attorneys today, and are published by the Office of Fraud Remedies, SAF/GCR. For questions, please call John W. Polk, Director, Office of Fraud Remedies, SAF/GCR. Previous Fraud Remedies Bulletins & Updates and issues of *Fraud Facts* are available on SAF/GCR's websites, as listed on page 7 of this issue under [Web Sources](#).





## RECENT DEBARMENTS

Adrian Marsh  
Aero Distributing  
Air Transport & Supply  
Alpha Technologies  
AM-AR Broadcasting  
AM-AR United Kingdom  
AM-AR United, Inc.  
American Supply Company  
Andrew A. Adams  
Anthony Fannin  
Arizona Aircraft  
Aviation Unlimited  
Cannew International  
Chuntex Electronic Company, Ltd.  
Computer Consulting Operation Systems, Inc.  
Continental Supply Company  
CTX International, Inc.  
David A. Klemenz  
Equipment & Supply, Inc.  
Four Corners International  
Four Corners United  
Frank Plum, III  
International Precision Suppliers  
James A. Wyszynski  
Jami S. Choudhury  
John Demeritt  
Larry L. May  
Marsh Communications  
Mary Ann Mitchell  
NexGen, LLC  
Osama Al-Sayed  
Pacific Aviation  
R. Lewis & Company  
Ron Lewis  
Thompson Company—Atlanta  
United States Overseas World Trade  
Vane Supply Company

## GUILTY PLEAS

### FORMER BOEING CFO PLEADS GUILTY

The Boeing Company's former Chief Financial Officer, Michael M. Sears, pled guilty to a one-count criminal information charging aiding and abetting acts affecting personal financial interest on November 15,

2004, in the United States District Court for the Eastern District of Virginia.

While acting as Boeing's CFO, Mr. Sears aided and abetted Darleen Druyun (*see Druyun Sentencing article below*), then the Principal Deputy Assistant Secretary of the Air Force for Acquisition and Management, in negotiating employment with Boeing while she was participating personally and substantially as an Air Force official overseeing the negotiation of a \$20 billion lease of 100 Boeing KC 767A tanker aircraft. Mr. Sears will be sentenced on January 21, 2005. He could receive a maximum sentence of 5 years in prison and a \$250,000 fine. Mr. Sears was suspended by the Air Force on February 9, 2004.

### FLIGHT SAFETY COMPROMISED

Vice President and co-owner of Temperform USA, LLC, Kerry Jablonski, pled guilty to seven counts of making false statements to the Department of Defense, Department of Transportation, and the National Aeronautics and Space Administration on September 27, 2004, in United States District Court, Los Angeles, California.

The guilty plea is the result of a July 3, 2003, criminal indictment, which charged Temperform, along with its parent company, Hydroform USA, Inc., and two other company officials with two counts of conspiracy and thirty-two counts of making false statements to the DoD, the DoT, and the NASA. Hydroform and Temperform falsely certified that their parts, including flight safety critical components, met government requirements when they in fact did not.

The investigation was conducted by DCIS, AFOSI, NASA, DoT OIG, DCMA, and DCAA. A special thanks to AUSAs Christine Adams and Dennis Mitchell.

## SENTENCING

### FORMER TOP AIR FORCE OFFICIAL SENTENCED

Darleen A. Druyun, the former Principal Deputy Assistant Secretary of the Air Force for Acquisition and Management, was sentenced on October 1, 2004, in the United States District Court for the Eastern District of Virginia to nine months incarceration, three years of supervised release that includes seven months in community confinement and 150 hours of community service, and a fine of \$5,000 for conspiracy to violate the conflict of interest regulations, 18 U.S.C. § 371.



In April of 2004, Ms. Druyun pled guilty and admitted she entered into, and then failed to disclose, discussions with Michael Sears, a senior Boeing Company executive, concerning her future employment with Boeing. According to United States Attorney Paul McNulty, “[f]rom September 23, 2002 until November 5, 2002, Druyun participated personally and substantially as a government employee overseeing the negotiation of [a matter involving] Boeing while she was at the same time negotiating prospective employment with a senior executive of The Boeing Company.”

On September 28, 2004, a Supplemental Plea Agreement was entered in which Ms. Druyun admitted she breached the April 20, 2004, plea agreement by not providing full, complete, and truthful cooperation. The Air Force suspended Ms. Druyun on February 9, 2004, and she was proposed for debarment on October 18, 2004.



OVER IRAQ -- An F-15E Strike Eagle flies off in the early evening light after receiving fuel from a 908th Expeditionary Air Refueling Squadron KC-10 Extender during a recent mission in support of Operation Iraqi Freedom. (United States Air Force photo by Tech. Sgt. Erik Gudmundson)

## IMPAC FRAUD SENTENCING

On September 24, 2004, Christopher Evans was sentenced to two years probation and 8 months home confinement for IMPAC card fraud. Mr. Evans was the owner of Evans Carpet Cleaning that had contracts with the Air Force. Mr. Evans fraudulently billed Air Force

IMPAC cards in excess of \$59,000. This case was ably prosecuted by Special Assistant United States Attorney Robert C. Bartlemay, United States Attorney’s Office for the Southern District of Ohio. Bob Bartlemay is also an attorney at Materiel Command at Wright-Patterson Air Force Base, AFMCLO-JAF.

## SETTLEMENT

### RUSSIAN TITANIUM

The Boeing Company agreed on September 29, 2004, to pay the United States over \$6.0 million to settle civil allegations that it delivered parts made of Russian titanium for use in military aircraft in violation of the Berry Amendment, 10 U.S.C. § 2533a. The Berry Amendment provides that absent a waiver, the Defense Department may not spend appropriated funds to purchase equipment made of foreign titanium. In this case, there was no waiver. The parts were used in C-17, F-15 and FA-18 aircraft. In addition to the agreed payment, Boeing delivered without charge aircraft parts worth more than \$1.4 million. The raw material value of the Russian titanium delivered to the United States subject to this agreement was approximately \$3.9 million. The case was settled under the False Claims Act, 31 U.S.C. § 3729, *et seq.*

The investigation was conducted by the DCMA, the AFOSI, the DCIS, the Navy Criminal Investigative Service, the DCAA, the Fraud Section of the Department of Justice Commercial Litigation Branch, and the United States Attorney’s Office for the Eastern District of Missouri.

Special thanks to Assistant United States Attorney Joseph Landolt, trial attorney Carolyn Mark of the Department of Justice, and contracts attorneys Douglas Campbell, AFMCLO/JAN, Wright-Patterson AFB, and Kay Lindbeck, DCMA.

### WHISTLEBLOWER SUIT SETTLES

On October 1, 2004, Photon Research Associates, Inc. (PRA) agreed to pay \$1.9 million to settle a whistleblower lawsuit filed under the False Claims Act— *United States ex rel. Segel v. Photon Research Associates, Inc.*, S.D. Calif., No. 03CV2103-J. The government had intervened in the lawsuit. The whistleblower, Kenneth Segel, a former contract manager for PRA, alleged that PRA knowingly overcharged United States defense agencies, including the Air Force, for labor costs on government contracts.



PRA provides software and services for satellites and target detection. According to Segel, PRA had a labor rate structure that took into account annual cost-of-living increases and pay raises. However, despite including pay increases in the basic labor rates, PRA added an escalation cost of approximately 5 percent, resulting in an overall profit to PRA that was more than three times the 8 percent profit negotiated with the government. The whistleblower will receive 19 percent of the settlement. Assistant United States Attorney Kevin A. Seely of the United States Attorney's Office, Southern District of California, litigated this lawsuit, and Patrick Elder at Kirtland Air Force Base was the Acquisition Fraud Counsel.

## WEB RESOURCES

### SAF/GCR WEBSITES:

SAF/GCR

<http://afnet.safgc.hq.af.mil/safgcr.htm>

HAFDASH GCR

<https://intranet.hq.af.mil/webfiles/safgc/>

FLITE GCR

<https://aflsa.jag.af.mil/>

AFNET

<http://afnet.safgc.hq.af.mil/>

### ADDITIONAL WEBSITES:

Central Contractor Registration

<https://www.bpn.gov/CCR/scripts/index.html>

Defense Federal Acquisition Regulations

<http://www.acq.osd.mil/dpap/dfars/index.htm>

Excluded Parties List System

<http://www.epls.gov/>

Federal Acquisition Regulations

<http://www.arnet.gov/far/>

Thomas (U.S. Congress Online)

<http://thomas.loc.gov>

*\*Multiple other useful links may be found on the SAF/GCR websites.*

## LEGISLATIVE ACTIVITY

There were no changes in status to the Congressional bills being monitored by the *Fraud Facts* since the September 2004 edition. The next issue will contain any relevant updates.

## ETHICS CORNER

### Insider Trading

By Kerri Cox, SAF/GCA

The Wall Street Journal recently reported that United States senators have a knack for picking stocks that outperform the market. A study to be published in the December issue of the Journal of Financial and Quantitative Analysis, relied on public financial disclosure forms over a five year period to reveal that stocks purchased or sold by senators beat the market by approximately 12 percent a year. In addition, the senators seemed to know exactly when to buy and sell. Purchased stocks would suddenly outperform the market by 25%; upon sale, stocks that had been performing at 25% for the past year would suddenly fall back in line with market performance. The article did not make any claim that trades were illegal. Researchers surmise this ability to beat the market stems from access to information not available to the general public. For example, a committee member might know whether a particular drug is likely to win regulatory approval or whether certain tax legislation will pass - benefiting particular companies. The United States Senate Ethics manual states that if a senator benefits personally from legislation that has a broad, general impact on his state or the nation, resulting personal gain is not prohibited.

For Air Force employees, there are both specific and general prohibitions on using non-public information. Air Force employees, both military and civilian, should understand that public service is a public trust. And, the three core values - integrity first, service before self, and excellence in all we do, serve as the backdrop for every decision an Air Force employee makes. In addition, "employees shall not hold financial interests that conflict with the conscientious performance of duty." Secondly, "employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest."

Further, direct conflicts of interest are prohibited by criminal statute. Federal employees are prohibited from participating personally and substantially in an official capacity in particular matters in which they have a financial interest where the matter will have a direct and predictable effect on that interest. Members of the acquisition and investigative communities in the Air Force are often privy to specific information that may directly impact, positively or adversely, on particular companies in the private sector. Knowledge of the likely



awardee of a contract, for example, cannot be used to further personal financial interests.

Air Force employees might also have general information about contractual actions, individual investigations, possible indictments, or suspensions or debarments that could bring great financial benefit to individual employees in contradiction to the oaths taken by those same employees. The Securities and Exchange Commission defines insider trading very broadly. When a person trades a security while in possession of material nonpublic information in violation of a duty to withhold the information or refrain from trading, they have committed insider trading. Therefore, Air Force employees should think carefully before buying or selling stock to insure the basis of the trade is not information unavailable to the general public. When in doubt about any of these issues, employees should consult their supervisor or ethics counselor.

## ARTICLES & SPEECHES

### ARTICLES

- Suspension & Debarment in a Nutshell  
[http://afnet.safgc.hq.af.mil/sd\\_shaw\\_nutshell.htm](http://afnet.safgc.hq.af.mil/sd_shaw_nutshell.htm)
- Suspension & Debarment: Emerging Issues in Law and Policy  
[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=509004](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=509004)

### UPCOMING SPEECHES

- February 17, 2005: Steve Shaw will lead a panel on contractor ethics at an NCMA Conference in Melbourne, Florida.
- December 9, 2004: Steve Shaw will be addressing debarment issues at Professors Nash and Cibinic's West Publishing Forum in Washington, D.C.
- December 6, 2004: John Polk will teach classes on the False Claims Act and issues involving contractor employees in the workplace at Hanscom Air Force Base.

### RECENT SPEECHES & ARTICLES

- November 11, 2004: Steve Shaw spoke at the annual Aerospace General Counsels' Conference in Scottsdale, Arizona, on corruption in international arms trade.
- October 5, 2004: Steve Shaw made a presentation on ethics to The Boeing Company's ethics officers in Seattle, Washington.

## SUSPENSION & DEBARMENT IN A NUTSHELL

**Regulations**—The suspension and debarment regulations are found in the Federal Acquisition Regulation (FAR), Subpart 9.4. - "Debarment, Suspension, and Ineligibility." 48 CFR, Chapter 1, Part 9.

**Suspension**—The government may suspend a contractor based upon "adequate evidence" that it has engaged in certain misconduct as stated in FAR 9.407-2. The suspension continues, with certain limitations, pending the completion of any investigation or legal proceeding. An indictment constitutes "adequate evidence" as a matter of law under FAR 9.407- 2(b), but is not required. As a general principle, "adequate evidence" is analogous to probable cause.

**Debarment**—A suspending and debarring official (SDO) may debar a contractor based upon a civil judgment or conviction of a crime in connection with offenses involving business integrity, regardless of whether it was related to a government contract. However, a conviction or civil judgment is not a necessary prerequisite to debarment. The government can debar a contractor for any misconduct if it is so serious as to affect the contractor's present responsibility under FAR 9.406-2(c), including violations of government contracts. FAR 9.406-2(b)(1). The debarment is for a specific period of time: "generally" no more than three years. FAR 9.406-4(a)(1).

*This is an excerpt of "Suspension and Debarment in a Nutshell." To view the full article, click on the link:*

[http://afnet.safgc.hq.af.mil/sd\\_shaw\\_nutshell.htm](http://afnet.safgc.hq.af.mil/sd_shaw_nutshell.htm)

## CONTRIBUTING WRITERS

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*A special thanks to this issue's contributing writers.*





## AVIATION HISTORY

### The End of the Red Baron

#### Part II

*John W. Polk, SAF/GCR*

The last issue described the death of Manfred von Richthofen, the Red Baron, who was shot out of the sky over France in April 1918, and the ensuing controversy surrounding his death. For many years a Canadian pilot named Roy Brown was credited with shooting down the Red Baron, but a recent review of the evidence seems to prove that an Australian machine-gunner firing from the ground brought down the dreaded Red Baron. Now, there is yet another theory suggesting that the Red Baron's death spiral may have begun nine months earlier.



Two medical researchers contend that an injury to von Richthofen's brain during an earlier dogfight figured in his death. The medical researchers focused on an incident in July 1917 when a bullet struck Richthofen's head leaving a four-inch scar that never completely healed. Richthofen was a very reserved person, but was described as immature after the injury, which is apparently common after a brain injury. He began exhibiting odd behavior, such as laying his head on a Berlin restaurant table to display the open head wound. Richthofen's mother wrote that after the injury her son's behavior changed, and Richthofen himself commented that the head wound affected his behavior. During his final, fatal dogfight, von Richthofen pursued a fleeing plane across enemy lines in an uncharacteristic display of target fixation. The pursuit broke Richthofen's own rule to never obstinately stay with an opponent. The researchers believe that the effects of Richthofen's July 1917 head wound interfered with his ability to make the right critical decisions in combat, resulting in his later death in April 1918.

There is, however, a problem with this theory.

When Richthofen incurred the head wound, he had shot down 57 planes. After he returned to duty, he shot down 23 more, hardly a record of dazed and confused behavior.

*This article is based on information published on the Internet. See [www.briggsenterprises.com/bluemax/](http://www.briggsenterprises.com/bluemax/) for further information on the Red Baron.*

### IRAQ: A DAY IN CAMP ANACONDA

*by Major James P. Sweeney, DCMA BAE Systems,  
Nashua N.H.*

The alarm on my wristwatch sounds at 0500. I press the indigo light to confirm what I already know: it is indeed time to start another day at Camp Anaconda in Balad, Iraq. Stationed about one hour's drive north of Baghdad, the ambient air within our green tent is cold. The generator quit sometime during the night. But it was a good night for Anaconda - there were no mortar or rocket attacks.

From my sleeping bag, I can see the glow of Major Derek Bonenclark's flashlight. He's considerably attempting to put on his gym clothes without waking anyone else in the tent. Together we head out for morning workout. It is late October, and the outside temperature is cold enough to see one's breath. But, with any luck, we have a hot shower to look forward to.

The water is only lukewarm as I rinse away what is left from my morning shave. As we change into our desert camouflage utilities, I remember how glad I am that I picked up winter gear while at Fort Bliss en route to Iraq.

Breakfast is had at one of three dining facilities (DFACs) here on Anaconda. The line moves fast this early in the morning. I get my usual: waffles, scrambled eggs, fruit, juice, and coffee - brewed extra strong by the Third Country National (TCN) sub contractors. I discreetly pocket a few pieces of fruit in my bulky jacket for lunch as well as a couple of cans of juice to stock up our small refrigerator in our office trailer.

Major Derek Bonenclark and I arrive at our trailer located beside our sleeping tent and adjacent to the Army Material Command (AMC) building. AMC provides logistical support to the warfighter. I'll spend a short time in the office catching up on e-mails.

Together, Derek and I provide contract surveillance over Kellogg Brown, and Root (KBR), the prime contractor for the Army's Logistics Civil Augmentation Program (LOGCAP). Major Bonenclark is the



administrative contracting officer (ACO) for this location, and I am the quality assurance representative (QAR).

As QAR for Camp Anaconda, I visit the various sites that KBR have under construction. I inspect the latrine and shower trailers and a laundry facility, as well as two of the DFACs. Within these dining facilities are the Morale, Welfare, and Recreation Offices, which house an indoor pool, gym, movie-theater, and game room!

Time to load my helmet and flack jacket into our Non-Tactical Vehicle (NTV) because today I know I'll be driving close to the perimeter fence during my morning rounds. I remember I'll see the Phillipino TCN's, so I bring along a few extra items for them from our organization, little things like clothing, goodies, and toiletry items. They work for a sub contractor called Prime Projects International under KBR.

On my way to the perimeter road, I visit first the DFAC under construction and then it's off to the laundry site. Camp Anaconda is primarily an Army logistics base that receives supplies from Kuwait, and then pushes them out to other locations in Northern Iraq. Personnel on the base consist of mostly Army however there are also Air Force, Navy, and Marine Corps as well as military and/or civilians performing other vital functions.

Constant noise stems from the amount of activity present. It comes from the consistent taking off and landing of aircraft, vehicles that are always making rounds and the continuous hum of generators located throughout the post. I arrive at the second DFAC construction site to discuss progress with their lead engineer. My digital camera captures a log of progress, which I use to show other folks, including KBR, back at the office. But, I also take photographs of the workers and promise to have them developed so they can send them to their families in the Philippines.

I stop to realize the pristine Iraq morning - blue skies and cool crisp air. We cherish each and every safe day. Heavy transports (C-130s, C-17s, and C-5s) can now be seen taking off and landing. Each executes a steep tactical approach and departure, continuously maneuvering (and on occasion deploying flares) so as not to make the big planes an easy target for the enemy.

Apache helicopters protect the perimeter and outlying areas, while Unmanned Aerial Vehicles provide additional surveillance. Members of the Fourth Infantry Division protect the ground outside the fence as they

perform local area searches for enemy combatants and their weapons caches.

I return to the office by early afternoon to prepare for our daily meeting with KBR. We mainly discuss progress, clarify some issues and obtain details on important daily subjects. After some more work back at my desk, I attend the 1800 Camp Mayor 's staff meeting, prior to heading to dinner. And after it's time to perform my evening meal ritual – a bowl of ice cream and iced tea to go. Then it's back to the office trailer for some light reading and more e-mails.

Most nights, Major Bonenclark and I call it quits between 2100 and 2200. He ends his day reading under the glow of a flashlight. I don my headset and listen to the Armed Forces Network radio. Before I drift to sleep, I know that I'm one day closer to a return home to my family and friends.

\*This story is from DCMA's Eastside Edition publication at <http://home.dcmde.dcm.mil/EastSide/>.



HYAKURI AIR BASE, Japan—An F-15 Eagle from the 67th Fighter Squadron at Kadena Air Base, Japan, takes off for a mission during a Keen Sword exercise Nov. 16. Keen Sword is a bilateral defense exercise designed to practice defending Japan against foreign aggression. (United States Air Force photo by Master Sgt. Val Gempis)

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