

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 05 2012

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,) Case No **12 CR 07 GKF**
v.) FILED UNDER SEAL
) INDICTMENT
BERND KOWALEWSKI,) [COUNT 1: 18 U.S.C. § 371 - Conspiracy;
Defendant.) COUNTS 2 through 7: 15 U.S.C. § 78dd-2 -
) Foreign Corrupt Practices Act;
) COUNT 8: 18 U.S.C. § 1956(h) -
) Conspiracy to Launder Monetary
) Instruments;
) COUNTS 9 through 11: 18 U.S.C.
) § 1957(a) - Money Laundering]

THE GRAND JURY CHARGES:

SEALED

COUNT ONE
[18 U.S.C. § 371]

INTRODUCTION

Unless specified otherwise, at all relevant times to this Indictment:

1. The Foreign Corrupt Practices Act of 1977, as amended, Title 15, United States Code, Sections 78dd-1, *et seq.* ("FCPA"), was enacted by Congress for the purpose of, among other things, making it unlawful for certain classes of persons and entities to act corruptly in furtherance of an offer, promise, authorization, or payment of money or anything of value to a foreign government official for the purpose of assisting in obtaining or retaining business for or with, or directing business to, any person.

2. BizJet International Sales and Support, Inc. ("BizJet") was headquartered in Tulsa, Oklahoma, incorporated in Oklahoma, and thus a "domestic concern," as that term is

used in the FCPA, Title 15, United States Code, Section 78dd-2(h)(1)(B). In or about 2000, BizJet was acquired by a company incorporated and headquartered in Germany. BizJet was in the business of providing aircraft maintenance, repair and overhaul ("MRO") services to customers in the United States and abroad. BizJet serviced aircraft owned and operated by a number of governmental and other customers in Latin America, including Mexico and Panama.

3. The defendant, **BERND KOWALEWSKI** ("KOWALEWSKI"), was the President and Chief Executive Officer of BizJet from in or around 2004 through in or around March 2010. **KOWALEWSKI** was an employee and agent of a domestic concern, as that term is used in the FCPA, Title 15, United States Code, Section 78dd-2(h)(1). **KOWALEWSKI** was responsible for the operations and finances of BizJet.

4. Peter DuBois ("DuBois") was a senior sales and marketing executive at BizJet from in or about 2005 to in or about March 2010. DuBois was responsible for overseeing efforts to obtain business from new customers and to maintain and increase business with existing customers.

5. Neal Uhl ("Uhl") was a senior finance executive at BizJet from in or about 2004 to in or about January 2010. Uhl was responsible for overseeing BizJet's accounts and finances and the approval of payment of invoices and of wire transfers and check requests.

6. Jald Jensen ("Jensen") was a regional sales manager at BizJet from in or about 2004 to in or about 2010. Jensen interacted with potential and existing customers and was

responsible for obtaining business from new customers and maintaining and increasing business with existing customers.

7. Avionica International & Associates, Inc. ("Avionica") was owned by Jensen and was located at Jensen's personal residence in Van Nuys, California. Avionica operated under the pretense of providing aircraft maintenance brokerage services. Jensen was the only officer, director, and employee of Avionica.

8. The Mexican Policia Federal Preventiva (the "Mexican Federal Police") was the government police force in Mexico and an "agency" of a foreign government, as that term is used in the FCPA, Title 15, United States Code, Section 78dd-2(h)(2). The Mexican Federal Police was a customer of BizJet.

9. The Mexican Coordinacion General de Transportes Aereos Presidenciales (the "Mexican President's Fleet") was the air fleet for the President of Mexico and an "agency" of a foreign government, as that term is used in the FCPA, Title 15, United States Code, Section 78dd-2(h)(2). The Mexican President's Fleet was a customer of BizJet.

10. The air fleet for the Gobierno del Estado de Sinaloa ("Sinaloa") was the air fleet for the Governor of the Mexican State of Sinaloa and an "agency" of a foreign government, as that term is used in the FCPA, Title 15, United States Code, Section 78dd-2(h)(2). Sinaloa was a customer of BizJet.

11. The Republica de Panama Autoridad Aeronautica Civil (the "Panama Aviation Authority") was the aviation authority of Panama and an "agency" of a foreign government,

as that term is used in the FCPA, Title 15, United States Code, Section 78dd-2(h)(2). The Panama Aviation Authority was a customer of BizJet.

12. The air fleet for Estado De Roraima, Brasil (the "State of Roraima") was the air fleet for the government of the Brazilian State of Roraima and an "agency" of a foreign government, as that term is used in the FCPA, Title 15, United States Code, Section 78dd-2(h)(2). The State of Roraima was a customer of BizJet.

13. Official 1 was a Captain in the Mexican Federal Police and had broad decision-making authority and influence over the award of contracts to MRO service providers. Official 1 was a "foreign official," as that term is used in the FCPA, Title 15, United States Code, Section 78dd-2(h)(2).

14. Official 2 was a Colonel in the Mexican President's Fleet and had broad decision-making authority and influence over the award of contracts to MRO service providers. Official 2 was a "foreign official," as that term is used in the FCPA, Title 15, United States Code, Section 78dd-2(h)(2).

15. Official 3 was a Captain in the Mexican President's Fleet and had broad decision-making authority and influence over the award of contracts to MRO service providers. Official 3 was a "foreign official," as that term is used in the FCPA, Title 15, United States Code, Section 78dd-2(h)(2).

16. Official 4 was an official employed by the Mexican President's Fleet and had broad decision-making authority and influence over the award of contracts to MRO service

providers. Official 4 was a "foreign official," as that term is used in the FCPA, Title 15, United States Code, Section 78dd-2(h)(2).

17. Official 5 was a Captain at Sinaloa and had broad decision-making authority and influence over the award of contracts to MRO service providers. Official 5 was a "foreign official," as that term is used in the FCPA, Title 15, United States Code, Section 78dd-2(h)(2).

18. Official 6 was a chief mechanic at the Panama Aviation Authority and had broad decision-making authority and influence over the award of contracts to MRO service providers. Official 6 was a "foreign official," as that term is used in the FCPA, Title 15, United States Code, Section 78dd-2(h)(2).

THE CONSPIRACY

19. Paragraphs 1 through 18 are realleged and incorporated by reference as though fully set forth herein.

20. From in or around 2004 through in or around March 2010, in the Northern District of Oklahoma and elsewhere, the defendant, **BERND KOWALEWSKI**, being a domestic concern and an employee and agent of a domestic concern, did willfully, that is, with the intent to further the objects of the conspiracy, and knowingly conspire, confederate and agree with DuBois, Uhl, Jensen, and others, known and unknown to the Grand Jury, to commit offenses against the United States, that is, to willfully make use of the mails and means and instrumentalities of interstate commerce corruptly in furtherance of an offer,

payment, promise to pay, and authorization of the payment of money, offer, gift, promise to give, and authorization of the giving of anything of value, to a foreign official, and to a person, while knowing that all or a portion of such money and thing of value would be and had been offered, given, and promised to a foreign official, for purposes of: (i) influencing acts and decisions of such foreign official in his or her official capacity; (ii) inducing such foreign official to do and omit to do acts in violation of the lawful duty of such official; (iii) securing an improper advantage; and (iv) inducing such foreign official to use his or her influence with a foreign government and agencies and instrumentalities thereof to affect and influence acts and decisions of such government and agencies and instrumentalities, in order to assist KOWALEWSKI, BizJet, DuBois, Uhl, Jensen, and others, in obtaining and retaining business for and with, and directing business to, BizJet and others, in violation of Title 15, United States Code, Section 78dd-2.

PURPOSE OF THE CONSPIRACY

21. The purpose of the conspiracy was to obtain and retain MRO service contracts and other business for BizJet and others from foreign government customers, including the Mexican Federal Police, the Mexican President's Fleet, Sinaloa, the Panama Aviation Authority, the State of Roraima, and other customers, by paying bribes to foreign officials employed by such customers.

MANNER AND MEANS OF THE CONSPIRACY

22. The manner and means by which **KOWALEWSKI** and his co-conspirators sought to accomplish the purpose of the conspiracy included, among other things, the following:

a. **KOWALEWSKI** and his co-conspirators would and did discuss in person, via telephone and via electronic mail ("e-mail") making bribe payments — which they called "commissions," "incentives" or "referral fees" — to employees of foreign government customers in order to obtain and retain contracts to perform MRO services.

b. **KOWALEWSKI** and his co-conspirators would and did offer to pay, promise to pay, authorize the payment of, and pay bribes, directly and indirectly, to and for the benefit of employees of foreign government customers in exchange for those officials' agreements to help BizJet secure contracts with the foreign government customers by which they were employed.

c. **KOWALEWSKI** and his co-conspirators would and did discuss in person, via telephone, and via e-mail with DuBois, Uhl, and Jensen the manner and means by which the bribes were to be paid — for example, by check, wire, or cash — and the names and locations of bank accounts to which bribe payments should be transferred.

d. **KOWALEWSKI** and his co-conspirators would and did attempt to conceal the payments to foreign officials by using Avionica to funnel the payments to the foreign officials and by making payments in cash delivered by hand to the foreign officials.

e. **KOWALEWSKI** and his co-conspirators would and did wire and cause to be wired certain bribe payments from BizJet's bank account in New York to bank accounts in Oklahoma, California and elsewhere.

OVERT ACTS

23. In furtherance of the conspiracy and to achieve its purpose and object, at least one of the conspirators committed, and caused to be committed, in the Northern District of Oklahoma and elsewhere, the following overt acts, among others:

a. On or about March 10, 2005, a co-conspirator who was the co-owner of a third-party agent company utilized by BizJet sent an e-mail to **KOWALEWSKI**, stating, "Regarding the aircraft for the Government of the State of Roraima . . . Tomorrow the principal decision makers will be here in Florianopolis and we will be reviewing the logbooks together. [The second co-owner of the third-party agent company] took the Colonel [sic] to the best restaurant in Rio de Janeiro for dinner, put him up in an excellent hotel and even bought him lunch the next day. The Colonel has requested that [the second co-owner] obtain two other competitive bids for him to present to the State Government, and that we adjust our bid accordingly."

b. On or about November 16, 2005, at a meeting of BizJet's Board of Directors attended by **KOWALEWSKI**, DuBois stated, in response to a question by a Director about who the decision-maker was at a particular customer, that a director of maintenance or chief pilot was normally responsible for decisions on where an aircraft went for maintenance work.

c. On or about November 16, 2005, at the same Board of Directors meeting described in Overt Act b., **KOWALEWSKI** responded to DuBois's statement by explaining that these directors of maintenance and chief pilots in the past received "commissions" of \$3,000 to \$5,000 but were now demanding \$30,000 to \$40,000 in "commissions."

d. On or about November 16, 2005, at the same Board of Directors meeting described in Overt Act b., in response to a question by a Director about how BizJet would survive the next six months without "burning cash," **KOWALEWSKI** stated that BizJet expected to gain market share by paying "referral fees" just as the competition was doing.

e. On or about March 29, 2006, in response to an e-mail from an accounting employee at BizJet's parent company asking what BizJet's outlook would be if incentives paid to brokers, directors of maintenance, or chief pilots continued to increase industry wide, Uhl responded, copying **KOWALEWSKI**, DuBois, and others: "We took a conservative approach to developing our 2006 budget, so the likelihood of the continuance and increase of incentives were included in the budget figures. We work to build these fees into the revenue as much as possible. We must remain competitive in this respect to maintain and gain market share."

f. On or about June 6, 2006, Jensen discussed with a customer-relations employee of BizJet that BizJet would purchase a cellular telephone for Official 6 and pay \$10,000 to Official 6 for his instrumental assistance in securing for BizJet a contract with the Panama Aviation Authority.

g. On or about June 7, 2006, DuBois sent an e-mail to the customer-relations employee at BizJet described in Overt Act f., copying Uhl and Jensen, in which DuBois approved the cellular telephone and \$10,000 compensation for Official 6.

h. On or about September 28, 2006, Jensen sent an e-mail to DuBois stating that Official 2 "just call me and ask for his commision, I need to travel to mexico this tuesday. Tomorrow, please help me make this payment..."

i. On or about November 9, 2006, Jensen sent an e-mail to DuBois stating that BizJet needed to pay \$2,000 in United States currency to Official 3.

j. On or about October 30, 2007, Jensen sent an e-mail to DuBois and Uhl asking for their help in delivering \$30,000 to Official 2.

k. On or about October 30, 2007, Uhl responded by e-mail to Jensen's e-mail described in Overt Act j., stating, "Are we to wire funds to your business account?"

l. On or about October 30, 2007, Jensen responded in an e-mail to Uhl's e-mail described in Overt Act k., stating, "Yes Sir. I don't have another choice. Thank you."

m. On or about October 31, 2007, Uhl caused \$30,000 to be wired from BizJet's bank account in New York to Avionica's bank account in California for the purpose of making a payment to Official 2 in return for Official 2's help in securing a contract for BizJet with the Mexican President's Fleet.

n. On or about October 31, 2007, Uhl sent an e-mail to Jensen, copying others, and stated, "Please note that the \$30k wire has been sent. Please confirm that you receive

it. Thx.”

o. On or about October 31, 2007, Jensen responded to Uhl’s e-mail described in Overt Act o. with the subject of the e-mail, “re: from Los Angeles Airport Mex pres comm,” and stated that he was on his way to Mexico with the cash meant for Official 2 “on board.”

p. On or about February 21, 2008, DuBois sent an e-mail to Uhl, stating that Jensen “has recently purchased some high dollar stuff for [the Mexican Federal Police] and Chile. His card is maxed. Can we put an additional 10k for a period. He is departing today and needs it.”

q. On or about February 21, 2008, DuBois notified Jensen that the increase described in Overt Act p. was made.

r. On or about May 5, 2008, **KOWALEWSKI** sent an e-mail to Jensen regarding an additional \$30,000 commission that was to be paid in connection with a project for the Mexican President’s Fleet, and stated, “What is the background for this? We cannot just take another 30k hit to this job. Have we got the downpayment yet? Have we got the signatures for the additional work yet?”

s. On or about May 6, 2008, Jensen forwarded **KOWALEWSKI**’s e-mail to DuBois and stated, “Yesterday afternoon I have a long conversation with [**KOWALEWSKI**] and I have the chance to explain the Boeing situation, no panic, no problem, only poor experience with the customer and the Boeing crew, this week we have the first payment and of course we need to pay part of the commission. Normal stuff, no worries.”

t. On or about November 21, 2008, Uhl caused \$18,000 to be wired from BizJet's bank account in New York to Avionica's bank account in California for the purpose of making a payment to Official 5 in return for Official 5's help in securing a contract for BizJet with Sinaloa.

u. On or about November 22, 2008, Jensen issued a check from Avionica's account in California in the amount of \$18,000 to Official 5 in return for Official 5's help in securing a contract for BizJet with Sinaloa.

v. On or about December 1, 2008, Jensen issued a check from Avionica's bank account in California in the amount of \$50,000 to Official 4 in return for Official 4's help to secure a contract for BizJet with the Mexican President's Fleet.

w. On or about April 6, 2009, Jensen caused an invoice to be submitted on behalf of Avionica to BizJet, to the attention of Uhl, in the amount of \$176,000 for payments to be made to officials employed at the Mexican Federal Police in return for the officials' help in securing a contract for BizJet with the Mexican Federal Police.

x. On or about April 7, 2009, Jensen issued a check from Avionica's bank account in California in the amount of \$40,000 to Official 4 in return for Official 4's help in securing a contract for BizJet with the Mexican President's Fleet.

y. On or about April 13, 2009, Uhl caused \$176,000 to be wire transferred from BizJet's bank account in New York to the bank account of Avionica in California for the purpose of making payments to officials employed at the Mexican Federal Police in return

for the officials' help in securing a contract for BizJet with the Mexican Federal Police.

z. On or about October 6, 2009, Jensen caused an invoice to be submitted on behalf of Avionica to BizJet, to the attention of Uhl, in the amount of \$210,000 for payments to be made to officials employed at the Mexican Federal Police in return for the officials' help in securing a contract for BizJet with the Mexican Federal Police.

aa. On or about October 15, 2009, Uhl caused \$210,000 to be wire transferred from BizJet's bank account in New York to the bank account of Avionica in California for the purpose of making payments to officials employed at the Mexican Federal Police in return for the officials' help in securing a contract for BizJet with the Mexican Federal Police.

bb. On or about October 27, 2009, Jensen submitted a check request in the amount of \$6,417.44 for payment to Official 5 in return for Official 5's help in securing business for BizJet with Sinaloa.

cc. On or about October 27, 2009, Uhl caused two checks to be sent to Official 5 in the amounts of \$22,912.38 and \$6,417.44 for Official 5's help in securing business for BizJet with Sinaloa.

dd. On or about January 11, 2010, after receiving an e-mail stating that the internal auditors of BizJet's parent company would be conducting a detailed audit of BizJet's incentive payments and requesting that **KOWALEWSKI** prepare and make available all relevant documents, **KOWALEWSKI** caused deletion software to be installed and run on

his computer that erased content from his computer.

All in violation of Title 18, United States Code, Section 371.

COUNTS TWO THROUGH SEVEN
[15 U.S.C. § 78dd-2 and 18 U.S.C. § 2]

24. Paragraphs 1 through 18 and Paragraphs 22 and 23 are realleged and incorporated by reference as though fully set forth herein.

25. On or about the dates set forth below, in the Northern District of Oklahoma and elsewhere, the defendant, **BERND KOWALEWSKI**, being a domestic concern and an employee and agent of a domestic concern, did willfully use and cause to be used the mails and means and instrumentalities of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, and authorization of the payment of money, offer, gift, promise to give, and authorization of the giving of anything of value to a foreign official, and to a person, while knowing that all or a portion of such money and thing of value would be and had been offered, given, and promised to a foreign official, for purposes of: (i) influencing acts and decisions of such foreign official in his or her official capacity; (ii) inducing such foreign official to do and omit to do acts in violation of the lawful duty of such official; (iii) securing an improper advantage; and (iv) inducing such foreign official to use his or her influence with a foreign government and agencies and instrumentalities thereof to affect and influence acts and decisions of such government and agencies and instrumentalities, in order to assist **KOWALEWSKI**, BizJet, DuBois, Uhl, Jensen, and others, in obtaining and retaining business for and with, and directing business to, BizJet and others, as follows:

COUNT	DATE	MEANS AND INSTRUMENTALITIES OF INTERSTATE AND INTERNATIONAL COMMERCE
Two	2/2/2007	Check mailed in the amount of \$20,000 by BizJet in Tulsa, Oklahoma, to Official 6 in Panama in return for Official 6's assistance in securing business for BizJet with the Panama Aviation Authority.
Three	10/31/2007	Wire transfer in the amount of \$30,000 from BizJet's bank account in New York to Avionica's bank account in California for use to bribe Official 2 in return for Official 2's assistance in securing business for BizJet with the Mexican President's Fleet.
Four	11/21/2008	Wire transfer in the amount of \$18,000 from BizJet's bank account in New York to Avionica's bank account in California for use to bribe Official 5 in return for Official 5's assistance in securing business for BizJet with Sinaloa.
Five	4/13/2009	Wire transfer in the amount of \$176,000 from BizJet's bank account in New York to Avionica's bank account in California for use to bribe foreign officials employed by the Mexican Federal Police in return for their assistance in securing business for BizJet with the Mexican Federal Police.
Six	10/15/2009	Wire transfer in the amount of \$210,000 from BizJet's bank account in New York to Avionica's bank account in California for use to bribe foreign officials employed by the Mexican Federal Police in return for their assistance in securing business for BizJet with the Mexican Federal Police.

COUNT	DATE	MEANS AND INSTRUMENTALITIES OF INTERSTATE AND INTERNATIONAL COMMERCE
Seven	10/27/2009	Two checks mailed in the amount of \$22,912.38 and \$6,417.44 by BizJet in Tulsa, Oklahoma, to Official 5 in Mexico in return for Official 5's assistance in securing business for BizJet with Sinaloa.

All in violation of Title 15, United States Code, Section 78dd-2, and Title 18, United States Code, Section 2.

COUNT EIGHT
[18 U.S.C. § 1956(h)]

26. Paragraphs 1 through 18 and Paragraphs 22 and 23 are realleged and incorporated by reference as though fully set forth herein.

27. From at least in or around 2004, through at least in or around March 2010, in the Northern District of Oklahoma and elsewhere, the defendant, **BERND KOWALEWSKI**, did willfully, that is, with the intent to further the objects of the conspiracy, and knowingly combine, conspire, confederate and agree with DuBois, Uhl, Jensen, and others, known and unknown to the Grand Jury, to commit offenses under Title 18, United States Code, Sections 1956 and 1957, namely:

- a. to knowingly transport, transmit and transfer monetary instruments and funds from a place in the United States to places outside the United States, with the intent to promote the carrying on of a specified unlawful activity, namely, bribery of a foreign official, a felony violation of the FCPA, Title 15, United States Code, Section 78dd-2, in violation of Title 18, United States Code, Section 1956(a)(2)(A); and
- b. to engage in a monetary transaction by, through and to a financial institution, in and affecting interstate and international commerce, in criminally derived property that was of a value greater than \$10,000.00, that is, the deposit, withdrawal, transfer and exchange of United States currency, funds and monetary instruments, such property having been derived from specified unlawful activity, namely, bribery of a foreign official, a felony violation of the FCPA, Title 15, United States Code, Section 78dd-2, in violation of Title 18, United States Code, Section 1957.

MANNER AND MEANS OF THE CONSPIRACY

28. **KOWALEWSKI** and his co-conspirators used the following manner and means to achieve the objects of the conspiracy:

a. **KOWALEWSKI** and his co-conspirators, while located in Tulsa, Oklahoma, would and did direct the wire transfer of, and cause to be wired, money from BizJet's bank account in New York to Avionica's bank account in California for the purpose of concealing and disguising the bribe payments.

b. **KOWALEWSKI** and his co-conspirators would and did take all or a portion of the money paid to Avionica's bank account in California and engage in monetary transactions designed to conceal the source of the moneys and the fact that they were bribes to foreign officials.

c. **KOWALEWSKI** and his co-conspirators would and did take all or a portion of the money paid to Avionica's bank account in California and engage in monetary transfers designed to promote the payment of bribes through international monetary transfers for the benefit of foreign officials.

d. **KOWALEWSKI** and his co-conspirators would and did take all or a portion of the money paid to Avionica's bank account in California and engage in monetary transactions of a value greater than \$10,000 using criminally derived property.

All in violation of Title 18, United States Code, Section 1956(h).

COUNTS NINE THROUGH ELEVEN
[18 U.S.C. § 1957(a) and 18 U.S.C. § 2]

29. Paragraphs 1 through 18, Paragraphs 22 and 23, and Paragraph 28 are realleged and incorporated by reference as though fully set forth herein.

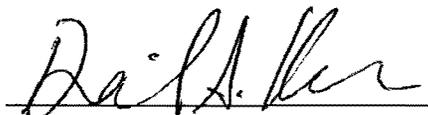
30. On or about the dates set forth below, in the Northern District of Oklahoma and elsewhere, the defendant, **BERND KOWALEWSKI**, did knowingly cause the engagement and did attempt to engage in monetary transactions, by, through, and to a financial institution, affecting interstate or foreign commerce, in criminally derived property of a value greater than \$10,000.00, from specified unlawful activity, to-wit: the deposit, withdrawal, transfer and exchange of United States currency, funds and monetary instruments, such property having been derived from specified unlawful activity, namely, bribery of a foreign official, a felony violation of the FCPA, Title 15, United States Code, Section 78dd-2, as follows:

COUNT	DATE	MONETARY TRANSACTION
Nine	11/22/2008	Transfer of a check in the amount of \$18,000 to Official 5.
Ten	12/1/2008	Transfer of a check in the amount of \$50,000 to Official 4.
Eleven	4/7/2009	Transfer of a check in the amount of \$40,000 to Official 4.

All in violation of Title 18, United States Code, Sections 1957(a) and 2.

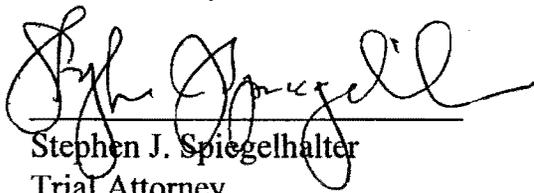
A TRUE BILL

DENIS J. McINERNEY
CHIEF, FRAUD SECTION
CRIMINAL DIVISION
U.S. DEPARTMENT OF JUSTICE



Daniel S. Kahn
Trial Attorney

/s/Foreperson
Grand Jury Foreperson



Stephen J. Spiegelhalter
Trial Attorney