

1995. We also received copies of the checks that were issued by the Marshals Service in payment of those vouchers.⁷ The earliest of these vouchers was issued on March 15, 1993, by AUSA Lynn Leibovitz. The latest was issued on June 13, 1995, by former AUSA G. Paul Howes. We were provided with 719 vouchers that were issued for prosecution witnesses in the above-captioned cases during this period, of which 35 were signed by AUSA Ragsdale, AUSA Leibovitz, or another AUSA in the office.⁸ The remaining 684 vouchers were signed by or on behalf of G. Paul Howes. The first one he signed was dated May 3, 1993, for [] The vouchers represented payments to 132 government witnesses in the total amount of \$140,918.14. As will be discussed in more detail below, several witnesses received in excess of \$1,000 each; one witness

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⁷The cases for which vouchers were produced were the following:

United States v. Mark Hoyle, et al., No. 92-284 (TPJ)

United States v. Andre Perry, No. 92-284 (TPJ) [severed from Hoyle]

United States v. Lazaro Santa Cruz, et al., No. 92-285 (TPJ)

United States v. Perry Graham, et al., No. 92-287 (TPJ).

⁸We did not consider any of the vouchers issued by AUSAs other than Howes to be suspect, for several reasons. First, we received no allegation that anyone other than Howes issued vouchers that were not justified under the law and regulations. Second, there were very few vouchers issued by these persons, and accordingly there was no pattern of heavy use that gave rise to a suspicion of abuse. Third, there were no vouchers issued under other circumstances that gave rise to suspicion, such as being issued for periods when a witness was incarcerated.

received more than \$10,000 in attendance fees and travel payments.⁹

Although the Hoyle trial lasted six months and some of the vouchers were for related (though much shorter) trials, the volume of vouchers appeared to be unusually large, particularly in view of the large payments to certain witnesses. Therefore, we attempted to interview as many of the persons who received witness fees as we could in order to determine the purposes of the vouchers. We also interviewed the prosecutors, agents, and police officers who had knowledge of the contributions of each witness. Because we were conducting an administrative investigation and had no subpoena power, some witnesses refused to talk to us. However, we spoke to enough people to develop reliable information about a substantial number of the witness vouchers.

As would be expected, many of the vouchers turned out to be completely legitimate, in that they went to persons who provided information in pre-trial conferences and then testified at trial. For example, Andre White was an important witness against defendant Mark Hoyle concerning the murder of Marcus Herring. White testified at the trial and was considered a credible witness. He received witness vouchers totaling \$970.95 for appearances and

⁹Attached at Tab G is a table prepared by the FBI setting forth the list of all persons receiving the vouchers retrieved from the USMS in this investigation. This table includes a few vouchers that were included by mistake, such as some that were issued in connection with cases not related to the NSC cases. The figures in the text of this report exclude those vouchers, as well as the very few NSC vouchers signed by prosecutors other than Howes. Accordingly, the figures shown on the table differ in some respects from the figures discussed in the text for numbers of days of attendance and total amounts paid to a given witness.

travel expenses on 23 days, some for pre-trial in Hoyle, some for trial in Hoyle, and some for pre-trial in the severed case of Andre Perry. Reginald Drake was a police officer from Tennessee who testified about an incident involving narcotics at a Tennessee airport. He received vouchers for travel expenses and four days of attendance towards the end of the Hoyle trial, totaling \$349.00.

Many other individuals, however, received payments that could not be explained adequately by anyone we interviewed. For example, [REDACTED] received vouchers totaling \$5,421.20 for 91 days of attendance between July 2, 1993, and April 6, 1995, for the Perry Graham, Hoyle, and Andre Perry cases. [REDACTED] was one of the few non-MPD Hoyle witnesses who agreed to be interviewed by us. She appeared to be quite credible and forthright. [

[REDACTED] who pleaded guilty and cooperated as a government witness. She said that [] testified for the government in the Perry Graham trial. When he testified, [REDACTED] went to the courthouse every day to talk to him and the prosecutors or to observe the trial. When she went to the courthouse, Howes always asked her questions about [

] several persons who were connected to the NSC defendants and witnesses. Howes also asked her to listen to the trial testimony and provide her opinions about it afterwards; he also told her he might call her as a rebuttal witness, but he never did so, and she never testified for the government at all. However, she did say that she provided some information to Howes for every day she received a voucher, with one exception.

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The one exception was the voucher issued to her for April 3, 4, 5, and 6, 1995. She was somewhat confused about this voucher, but we believe we understand what happened. She told us that she received a voucher at that time, which was well after the Hoyle trial, for the benefit of [] who was being released from jail on the completion of his sentence. When she spoke to us, she evidently thought she had taken a voucher that was issued to Woodfork himself and cashed it for him because he had no identification card. Woodfork did, indeed, receive a voucher for the same time period, but he cashed the check himself. [] did not recall that she received a voucher in her own name. Evidently, she cashed her own voucher and gave the money to Woodfork, without realizing that he had received a voucher himself in his own name.

What is clear from [] interview with us, though, is that she did not testify or provide any information to prosecutors to justify that voucher, except for possibly talking to Howes on one of the listed days about where Woodfork would go upon his release. She told us that the voucher she cashed was intended for Woodfork, that she gave the money to him so he could purchase clothes, and that that was the purpose of the voucher, according to what Woodfork told her. She also told us that other cooperating witnesses, including Santa Cruz, Lynch, and one other whose name she did not recall, had gotten vouchers from Howes upon their release from jail.

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We asked Howes about the vouchers for [REDACTED] and Woodfork. He told us that [REDACTED] provided him with information about threats against the witnesses being held in local jails as well as general information about the witnesses and defendants. He said that on some occasions she provided her information briefly to a police officer and other times directly to Howes. He also told us that on occasion he called her on the phone to get information and then issued her a voucher for that day. However, there is no evidence that Howes ever intended to call her as a witness at the trial, and her name did not appear on a questionnaire for prospective jurors that contained the names of many potential witnesses.¹⁰

Howes told us that [REDACTED] never told him she was going to use the money from any of her vouchers for the benefit of Woodfork. Howes acknowledged that the voucher to Woodfork was issued on the day Woodfork was released from jail; Howes said he intended that the money be used as a resource to keep Woodfork from going back onto the streets. Howes told us he issued vouchers to other witnesses upon their release for the same purpose.

[REDACTED] a witness who received a great many vouchers is [REDACTED]

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[REDACTED] who committed three murders on behalf of the NSC, eventually cooperated after being convicted of one murder in a trial handled

¹⁰With respect to [REDACTED] and other witnesses whose names did not appear on the jury questionnaire, there was no claim by Howes, or any other indication, that these were "secret" witnesses whose names were concealed in order to protect their identities.

by Howes. Forgy then became a crucial witness and displayed great loyalty to Howes and the government. According to Forgy, he was kept on the sixth floor of the courthouse on many days not just as a witness but as a leader of the other witnesses, some of whom were afraid of the defendants and the defendants' associates. This view was corroborated by MPD Detective Barbara Lyles, who said that Forgy acted as a leader to keep the morale of the other witnesses strong and to keep them loyal to the government.

[REDACTED] received vouchers for 180 days of attendance for the Hoyle, Perry Graham, and Andre Perry cases, between July 2, 1993, and May 1, 1995. The total amount paid to her was \$7,518.00. We made repeated attempts to interview [REDACTED] through MPD Sergeant Frank Morgan, who asked her to talk to us; through a letter from AUSA Chapman, and through a phone call with AUSA Chapman. At one point she agreed to come to an interview, but then failed to show up and thereafter declined to speak to us.

Forgy told us that he knew [REDACTED] went to the courthouse often in connection with the NSC cases. He said that she visited him there often, and that she might have been questioned by the prosecutors about a threat that was made against her.

Howes acknowledged that he issued numerous witness vouchers to [REDACTED]. He told us he believed the vouchers were justified because of her contributions to the case, including providing a lot of information. He told us he could not quantify the amount of information she provided each time she was issued a voucher. He

said that whenever she came to the courthouse to visit Forgy, she was asked at least one question, such as whether anything had happened with respect to threats, or whether she had anything new to report. Howes said that perhaps one-third of the time it was the absence of information that was significant. In other words, she may have been asked if there had been any problems with threats from persons associated with the defendants; if she said no, then the prosecutors and agents were satisfied that the situation was stable for the moment and no new protective action was needed. He also told us that were occasions when she came to the courthouse to visit and was not issued a voucher.

In addition, Howes told us that the vouchers were justified because [REDACTED] always was a potential witness who could provide historical information about the Newton Street neighborhood. He also made it clear that part of the justification for paying her a witness fee was that, when she reported that everything was all right in the neighborhood, that information had a calming effect on the cooperating witnesses. However, [REDACTED] never testified in any of the NSC trials, and [REDACTED] in the Hoyle case.

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The witness who received the largest sum of money in witness fees was David Belisle, who was paid \$9,835.00 for appearances on 167 days between July 13, 1993, and September 23, 1994.¹¹ He

¹¹Belisle also received vouchers for seven days in April 1993. However, those vouchers were issued by AUSA Leibovitz, and therefore are not considered in this discussion. Accordingly, the total number of vouchers and the total amount of money paid to Belisle as set forth in the table at Tab G, which includes the

received more money for slightly fewer appearances than [] b7C
because he had higher travel expenses, traveling from Annapolis, b7F
Maryland, to the courthouse for each day of attendance. Belisle,
as noted earlier, was an MPD detective who was heavily involved in
the NSC investigation from its inception. He retired from the
police department on August 29, 1992, not long after the July 1992
NSC arrests. In January or February of 1994, he began to work
part-time for the sheriff's office in Anne Arundel County,
Maryland, where he continued to work part-time during the Hoyle
trial in 1994.

Belisle told us that he traveled often to the courthouse for
the Hoyle trial and the earlier trials, virtually every day for the
Hoyle trial. He said that, if he was not working at the sheriff's
office in Maryland, he normally reported to the courthouse in
Washington at about 10:00 a.m.; if he had to work in Maryland in
the morning, he arrived at the courthouse at about 12:30 p.m. He
told us that he ordinarily called Howes' office in the morning to
get instructions, then he took files, exhibits, or other items from
Howes' office to the courthouse. He spent some time guarding the
witnesses on the sixth floor and sometimes helped escort them back
down to the Marshals Service cell block in the basement at the end
of the day.

Belisle told us that he did testify once or twice in the Hoyle
trial, but not extensively. He said that he was given a witness

Leibovitz vouchers, are higher than the figures in the text of this
report.

voucher whenever he showed up to assist the prosecutors. He said that his assistance usually consisted of doing errands in the manner of a case agent, rather than providing information as a witness.

Howes told us that Belisle was present for every day he received a voucher. Howes said that Belisle did testify in the Hoyle trial. Howes said that, each time Belisle appeared, Belisle "provided information" to the prosecution, not necessarily as a fact witness himself, but on occasion through his assistance with exhibits, making phone calls to witnesses and otherwise advancing the prosecution.

Another witness, [REDACTED] received vouchers for 162 days of attendance between June 25, 1993, and April 6, 1995, for a total amount of \$8,409.00. [REDACTED] was the [REDACTED]

[REDACTED] an important cooperating witness, and [REDACTED]

[REDACTED] She told us that Howes called her down often to his office or to the courthouse to provide information [

] but she said she had no evidence about their crimes, because she had never witnessed any drug transactions or other criminal activity. She never testified in any of the NSC trials. However, [[REDACTED]] list of prospective witnesses set forth on the questionnaire for jurors in the Hoyle trial.

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Howes told us that [REDACTED] provided some information about the defendants and was important in helping the prosecutors maintain a good relationship with Lynch, who was reluctant to talk to them at first.

Another witness in a similar situation was [REDACTED] the [REDACTED] She received vouchers for 103 days of attendance, in the amount of \$4,538.00, between April 26, 1993, and January 25, 1995. We were not able to interview either her or Santa Cruz. Howes told us that [REDACTED] was an important potential witness and that he considered putting her on the stand after Santa Cruz, but did not do so. He also said that she provided valuable information about the cooperating witnesses. [REDACTED] list of prospective witnesses disclosed to jurors.

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We also interviewed cooperating witness Frank Lynch. He told us that he did not ordinarily receive witness vouchers himself, because he was incarcerated and therefore ineligible to receive them. However, he did acknowledge receiving one voucher from Howes upon his release from jail on or about April 6, 1995. In fact, the records show that he received a voucher on April 6, 1995, covering April 3, 4, 5, and 6. Although Lynch told us he was released from jail on April 4, [REDACTED] told us the date was April 6, and the docket entry for his case says that final judgment in his case was entered on April 6, indicating that he was

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finally sentenced to time served and released on that date. We have been unable to obtain from the jail any records showing his release date.

Thus; it appears that Lynch received a voucher covering three dates on which he was incarcerated the entire day, and one date on which he was incarcerated part of the day. The statute governing fact witness payments, 28 U.S.C. § 1821, provides, in part:

(f) Any witness who is incarcerated at the time that his or her testimony is given (except for a witness to whom the provisions of section 3144 of title 18 apply) [relating to material witnesses] may not receive fees or allowances under this section, regardless of whether such a witness is incarcerated at the time he or she makes a claim for fees or allowances under this section.

Under this statute, it was improper for Lynch to be given a voucher for the three days preceding his release from incarceration. Moreover, Lynch told us he was not sure what the voucher was for.

When we confronted Howes with this voucher, he told us he did not recall giving Lynch the voucher and could not explain how a voucher could be issued for those dates. He acknowledged that the signature on the voucher was his own. He told us that perhaps a police officer met with Lynch to discuss what Lynch would do upon his release. Howes told us that voucher payments to Lynch and other witnesses being released from jail were intended partly to ensure that the witnesses had some money to keep them from going directly back to the streets, and possibly to allow them to leave town, at least for a while. He also said that he may have wanted Lynch interviewed about the Tony Garrett murder in preparation for the trial of Andre Perry, the defendant severed from the Hoyle

trial. Howes said that, if some of the money went for days when the witness was incarcerated, "that's an error."

As noted earlier, William Woodfork also received a voucher upon his release from jail, as did Lazaro Santa Cruz (\$210.00 on April 4, 1995) and Robert "Blue Tip" Smith (\$168.00 on May 31, 1995). Smith, in his interview with us after his polygraph examination, alleged that MPD Sergeant Frank Morgan had dropped the envelope containing the voucher on a bench outside the courthouse, telling him, "You didn't get this from me," and saying it was from Howes. When we asked Morgan about this incident, he readily acknowledged handing Smith an envelope from Howes after Smith was released from jail. Morgan told us that Howes had arranged for Smith to have a job with Caruso's florist shop in Washington, and Morgan said he thought the envelope, which felt "puffy," contained employment papers. He said he may have made a remark to Smith such as "You didn't get this from me," but if he did, it was meant as a joke. He said that he regularly joked with Smith. We found Morgan to be a very cooperative and credible witness.

Smith also alleged, as noted earlier, that, in December 1994, while still in jail, he asked Seldon how to get some money, and Seldon arranged with Howes for Smith to get money through a voucher issued to [] In fact, [] was issued a single voucher on December 20, 1994, for \$210.00, covering appearances on November 18, December 2, December 9, December 16, and December 20 for preparation for the Andre Perry trial, which was still pending. When we showed this voucher to Howes and

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repeated the allegation, he flatly denied issuing a voucher at the request of Seldon. He told us the name of [] was familiar to him, but that he could not recall what her role as a witness had been. Seldon told us that he did speak to Howes about the possibility of [] getting a witness voucher, but he did not know if Howes ever gave her one. He told us that []

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[] was a potential witness against the NSC.

We were unable to contact [] for an interview. We found it significant that this single voucher was issued for five dates spaced quite far apart, whereās the normal practice would be to issue one voucher for each date or set of dates within a particular week. It also was of note that no trial date had been set for the Andre Perry trial at this point, and it was unclear whether the case would go to trial.¹² However, although we found this voucher to fit the pattern of excessive issuance of vouchers without adequate justification, we did not find sufficient evidence to conclude that Howes issued it at Seldon's request solely to provide money to Smith.

In some respects the most troubling of all the vouchers issued by Howes were those issued to [REDACTED] [REDACTED] received vouchers signed by Howes for 53 days of attendance between December 1, 1993, and June 13, 1995, some for

¹²AUSA Ragsdale told us that no court action was taken on Perry's case from the time he was severed from the Hoyle trial until a status hearing before Judge Jackson in February 1995. At that time the hearing was continued to April 6, 1995. Eventually, on August 4, 1995, Perry pled guilty to a seven-year count and was sentenced to five years supervised release.

the Hoyle case, and the later vouchers, after the completion of the Hoyle trial in September 1994, for the Andre Perry case. Including travel expenses, these vouchers totaled \$3,905.60. Vouchers for many of the same dates were issued to [REDACTED] (\$2,240.00), [REDACTED] (\$2,240.00), and [REDACTED] (\$2,360.00). The latter three witnesses received attendance fees only, without travel expenses.¹³

[REDACTED] told us that she did receive the vouchers from Howes and that the other three witnesses named [REDACTED] are her [REDACTED]. She said that her [REDACTED] who was born in about [REDACTED] was [REDACTED]

[REDACTED] in about [REDACTED] when some members of the family lived in the Southeast quadrant of Washington, D.C. [REDACTED] was charged with [REDACTED]

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[REDACTED] was acquitted. according to [REDACTED] the defense argued that [REDACTED] had coached [REDACTED] in [REDACTED] testimony.

After the acquittal [REDACTED] and her [REDACTED] were living in [REDACTED]. She told us that she remembered traveling to Washington to see Howes at his office numerous times to discuss a possible trial of [REDACTED] on additional charges arising from his attacks on [REDACTED] including [REDACTED] that occurred after the acquittal, as well as to discuss her knowledge of drug trafficking in Southeast Washington. [REDACTED] who was quite vague in her interview with us, told us that she did not recall the names of any drug dealers she discussed with Howes, nor

¹³Copies of these vouchers are attached at Tab H.

the specific street or streets in Washington where the drug dealing took place.

[REDACTED] told us that she usually met with Howes for about an hour each time, on various floors of the U.S. Attorney's Office building. She said she brought not only [REDACTED] but [REDACTED] along each time because the [REDACTED] also had general knowledge about [REDACTED]

We questioned her especially closely about the vouchers Howes issued to [REDACTED] on June 13, 1995, covering May 31, June 2, June 8, and June 13, 1995. Although these were the last vouchers Howes issued to them, she could not recall these vouchers in particular. She could not recall ever saying goodbye to Howes, despite the fact that he was moving to California after working closely with [REDACTED]] She could not recall where the vouchers were issued or any other details about the final meeting.

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Howes told us that he had tried [REDACTED] for [REDACTED]] of [REDACTED] He said he had had to work with [REDACTED] for about a year to get [REDACTED]] to be confident enough to testify in the grand jury. He said that the vouchers issued in later years were for the follow-up [REDACTED]] investigation of [REDACTED] and for information about open homicides in Washington. When confronted with the vouchers issued on June 13, 1995, he at first told us that the dates must be "wrong." However, since the checks also were dated June 13, it was apparent that the vouchers' dates were correct. Ultimately, Howes said he could not explain how he could have

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issued vouchers after his departure from the U.S. Attorney's Office. He told us that he left on or about the last day of May; his personnel records show his last day as May 26. Despite repeated questioning on this point he was unable to explain what happened, although he did not deny that the vouchers were signed by him.

Our investigation revealed other problems with the witness vouchers issued by Howes. Apart from those discussed above, some other witnesses received numerous vouchers without testifying at trial, raising the question whether they were being paid for providing case-related information or were being paid in order to maintain their loyalty, or that of their relatives, to the government.¹⁴

In addition, Howes issued a significant number of vouchers styled under the Hoyle caption to witnesses from his Card case in the Superior Court, including Anthony Dorsey, Irvin Pittman, and Leroy Pearsall. Howes acknowledged that this was at least technically improper; he told us that he used the Hoyle vouchers for the U.S. District Court because they were readily available and it was convenient to use them rather than switching back and forth with Superior Court vouchers. However, Ramsey Johnson, the Principal AUSA for the office, told us that Superior Court vouchers are issued by the half-day of attendance, as opposed to District Court vouchers, which are issued for a full day's attendance regardless of the amount of time actually spent in attendance.

¹⁴See the table of witness payments at Tab G.

Thus, it would be easier to provide more money to witnesses through District Court vouchers than through Superior Court vouchers when the witnesses only appeared at the office for a short time. In addition, the Superior Court form provides for payment only for a single appearance, and requires recording of the date and of the starting and ending times of the appearance; the District Court form permits payment for multiple days, and no times need be recorded.¹⁵

We also found evidence of an inquiry by the USAO into Howes' use of witness vouchers. We obtained a copy of a memorandum dated January 31, 1995, from Howes to Steven J. Roman, Chief of the Narcotics Section in the District Court division of the U.S. Attorney's Office.¹⁶ This memorandum was in response to AUSA Roman's request that Howes explain the large payments of witness fees to two individuals, Anthony Pratt and Cornelius "Googie" Wooten from 1990 to 1992. Although these payments were made prior to the time covered by our inquiry, they were made in connection with the NSC investigation, and the memorandum provides useful information about the witness voucher issue in general.

AUSA Roman told us that, when he became Chief of the Narcotics Section in December 1994, after the Hoyle trial had concluded, AUSA Jeffrey Ragsdale mentioned to him that two witnesses in Hoyle had received large payments through witness vouchers. After discussing

¹⁵A sample blank Superior Court witness voucher is attached at Tab I.

¹⁶A copy of this memorandum is attached at Tab J.

the situation with AUSA Marshall Jarrett, the Chief of the Criminal Division of the USAO, AUSA Roman asked Howes to provide an explanation. The result was Howes' January 31, 1995 memorandum. In the memorandum, Howes explained that Pratt and Wooten had received total payments of \$8,480.00 and \$4,910.00, respectively, for their assistance as informants and witnesses through 1992. Howes said that Pratt and Wooten "were not only making [controlled drug] buys, but were working and living in the neighborhood, bringing us intelligence as we began to learn the [NSC] players" He went on to say:

On those occasions when buys were made, the CIs [confidential informants Pratt and Wooten] were paid \$50 or \$100 for their work on the street. However, they both saw me on several days each month -- some as few as 5 days, sometimes as many as 19 days during trials -- in my office and elsewhere, with the officers, to provide us with the only sources of intelligence we had on the members [of the NSC].

Earlier in the memorandum, Howes offered a general explanation of the nature of the payments:

There was no money to fund this investigation. Unlike today, where federal agencies routinely fund confidential informants and the expenses of long term undercover purchases, MPD was interested only in solving murder cases and didn't want [Sergeant Daniel] Wagner working drug cases

Howes went on to explain how he and the investigators

utilized our own resources: we garnered our own observation post, used our own cars and gas, bought our own video equipment and recording tapes, and, on occasion, used our own funds for buy money (which, after the fact, was always reimbursed through vice offices the following morning once the paper work was completed and the drugs delivered for analysis).

He concluded the memorandum by providing an impressive list of the numerous homicides Pratt and Wooten helped to solve through their service as informants and witnesses.

AUSA Roman told us that, although he was "shocked" at the amounts of money paid to Pratt and Wooten, the investigation of Howes' conduct ended without resolution when Howes left the USAO in May 1995.

We also found evidence that Howes had been warned before the Hoyle trial took place about abuse of witness vouchers. AUSA Leibovitz told us that in early 1993 in connection with a case in Superior Court she noticed that Howes issued a voucher to a witness for two days of appearance. AUSA Leibovitz believed the witness had appeared for only one day. She later took Howes aside and told him not to do that because it could get him into trouble. According to AUSA Leibovitz, Howes said "All right," meaning he would not do it again.

Apart from evidence concerning the use of witness vouchers, we inquired into more general matters for the purpose of assessing whether Howes' conduct was intentional or resulted merely from lack of guidance and training. One important area of inquiry was Howes' reputation within the USAO. Several of his supervisors and colleagues told us that Howes was a very capable and dedicated prosecutor who worked hard to achieve results. However, we also were told that Howes did not like to be told what to do by supervisors and had a tendency to disregard rules he did not want to follow.

For example, Eric Holder, the U.S. Attorney during the period in question, told us that Howes was a very talented trial lawyer, but was "kind of a pain," in that he viewed himself at the center of the world. He said that the USAO "put up" with a lot of difficulties from Howes because of all that Howes accomplished in his prosecutions, which Holder described as extraordinary work. Ramsey Johnson, who was Chief of the Superior Court Division, Interim U.S. Attorney, and then Principal AUSA during the NSC investigation and trials, told us that Howes was a dedicated prosecutor who worked long hours to pull together the case. He said the NSC prosecution never would have had the success it did if it had been prosecuted by an attorney less talented than Howes, largely because of the difficulties of dealing with witnesses from the streets, some with major criminal histories.

David Schertler, who was Chief of the Homicide Section, where Howes was assigned, told us that Howes was an aggressive, hard-driving prosecutor who did a tremendous job, though he also said Howes was stubborn and strong-willed. Daniel Friedman, Deputy Chief of the Homicide Section, said that Howes was totally committed to his job, but was willing to "stretch" the rules, particularly with respect to witness vouchers, not for personal gain but in order to advance the interests of the case.

William O'Malley, who was Deputy Chief of the Narcotics Section during the NSC case and had supervisory authority over the case, stood out from all other witnesses in his disdain for Howes. He told us that "Paul Howes is a cowboy in everything he does," but

is very persuasive in person. O'Malley told us that he had a confrontation with Howes over the issue of prisoner "come-ups," in which Howes was "combative" and "sputtered" because of his displeasure at being criticized by O'Malley. O'Malley told us he felt Howes was capable of misconduct with witness vouchers, and that Howes was a man who chased monsters and became one himself. He said he believed Howes had no concept of responsibilities or of correct procedures. O'Malley told us of one occasion on which Howes, unhappy at having his promotion held up, yelled at O'Malley, left O'Malley's office, then came back and threw the door open so hard it drove the doorstop through the wall and knocked hanging items off the wall. O'Malley said he then had to order Howes to leave his office. O'Malley said that, in his opinion, Howes managed to follow his own rules in the office to some extent because most supervisors did not want to confront so volatile a person. Several witnesses, including Eric Holder, David Schertler, and Ramsey Johnson, told us that it was well-known in the office that O'Malley and Howes were feuding and could not get along together.

James Bradley, who was one of the MPD officers who worked closely with Howes, told us that Howes was a "square" who was tenacious in court, and "lived for" the "arena" of the courtroom.

Another area that we inquired into was the history of the NSC investigation, when Howes was working with MPD officers before the investigation became federal. According to former MPD officer David Belisle, before the FBI became involved in the investigation

there was very little money available for controlled drug purchases or for the equipment needed to perform surveillances. Working with Howes, the officers used their own money for drug purchases and used their own cameras, film, and video equipment for surveillances, although they later got reimbursement for the drug purchases.

Donald Yates, another MPD officer, also told us that he and his colleagues, working with Howes, used personal resources in the early days of the NSC investigation, as did MPD officer Daniel Wagner, who told us he withdrew money for drug purchases from automated teller machines and used his own video equipment for surveillances. Yates told us that, until the FBI became involved in the investigation, he felt frustrated because the MPD did not appreciate the "big picture" of attacking the whole NSC organization, but preferred to prosecute individual cases.

3. Witness Vouchers: Analysis

Based on all of the facts set forth above, we conclude that Howes abused the witness voucher system in several ways. From the broadest perspective, it is apparent from the justifications he set forth in his memorandum to AUSA Roman and in his interview with us that he viewed the voucher system as a resource to be used as he saw fit in order to accomplish the goal of convicting some very violent, homicidal drug dealers. That is, he and the MPD officers who initially worked on the NSC investigation were faced with several murders that were difficult to solve and were met with bureaucratic obstacles: neither the MPD nor the USAO was

accustomed to devoting resources to a long-term investigation of an entire drug "crew"; rather, the institutions preferred to work on individual cases. Howes portrayed himself to us as a very talented, dedicated, and persistent prosecutor who was frustrated at his supervisors' lack of vision with respect to the NSC investigation. As is discussed above, his supervisors, with one strong exception, confirmed that Howes was dedicated and talented, and several of them acknowledged that he was willing to bend rules to achieve results.

Because of the difficulty of obtaining official support and resources in the early days of the NSC investigation, Howes and the MPD officers departed from official channels to a certain extent and went forward using their own equipment and money for some aspects of the investigative work. And, because there was no money to pay informants Pratt and Wooten for their work in making undercover drug purchases, Howes again improvised and used witness voucher payments in the place of an informant fund. In doing so, as he explained in his memorandum to AUSA Roman, he attempted to comply with the regulations to some extent by issuing the vouchers under the captions of indicted cases, on the theory that the broad range of information provided by these informants would be of assistance in all of these related cases.

With this background, we can turn to an assessment of Howes' conduct with respect to various categories of vouchers issued in connection with the Hoyle case and related cases.

Payments to Relatives and Friends of Witnesses

Once Hoyle and the other NSC cases were indicted, Howes continued to take a very broad view of the purposes of the voucher system. He used the witness vouchers, in effect, as his own discretionary fund, from which he caused the government to pay fees not just to likely trial witnesses, but to the relatives and girlfriends of the main cooperating witnesses. It is impossible to say with certainty that Howes committed misconduct with respect to any one particular voucher in this group. However, given the circumstances of the vouchers and the admissions by Howes, there is no doubt that Howes committed misconduct with respect to a significant number of these vouchers.

For example, Howes asserted that [REDACTED] and [REDACTED] had valuable information about their neighborhoods and the defendants. After interviewing Howes and [REDACTED] we cannot say with certainty that the witnesses provided no useful information to the prosecution; undoubtedly they provided some, perhaps a good deal. Thus, we cannot identify specific vouchers issued to [REDACTED] whose issuance clearly was improper. However, given the very large payments made to them over extended periods of time and the admissions by Howes, we have no doubt that these witnesses and others often were paid, in essence, merely for showing up. It clearly was good for the morale of incarcerated witnesses such as Woodfork, Forgy, and Lynch to have their relatives and girlfriends present in the courthouse to provide moral support. Howes

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acknowledged that he had [REDACTED] brought down to the courthouse in part to facilitate his talking to [REDACTED]

[REDACTED] He also admitted that [REDACTED] on as many as one-third of the occasions on which she received vouchers, was merely asked if she had had any problems, and replied in the negative. It is clear that, on a significant number of occasions, she received a witness fee primarily or solely as a benefit to induce her to visit [REDACTED] rather than as a legitimate fee for appearing as a witness.

Thus, with respect to [REDACTED] and [REDACTED] we found substantial evidence that Howes issued these individuals' witness vouchers that were not justified under any theory. Moreover, these persons would not have qualified for payments by the government through some other mechanism, such as payments from a confidential informant fund. As noted above, undoubtedly these witnesses provided information on some occasions; on those occasions informant payments would have been justified. However, the evidence shows that they did not provide any significant amount of information on many other occasions, and on those occasions they would not have been eligible for payments under any theory that we are aware of.¹⁷

Payments to David Belisle

The payments to David Belisle of \$9,835.00, including travel expenses between Annapolis and Washington, were of a somewhat

¹⁷Some witnesses and their relatives were relocated at the expense of the FBI when their lives were considered to be in danger. However, Howes did not argue that the continuing series of witness vouchers were intended as relocation payments.

different nature. It is clear from our interviews with Belisle, Howes, and others associated with the prosecution that Belisle was being paid more as a case agent than as a witness. Although Belisle undoubtedly did contribute valuable assistance to the prosecution effort, that assistance was more in the form of working with exhibits and witnesses than providing his own first-hand knowledge of events. To the extent the payments were for such assistance, they were not proper payments of witness fees.

Payments to Incarcerated Persons

Still another issue is presented by the payments to Woodfork, Lynch, Smith, and Santa Cruz upon their release from incarceration in the spring of 1995. Howes issued each of these men a witness voucher for about \$160 on the day of their release, covering that day and three earlier days. These payments were improper, first, because the witnesses were incarcerated during most of the time in question, and, second, because the witnesses were not being paid for attendance at a court proceeding or at a pre-trial conference. Howes told us, quite credibly, that he wanted to talk to these men in order to ensure that they had someplace to go and would not return immediately to a dangerous situation on the streets. He said he wanted them to have some money to get away from possible danger at the hands of the associates of the convicted defendants. Despite the desirability of protecting witnesses from danger, the fact remains that Howes ignored the law and Department of Justice regulations in order to accomplish that end. On some occasions the FBI provided funds to witnesses for relocation or as general

informant fees, through proper procedures.¹⁸ Howes, by contrast, who was described by some supervisors as aggressive and rather disdainful of the bureaucracy, simply used the witness voucher system as his own discretionary fund, regardless of the regulations.

Payments to Superior Court Witnesses

A more technical issue is raised by Howes' payments to witnesses from the Card case from Superior Court with District Court vouchers using the Hoyle caption. We found no evidence that these payments were improper apart from the use of the wrong type of voucher. That is, as far as we could determine, the Card witnesses who received Hoyle vouchers, including Leroy Pearsall, Irvin Pittman, and Anthony Dorsey, were legitimate witnesses in the Card case and were not paid excessive amounts. Howes was heavily involved in the Hoyle prosecution and it may have been convenient to use the readily available Hoyle vouchers rather than switch back and forth between forms. Moreover, according to Detective Bradley and Howes, the defense in the Hoyle trial raised the issue that a triple homicide known as the "duct tape triple" homicide, charged against the Hoyle defendants, actually was carried out by Javier Card. Therefore, Howes did call some Card witnesses to testify on this issue in rebuttal in the Hoyle trial, and accordingly he did have justification for interviewing them in the Hoyle case. Therefore, although it would have been preferable for Howes to

¹⁸For example, Woodfork told us that he received a relocation payment of \$1,500 from the FBI.

carefully distinguish between the two cases when issuing vouchers, we view the use of Howle vouchers for Card witnesses as a technical violation and not misconduct.

Payments to the []

Finally, in what arguably was the most egregious instance of flouting the law and regulations, Howes paid substantial payments of witness fees to [] for their repeated trips to his office from [] culminating in payments issued on June 13, 1995, about two weeks after Howes had left government service.

It is likely that Howes was motivated by an earnest desire to see [] brought to justice for [] of [] However, in pursuing this goal, Howes took it upon himself to pay [] for repeated trips to the USAO, listing the NSC cases as the justification on the vouchers. Howes and [] both told us that she provided some information about drug dealings or homicides by the NSC defendants. However, she could not recall any details of such information, and they both acknowledged that the interviews were in large part intended to address the [] investigation. That investigation involved the Superior Court, not the District Court, and [] had been acquitted years before these vouchers were issued. As the system was explained to us by Howes and by Principal AUSA Johnson, a witness could be paid only for the actual time of attendance, in half-day segments, under the Superior Court system. Thus, Howes abused the system by using District Court

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vouchers, permitting full-day payments for each appearance of any length. And, at least technically, it is likely that in many instances he falsely certified that the witnesses were providing information for the NSC cases. This was clearly what happened with the final vouchers issued to these individuals; Howes admitted to us that those vouchers could only have been for the [] investigation. Moreover, Howes very likely issued vouchers to the [] because [] needed to bring them along, rather than because they were actually acting as witnesses who were entitled to fees.

In summary, in all of the above scenarios, there are several common elements. Howes was aggressively pursuing legitimate goals, either the convictions of the violent NSC defendants or the conviction of the alleged [] He believed it was important to keep his witnesses happy. He did not believe he was adequately supported by his superiors in the USAO or by the supervisors of the MPD. Being resourceful and rather disdainful of bureaucratic obstacles, he used whatever assets he could readily adapt for his purposes, in some cases personal funds or personal equipment of MPD officers for undercover operations, and in many cases the District Court witness voucher system. He handed out the vouchers very freely, always for reasons that he believed served the interests of the case. We developed no information that Howes personally profited in any way from his free

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use of the vouchers. However, he distributed the vouchers in ways that went so far beyond the limits of appropriate conduct as to constitute flagrant abuse of the system.

In fact, Howes' issuance of so many vouchers in improper ways was sufficiently egregious that we considered criminal prosecution. Possible violations include 18 U.S.C. § 1001 (false statements), 18 U.S.C. § 287 (false claims), and 18 U.S.C. § 1018 (false certifications). However, we concluded that the case would be virtually impossible to prosecute successfully because of the defense that everything Howes did was intended to further the interests of justice and was not for his personal benefit. He would be able to point to his impressive accomplishments, hard work, and dedication to achieving convictions in very difficult cases involving extremely violent drug dealers and murderers. He undoubtedly would portray himself to a jury, as he has to us, as a beleaguered lone wolf battling a stifling and uncomprehending bureaucracy. In addition, as Howes pointed out to us, there is no evidence that any witness ever changed his testimony because he, or a relative or girlfriend, received witness vouchers.

Having concluded that criminal prosecution was not a viable option, we turned to an examination of Howes' actions under standards of professional conduct. Our first inquiry was to determine what regulations and other guidelines governed the use of fact witness vouchers by federal prosecutors. As noted above, the statutory authority is contained in 28 U.S.C. § 1821. The only guidance provided by this statute on the issues presented here is

that a "witness shall be paid a fee of \$40 per day for each day's attendance." Department of Justice regulations provide for payment of the attendance fee to fact witnesses "attending at any judicial proceeding." 28 C.F.R. § 21.4. The term "judicial proceeding" is defined to include "pre-trial conferences." 28 C.F.R. § 21.1(c). The term "pre-trial conference" is defined as a

conference between the Government Attorney and a witness to discuss the witness' testimony. The conference must take place after a trial, hearing or grand jury proceeding has been scheduled but prior to the witness' actual appearance at the proceeding.

28 C.F.R. § 21.1(d).

The U.S. Attorneys' Manual provides the following guidance on payment of attendance fees to fact witnesses for pre-trial interviews:

Neither the U.S. Attorney or his/her Assistants are empowered to issue subpoenas directing witnesses to appear at the U.S. Attorney's Office. . . . The usual procedure is for the U.S. Attorney to request that the witness appear at the U.S. Attorney's Office a few days prior to the witness' scheduled appearance in court. Where the witness is willing to be interviewed prior to his/her scheduled appearance in court, the witness may be compensated. If the interview occurs during the time that the witness is under subpoena, compensation is granted pursuant to 28 U.S.C. § 1821. See USAM 1-14.120, *infra*. If the interview occurs prior to the return date of the subpoena, compensation is granted pursuant to 28 U.S.C. § 524. . . . In the latter situation, payment is made on the Form OBD-3, Fact Witness Voucher.

Expenses for travel solely for these interviews, separate from travel to respond to subpoena, are not normally authorized. In exceptional circumstances, however, where such travel is unavailable, a request must be submitted in advance by completing a Request and Authorization for Fees and Expenses of Witnesses, Form OBD-47. See USAM 1-14.750, *infra*. Pre-trial interviews should not exceed 3 days (5 days if a weekend is involved for an out-of district witness).

U.S. Attorneys' Manual § 1-14.111 (1988)..

A more general provision covering misuse of witness vouchers is found in the government-wide ethical regulations. One of those regulations, 5 C.F.R. § 2635.704(a), provides:

An employee has a duty to protect and conserve Government property and shall not use such property, or allow its use, for other than authorized purposes.

Apart from the above provisions, we did not discover any other formal, written guidelines of the Department of Justice that were in effect at the time of the Hoyle investigation and trial.¹⁹ Therefore, we sought the views of supervisors within the USAO. Principal AUSA Ramsey Johnson told us that he was not aware of any formal guidelines within the USAO on the use of witness vouchers in the District Court. He said that it would be up to a trial attorney's supervisors to answer the attorney's questions about the use of vouchers. In his opinion, it would be improper to give vouchers to a witness just to keep the witness "on board" with the prosecution; vouchers should be issued only when the prosecutor has discussed specific case-related information with the witness. He said it might be appropriate for a prosecutor to meet with a witness outside of the USAO and issue a voucher, but that it would not be appropriate to issue a voucher for a telephone conversation with a witness. He said it would not be appropriate to issue vouchers to relatives of a witness merely to boost the morale of the witness.

¹⁹We did obtain copies of draft proposed guidelines on payments to fact witnesses from the Procurement Services Staff, Justice Management Division. However, because they were not in effect at the time of the conduct in question, we did not use them as standards of conduct.

AUSA Roman, who prosecuted narcotics cases as an AUSA in District Court since 1989, had no direct involvement with the NSC trials until he became Chief of the Narcotics Section of the USAO in December 1994. However, as noted earlier, at that time he conducted an inquiry into Howes' issuance of a large number of witness vouchers to Anthony Pratt and Cornelius Wooten. AUSA Roman told us that he concluded that Howes violated policy by making payments to Pratt and Wooten for their work as informants on the street. AUSA Roman said that it is proper to pay witnesses when they testify in court or when they appear for necessary preparation for their testimony, but not for their service as informants. He said that the fact that MPD would not provide informant payments was no excuse; he said Howes should have pursued the matter further, seeking funds from some other source rather than resorting to an unauthorized use of witness vouchers to generate funds for informant payments.

H. Marshall Jarrett, who was the Chief of the Criminal Division in the District Court side of the USAO during the NSC case, told us that he had not been closely involved in the USAO's inquiry into Howes' use of witness vouchers; he knew only what AUSA Roman told him. AUSA Jarrett said he did not know any details about the guidelines for the use of witness vouchers.

David Schertler, who was Chief of the Homicide Section of the Superior Court operation of the USAO from August 1992 throughout the NSC trials, told us that it is not proper to issue witness vouchers to informants for their work on the street.

Daniel Friedman, who was Deputy Chief of the Homicide Section from September 1992 throughout the NSC trials, told us that Howes may have "stretched" the voucher rules by issuing vouchers to informants, but AUSA Friedman said he believed Howes was pursuing a legitimate end by paying witnesses who were providing essential information. Although he said that Howes may well have issued vouchers more freely than another prosecutor would have, AUSA Friedman said he felt confident that Howes was doing what Howes believed was right, and that Howes did nothing with vouchers that resulted in personal gain for Howes.

Eric Holder, who was the U.S. Attorney from October 1993 through the conclusion of the NSC cases, told us that, although he did not know the details of witness voucher policy or regulations, the vouchers should not be used to generate payments for general source information from informants.

We also sought the views of the USMS because of its role in the District Court voucher system. In the District Court system, the AUSA (or his agent) fills out a voucher setting forth the dates of attendance by the witness and travel expenses, if any. The witness takes the completed voucher to a USMS office on the first floor of the courthouse, where a disbursing officer checks the voucher for formal requirements and then either issues a check on the spot or holds the voucher for the later mailing of a check to the witness.

We interviewed Carole Jones, the USMS disbursing officer for many of the vouchers issued in the NSC cases, about the procedure

her office used in processing the OBD-3 forms used to provide fees to fact witnesses. She told us that, according to her interpretation of the rules for payment of witness fees, a witness is entitled to payment only if the witness meets with the prosecutor; providing information over the phone would not suffice. However, she also told us, without equivocation, that her office pays the vouchers based on what the AUSA has represented on the form. She said, in response to hypothetical questions, that she would issue a check to a witness if a voucher were in proper order, even if the witness stated orally, upon presenting the voucher, that he was being paid for more days than he actually appeared. In other words, her office relied strictly on the representations on the form, as certified by the AUSA. She also told us that, as far as she was aware, there was no limit imposed in any given year on how much money could be disbursed for fact witness payments, and nobody monitored such payments to look for patterns of excessive expenditures or other forms of abuse.²⁰

In short, we did not discover any formal guidelines that clearly warn a prosecutor not to dispense witness vouchers freely or to persons who are not necessarily going to be witnesses. We did find the provision in Section 1-14.111 of the U.S. Attorneys' Manual, quoted above, that limits pre-trial witness preparation appearances to three days, but none of the supervisors or other

²⁰Ms. Jones provided us with a copy of the discussion of fact witness payments in an undated version of the U.S. Marshals Service Manual; that discussion did not provide any further insights into the questions at issue here.

Department personnel we spoke to mentioned this provision, and, in view of the fact that it appears at the end of a paragraph and is not phrased in emphatic terms, we do not view this provision as a clearly enunciated prohibition on issuing vouchers for more than three days for testimony preparation.

Apart from the question whether Howes' use of the vouchers violated Department policy, there is the legal question whether repeated payments of witness fees to relatives of the cooperating witnesses constituted an undisclosed benefit to those witnesses that should have been revealed to the court and defense counsel at trial. In our view, this is an open question. See, e.g., United States v. LaFuente, 991 F.2d 1406 (8th Cir. 1993), after remand, 54 F.3d 457 (8th Cir.), cert. denied, 116 S. Ct. 264 (1995) (after remanding case to determine whether defendants were prejudiced by improper payment of witness fees, court held without discussion that there was no prejudice): See also United States v. Price, 13 F.3d 711, 721 (3d Cir. 1994), cert. denied, 514 U.S. 1023 (1995) (disclosure of payments to witnesses did not require new trial in view of the weight of the evidence of guilt); United States v. Montoya, 952 F.2d 226, 227 (8th Cir. 1991) (undisclosed witness payments did not require new trial; impeachment on that issue would have been cumulative).

We did not find any cases involving large amounts of money paid to relatives and girlfriends of witnesses. It is our understanding that Judge Jackson may hold hearings on the defendants' new-trial motions and may resolve this issue. However,

regardless of the outcome of the new-trial motions, it appears to us that Howes should have realized that the magnitude of payments to persons such as [] was such that he should have considered disclosing those payments to the court and defense counsel.²¹ There is no evidence that he ever considered making such a disclosure, even though he and his colleagues did disclose in open court that the witnesses received lunches, telephone privileges, and visitors. b7C b7F

In summary, we found that Howes violated Department of Justice policy, as set forth in official guidelines and the views of supervisors in the USAO, in several ways: he issued numerous fact witness vouchers to persons such as [] who were not scheduled to testify in the trial, but who were brought to the courthouse to provide moral support and comfort for the government's main witnesses; he issued numerous vouchers to David Belisle, who was to some extent a fact witness but who was used mostly as a case agent assisting the prosecutors in a variety of tasks; he issued vouchers to four witnesses for the last few days of their incarceration in order to provide them with spending money upon their release, rather than for appearing as witnesses; he issued numerous vouchers to [] most of them without appropriate b7C b7F

²¹In some instances, such as where individuals received vouchers for providing intelligence information about the defendants' associates, it could be argued that disclosure of such payments to defense counsel could place the informants in jeopardy. However, in those instances the information still could be disclosed to the court in camera. We found no indication that Howes considered any such disclosure. b7C b7F

basis, and four of them, each covering multiple days, about two weeks after Howes had left the government; and he issued several District Court vouchers to witnesses from the Card case in Superior Court.

It is important to note that there are several different categories of misconduct present here. In some instances, the violations were merely technical, such as when a witness was interviewed legitimately for trial preparation but was paid with a District Court voucher instead of one from Superior Court. In other instances, witnesses were paid for providing general intelligence information to the government, rather than for actual trial preparation. In both of those situations, there arguably was no misuse of government funds, because the witness could have been paid properly from another fund; the violation was one of form more than substance. However, in other instances, witnesses, such as [] were paid not for providing any significant information or for pre-trial preparation, but, rather, for coming down to the courthouse to visit their relatives who were incarcerated witnesses, and to provide moral support and comfort to those witnesses. It is, of course, appropriate for a prosecutor to maintain the morale of the witnesses he works with and to ensure that they are well-treated, as long as his actions on their behalf do not violate applicable statutes, regulations, or Department policies. In these instances, however, there was no proper way in which the payments to the relatives could have been made, and the payments constituted a

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direct misapplication of government funds. Moreover, when such payments were made not for information but for the benefit of the relatives or the incarcerated witnesses, the payments arguably should have been disclosed to the court and defense counsel, which they were not.

The issuance of any one or a few of these vouchers possibly could be viewed as an acceptable lapse in the course of the long, complex NSC investigation and trials. In this case, though, there are several aggravating factors: the large amount of money involved; the pattern of extremely large numbers of vouchers going to several witnesses; the lack of any evidence that Howes sought or obtained approval from any supervisor to issue vouchers in the manner that he did; the long period of time over which the conduct occurred repeatedly; the issuance of vouchers after Howes had left the USAO; and the failure to disclose the payments to relatives and girlfriends of government witnesses to the court and defense counsel.

However, there also are several mitigating factors. First, there is no indication that Howes ever profited personally from the vouchers. Second, he undoubtedly used the vouchers with the intention of advancing the interests of the prosecution. Third, there is no evidence that any witness ever changed his or her testimony because of the receipt of vouchers. Fourth, we found no evidence that the USAO, the USMS, or any other authority ever questioned the use of the vouchers, provided any formal training or guidance, or otherwise brought the potential problems to Howes'

attention until AUSA Roman did so in January 1995, after the conclusion of the Hoyle trial. Moreover, as far as we could determine there were no controls in place in any government office to raise a warning that vouchers were being issued in the NSC cases or by Howes at an unusually heavy rate. Therefore, Howes did not receive any feedback from his supervisors to alert him to moderate the use of vouchers.

On balance, though, the aggravating factors clearly outweigh the mitigating factors. An experienced attorney such as Howes must be expected to realize that it is improper to use the government's witness fee funds as a discretionary source of money to be paid out virtually at will. He also must be expected to be aware of (or to inquire about) generally known rules for the use of vouchers, and to know that the principal purpose of vouchers is to compensate witnesses for appearing to testify in court or for a few pre-trial interviews. He clearly should know that it is improper to pay witness fees to persons who neither are expected to be witnesses nor are providing any significant amount of information.

Howes might argue that he violated the rules for use of vouchers only because he was not aware of the rules or had not been given sufficient training or supervision. However, that argument would be sharply undercut by the evidence in several respects. First, Howes issued several vouchers that clearly were improper, such as the vouchers that went to Woodfork, Lynch, Smith, and Santa Cruz upon their release from jail, and the vouchers that he gave to

[] about two weeks after he had

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left government service. Second, there is evidence that Howes was defiant of authority within the USAO and was willing to disobey orders he did not agree with, such as the orders from O'Malley and others regarding limiting the number of "come-ups" to bring prisoners from the USMS cellblock up to the sixth floor of the courthouse. Third, Howes once was warned by AUSA Leibovitz not to issue vouchers that were not justified under the regulations.

It is evident from those incidents that Howes was willing to intentionally violate rules that he did not agree with. Moreover, given his years of experience as a prosecutor, it is more likely than not that Howes was well aware that he was violating Department policy and regulations by handing out extraordinarily large amounts of money in witness fees to persons such as [] David Belisle, []

No witness has given us any indication that Howes is anything but very intelligent; several witnesses told us that he was an effective and talented prosecutor. Common sense alone should be sufficient to dictate that it is not appropriate to distribute such a large volume of vouchers to so many persons, many of whom never testified and, as far as we determined, provided little information of any substance to the government.

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Howes also might argue that he was forced to make liberal use of the fact witness voucher system because his supervisors in the USAO and the officials of the investigative agencies were unresponsive to the need for special measures to deal with the complex and difficult NSC investigation and trials. This argument

has little merit. The evidence does show that the MPD was not supportive of the NSC investigation in its earliest stages, and that Howes and the MPD investigators felt the need to make use of the MPD officers' personal funds and equipment (with some reimbursement) in order to keep the undercover drug investigation moving. However, it is apparent that funding and logistical support improved dramatically once the FBI joined the investigation. We found evidence that the FBI made informant payments and relocation payments to witnesses in some instances. Although the USAO supervisors eventually questioned the issuance of a large number of witness vouchers to two witnesses, that inquiry took place after the conclusion of the Hoyle trial. Moreover, although AUSA O'Malley and others did try to limit Howes' practice of having multiple incarcerated witnesses on the sixth floor of the courthouse, there is no evidence that any supervisor ever attempted to limit Howes' use of vouchers or otherwise curtail his payments to witnesses. Thus, he cannot successfully argue that he issued a large number of vouchers in order to counter the misguided actions of supervisors in limiting such payments.

CONCLUSION

In conclusion, we found some evidence that certain NSC witnesses consumed alcohol, possessed illegal drugs, and engaged in sexual activity with visitors while held in custody on the sixth floor of the federal courthouse and elsewhere. However, we found no evidence that this conduct took place with the knowledge or consent of any Department of Justice attorney or agent. We found

that the witnesses were bought lunches, were permitted to watch videotaped movies, and had fairly liberal telephone and visitor privileges while on the sixth floor. However, we also found that those privileges were appropriately disclosed in open court, and that the providing of those privileges therefore was not misconduct.

We found no evidence of any misconduct by AUSAs Lynn Leibovitz or Jeffrey Ragsdale or by any FBI agent.

With respect to witness vouchers, we found no evidence to support the allegation by Robert "Blue Tip" Smith that Howes issued vouchers in the names of third parties solely to generate money for cooperating witnesses. However, we did find strong evidence that Howes intentionally abused the witness voucher system in several ways. Specifically, he issued many vouchers to relatives and girlfriends of cooperating witnesses in circumstances that give rise to a strong inference that many of the vouchers were issued improperly in that they did not compensate a witness for an appearance to prepare for or give trial testimony, or even to provide the sort of intelligence information provided by informants. Rather, it appears that many of these vouchers were issued largely or solely in order to maintain or raise the morale of the cooperating witnesses.

Howes also issued numerous vouchers that were improper for other reasons, including vouchers to David Belisle, a retired police officer, for his assistance in working as a case agent, rather than for his service as a witness; vouchers to provide

spending money to witnesses upon their release from jail; vouchers to Superior Court witnesses who were not entitled to receive District Court vouchers; and vouchers to [] many of which were not for appearances to prepare testimony, and several of which were issued after Howes left the government.

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Viewing all of the evidence on the issue of witness voucher abuse, we conclude that Howes committed intentional professional misconduct. We intend to refer his conduct to the appropriate attorney licensing authorities in the District of Columbia, New Mexico, and California.

Finally, we believe that EOUSA may wish to examine the circumstances discussed in this memorandum and consider whether the Department's system for issuance and payment of fact witness vouchers needs to be revised. Although we found that Howes committed intentional misconduct, we also found that the lack of controls or clearly articulated guidelines for the use of vouchers gave rise to an environment that made it easy to issue a large number of vouchers without adequate justification. In view of this potential for abuse, we believe that EOUSA, in consultation with the Justice Management Division, the USMS, and other appropriate components, may wish to consider whether a more definite set of guidelines and controls for the use of such vouchers should be put into place.²²

²²During our investigation we obtained from personnel in the Procurement Services Staff of the Justice Management Division a copy of a U.S. General Accounting Office report of July 12, 1984, entitled "Justice Needs Better Controls Over Payment of Witness Fees," and the Department's response. This report, however,

cc: Donna Bucella
Director, Executive Office for U.S. Attorneys

addressed more technical matters such as ensuring proper certifications and calculations with respect to fact witness vouchers. It did not address broader issues such as ensuring that a given prosecutor does not abuse the system through overly liberal use of vouchers. The report and response are attached at Tab K. We also obtained a copy of a memorandum dated May 18, 1995, from EOUSA and the USMS to all Department of Justice components announcing certain changes to fact witness procedures. This memorandum, likewise, did not address the issue of overly liberal use of vouchers.