

The Janie Selby Story (part 1)



This is the story about Janie Selby that the Bonneville Power Administration (“BPA”) never wanted you to read.

In 2006, a jury convicted Selby of conflict of interest, wire fraud, and making a false statement to a federal official -- all felonies -- while serving as a trusted BPA employee. In January 2009, the U.S. Court of Appeals for the Ninth Circuit upheld her conviction on all counts.¹

At the heart of the case were allegations that Selby used her influence at BPA

to have it buy a software product manufactured by a company called Knowmadic. Her husband, Scott, worked there and stood to gain as much as \$100,000 in commissions from sales to BPA, prosecutors alleged.

Selby has already served her sentence: four months of detention at the YWCA in Portland, Oregon.²

Ever since her indictment, BPA has tried to portray Selby as a lone-ranger employee who flouted federal ethics rules. “The charges in this case pertain to the alleged ethical misconduct of a single manager in the performance of her duties,” a BPA memo to employees said in 2005.³ “BPA does not tolerate even the appearance of misconduct, much less an actual violation of well established standards of conduct every BPA employee should know.”⁴

In this Issue:

We examine the trial of Janie Selby, a veteran BPA employee.

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But things are not that simple. There is much more to the Janie Selby story:

- **The Offer.** BPA Administrator Stephen Wright attempted to induce Selby in 2005 to plead guilty and avoid an “agonizing trial” that might embarrass the agency. To entice her, Wright offered her early retirement benefits worth about \$650,000.⁵ But there were legal and ethical problems with Wright’s offer. Selby had a legal right, as would any other federal employee, to contest the criminal charges, if she wished to do so. The offering of money in the form of retirement benefits put a price tag on her claims of innocence and suggested BPA was willing to pay public money if she kept quiet. Selby refused, and the trial went ahead.

- **Incompetent ethics advice.** Trial testimony and records illustrate why BPA believed the trial might be “agonizing.” Selby informed BPA’s ethics officers three times in 2002-2003 about her husband’s relationship with Knowmadic, and she sought their legal advice. One of the ethics officers – an attorney in BPA’s Office of General Counsel -- did not even keep notes of conversations she had with Selby. Another ethics officer drafted a disqualification (recusal) statement for Selby without ever asking what her husband did for Knowmadic.

- **Other Potential Conflicts of Interest.** Another BPA employee, not Selby, helped design the software product that Knowmadic sold to BPA in 2001-2003. He accepted a watch, a bottle of wine and 24 lunches from the company, and also sought (but never accepted) money for consulting services while working full-time for BPA. Other BPA employees helped Knowmadic raise money in 2001-2002 by fielding calls from

venture capital investors who inquired about the company’s untested software. It is not clear why BPA staff came to the aid of Knowmadic, which was so strapped for cash it had trouble paying its rent.

- **Deficient Contracting Procedures.** Another BPA manager, not Selby, signed what he thought was a \$2.75 million “option” to buy Knowmadic software licenses in 2002. He did so to help Knowmadic show sales on its financial reports and encourage the company’s venture capital partners. BPA has never explained why one of its managers would want to promote Knowmadic’s finances. BPA’s “option” was, in fact, a firm agreement that obligated it to buy the Knowmadic licenses. When BPA’s auditor investigated the matter, the BPA manager acknowledged he never read the document before signing it. Knowmadic filed a contract claim in 2003 against BPA to get its money. BPA paid half of the disputed amount, approximately \$1.3 million, in 2004. Soon after, Knowmadic

closed its doors and went out of business.

- **Destroyed Documents.** BPA destroyed documents, including portions of the calendars of vice president Charles Meyer in 2006, *after* the FBI and Inspector General of the U.S. Department of Energy began investigating Selby and Knowmadic, and *after* Selby's lawyer asked BPA to preserve the records.

In response to these findings, **BPA Watch** asked Administrator Wright for comment. We asked him to respond to several questions, including whether he believed in retrospect that offering early retirement benefits to Selby was a mistake and whether he was satisfied with the quality of BPA's ethics advice to Selby. We also asked BPA's Office of General Counsel to explain what happened to the Charles Meyer calendars.

After a month of repeated inquiries, BPA submitted a brief response, saying only that it had expanded its ethics programs for employees and that these training methods "go beyond what is required by statute, which illustrates

BPA's commitment to ensuring employees are educated on ethics 'dos' and 'don'ts.'" [See Part 2 of this series for BPA's verbatim response.]

But Administrator Wright refused to answer **BPA Watch's** questions about his offer of early retirements to Selby and the quality of BPA's ethics advice. In addition, BPA's Office of General Counsel ignored our questions about the destruction of the Meyer calendars.

Who in BPA management was accountable?

BPA's refusal to answer these inquiries raises troubling questions apart from the particulars of the Selby case.

Should the Obama Administration, with its increased emphasis on ethics and transparency, accept BPA's silence? For the last eight years, the Bush Administration adopted a "hands-off" policy and let BPA alone. So did the Clinton Administration before that. Will the new Secretary of Energy, Steven Chu, do the same?

What follows in this newsletter is the story that BPA wanted to suppress – to make sure no one knew about. As you read the narrative, consider these questions: what kind of accountability is there at BPA? Did anyone in upper management take responsibility for what was going on? What is to prevent another ethics crisis at BPA in the future?

The Company

We begin in 2001, when Knowmadic, a small start-up firm with headquarters in Santa Clara, California, developed a software product for use by BPA and electric utilities. It was called the Automated Scheduling Conversion Interface/Customer Web Interface ("ASCI/CWI") or "ASCI" for short.

ASCI was soon touted within the halls of BPA as an interim fix to BPA's woes on transmission scheduling. For years, BPA relied on an antiquated system that did not meet Federal Energy Regulatory Commission ("FERC") requirements. FERC demanded that utilities and power marketing agencies, like BPA, offer "open access" transmission service. FERC wanted utilities to operate their interstate

THE ACTORS

Buser, Burt. A vice president of Knowmadic who testified at Janie Selby's trial.

Knowmadic. A California software company that made the ASCI product which BPA purchased for use in transmission scheduling. ASCI stands for "Automated Scheduling Conversion Interface."

Krier, Jeri. An attorney in BPA's Office of General Counsel who served as the agency's ethics officer.

McVey, Keshmira. An attorney in BPA's Office of General Counsel who served as the agency's ethics officer.

Meyer, Charles. A vice president at BPA and Janie Selby's boss.

Reynolds, Mark. A manager at BPA who supervised information technology contracts.

Selby, Janie. The defendant in the criminal trial.

Selby, Scott. Janie's husband. He worked for Knowmadic for seven and a half months in 2002.

SoftSmiths. A company in Houston that was installing BPA's automated "e-tagging" system to comply with federal regulations. The project was over budget and behind schedule. BPA staff looked to Knowmadic's ASCI software as a temporary solution to the problem.

Wilczewski, Mark. A business analyst at BPA who helped design the ASCI software that Knowmadic sold to BPA.

Wright, Stephen. BPA Administrator.

transmission systems as “common carriers,” like railroads.⁶

BPA and other utilities were supposed to keep track electronically of power sales (e.g. seller, buyer, amount, etc.), a process known as “e-tagging.” On BPA’s transmission system, this was a formidable task. BPA owns 15,000 miles of high-voltage transmission lines in the Pacific Northwest.

To design and install the e-tagging system, BPA in 1999 had hired a company, SoftSmiths, based in Houston, Texas, but the effort was far over budget and behind schedule. BPA initially expected the e-tagging system would start working in 2000. That did not happen. Then, BPA set a 2002 deadline.

But BPA was falling behind again, and the cost of the SoftSmiths system had ballooned from \$5 million to more than \$20 million, according to the Inspector General of the U.S. Department of Energy, which issued two critical reports of BPA’s efforts.⁷

It was to Knowmadic that BPA turned to for an interim fix.

BPA Pays Development Costs

Even before Knowmadic hired Selby’s husband, there were warning signs at BPA, if anyone cared to inquire, about the cozy relationship that certain BPA staff had developed with the company.⁸

A business analyst at BPA, Mark Wilczewski, helped Knowmadic develop the ASCI product it eventually sold to BPA. Knowmadic executives clearly understood Wilczewski’s importance to the company’s efforts. An internal corporate e-mail from 2001 noted that “we are getting most the development costs [of ASCI] paid by BPA.”⁹

Why BPA aided Knowmadic in the early days of the contract is one of many unanswered questions. Who in BPA management approved Wilczewski using BPA offices and time to develop the ASCI product that the company would then sell for a profit to BPA? We do not know.

Shaking the Money Tree

Nor do we know who in BPA management, if anyone, authorized staff to help

Knowmadic raise money. At the time, Knowmadic was so strapped for cash that its founder and chief executive officer, Jona Khandekar, sent an internal



e-mail (subject: “dire state of affairs”) suggesting the company might have to postpone paying rent. “Is there any money tree we can shake,”¹⁰ Khandekar asked?

Knowmadic, however, did have *potential* investors: venture capital funds that wanted to know more about the yet-untested ASCI product. Khandekar suggested that BPA employees accept calls from venture capital firms and say good things about the company. “We need to get someone [at BPA] who will say great things about us and is in a position of authority...Remember a lot is riding on this,” Khandekar wrote her executives.¹¹

That was the setting in



January 2002, when Selby, a 44-year old transmission contracts manager, accepted a special, four-month assignment to help BPA vice president Charles Meyer implement e-tagging.

In her job as contracts manager -- her regular position -- Selby and her staff wrote the agreements for transmission service that BPA signed with utilities, power marketers and others. But her duties were limited. It was Lorie Hoffman, another manager, who had the responsibility for scheduling the power that flowed on the transmission lines, and yet another manager, Mark Reynolds, who oversaw the information technology contracts BPA had signed with SoftSmiths for e-tagging and with Knowmadic for its ASCI product.

BPA vice president Meyer, however, was frustrated with delays in bringing the SoftSmiths' e-tagging system on line. It was not just a matter of budgets and schedules. Some of his staff wondered whether they would have jobs if BPA automated the scheduling of transmission. They resisted change.¹² Meyer needed someone to prod and cajole and coordinate

the various groups and factions. In her special assignment, Selby would serve as his advisor and troubleshooter. "She was good at problem solving," Meyer said later at Selby's trial.¹³

Knowmadic Hires Selby's Husband

Selby had served for only a month in her new assignment at BPA when Knowmadic considered hiring her unemployed husband, Scott. It was Selby who took the first step, telling a Knowmadic vice president that Scott was "very computer literate and savvy. And that he had been unemployed for quite a long time, and was looking for a job."¹⁴

BPA turned to Janie Selby as a troubleshooter.

Knowmadic executives then met Scott in February 2002 at an ASCI demonstration and reception at the Embassy Suites hotel in Portland.¹⁵ A month later, Knowmadic offered him a job with a salary of \$80,000, plus commissions. His assignment: to sell ASCI to BPA and utilities in the Pacific Northwest. He accepted the offer in

mid-March¹⁶ and began working on April 1.



By then, BPA and Knowmadic had cemented their relationship. On March 29, only three days before Scott started work at Knowmadic, BPA signed a "time and materials" contract authorizing it to buy up to \$2.4 million worth of ASCI licenses and Knowmadic consulting services. The contract did not commit BPA to purchase specific products. If BPA wanted to buy ASCI licenses, for example, it had to execute purchase orders.¹⁷

At Knowmadic's headquarters in California, the mood was only fleetingly-optimistic. Company vice president Burt Buser complained that he was "pissed off" no one else seemed to bring in work to the company coffers. And company CEO Khandekar said in an e-mail to other executives that she was "pissed off" at Buser for the tone of his e-mail.¹⁸



Meanwhile, BPA business analyst Wilczewski, who had helped develop the ASCI product, made his own overtures to Knowmadic: he suggested he might be interested in working for the company as an employee or as a consultant.¹⁹

A Badge for Access

From the start, Selby made no effort to keep her husband's job secret. She told colleagues at BPA she was pleased Scott had a good position with Knowmadic. BPA even gave Scott a badge for easy access to its Dittmer office complex in Vancouver, Washington, where Selby worked. Other employees soon noticed him at BPA. "I just remember that he just started showing up at BPA," one employee told the jury at Selby's trial.²⁰

Even when Scott took an active role in pushing sales of ASCI to BPA, only a handful of employees objected – and they did not do so in writing.²¹ Nor did Selby's boss at BPA, vice president Meyer. In April 2002, Meyer told Selby he was so pleased with her work he wanted to extend her special detail until August 1. And Selby agreed.

Selby's First Disqualification

It was not until two and a half months after Scott Selby started working for the Knowmadic that Janie Selby formally disqualified (recused) herself from decisions relating to the use of Knowmadic's software products.²²

Selby told BPA about her conflict-of-interest.

Janie Selby would later say at her trial that she asked BPA ethics officer Keshmira McVey to approve a disqualification statement earlier – on or before May 7 – and that McVey, busy with other duties, delayed.²³

What matters most is that on June 11, 2002, Selby signed a "disqualification memorandum," and both vice president Meyer and ethics officer McVey approved the document.

In her memorandum, Selby wrote: "I am seeking to disqualify myself from decisions related to the use of the Knowmadic software product because of a Conflict of Financial Interest. I have a personal

financial interest in Knowmadic because my spouse is an employee of the company."²⁴

Had Selby's memorandum stopped there, many of the troubling events that followed might not have occurred. The memorandum, however, continued on: "I will still be available to assist... [names of employees omitted] on Budget, Employee Performance, and Human Resource Allocation issues."²⁵

Selby would later argue – with some justification – that this ambiguous sentence allowed her to work on budgets, employee performance and human resources issues *relating to Knowmadic*, even though her husband received commissions for selling ASCI to BPA.

If that was indeed what BPA's ethics officer intended, it was questionable legal advice. Selby -- or anyone else in her position -- could hardly avoid the appearance of impropriety. Even though Selby had no direct authority over Knowmadic, her free-wheeling role as trouble shooter for vice president Meyer presented too many potential conflict-of-interest problems under



federal ethics laws and regulations.

Those laws and regulations prohibit federal employees from participating in decisions, recommendations or other actions regarding a “particular matter” in which they have a personal and substantial financial interest.²⁶

To help federal employees do the right thing, agencies have ethics officers who are supposed to watch out for problems and, if necessary, say to the employee, “you can’t do this.”

In Selby’s case, BPA’s ethics officer should have said: “If your husband receives commissions selling ASCI software to BPA, then you have to stay far away from this contract. Period. If that means relinquishing your temporary job on special assignment, so be it. You cannot attend meetings, review e-mails or participate in anything to do with Knowmadic.”

But that was not the ethics advice Selby received. And over the next few months, Selby participated in BPA meetings where ASCI was discussed. She received and sent e-mails

to other BPA staff on the subject of implementing the Knowmadic contract. At one point, she reviewed a notice from BPA announcing the creation of a BPA-funded pilot project to buy ASCI software and loan it to utilities at no cost. Participants in one meeting in Selby’s cubicle included Knowmadic vice president Burt Buser, information technology manager Reynolds and her husband, Scott.²⁷

There were, however, no secret off-site meetings, no clandestine sessions to discuss ASCI. The important decisions regarding Knowmadic were made at BPA during normal business hours.

Working at the Brew Pub?

Even when Knowmadic hosted a “kickoff” event for the ASCI pilot project, Selby consulted with BPA’s ethics officer and asked her whether it was proper for BPA employees to attend. And once again, the ethics advice was questionable.

The “kickoff” event was scheduled for June 2002 at the Widmer Brew Pub. Employees of both BPA and Knowmadic, and their spouses, were invited. Prior to the event, Selby

asked Tara Exe, who served as ASCI project manager, to ask ethics officer McVey: Could BPA employees accept food and drinks from Knowmadic at the pub?



Later, when Exe was on the witness stand in Selby’s trial, she described the advice McVey provided: “There is a way you can do something similar to this. It has to be in conjunction with some sort of working type of meeting. It can’t just be all fun. And she says, but even – even if you still do that, she said, you know, you still have an appearance issue. So I took that information and I gave it back to Jane.”²⁸

What Selby or anyone else would have done with this information is hard to imagine. Did McVey believe BPA employees would go with their wives or husbands to the Widmer



Brew Pub after hours primarily *to work?*

As it turned out, BPA did, in fact, schedule a presentation for the event, and Selby gave two monetary awards to BPA employees for their contribution to the development of ASCI. But BPA's ethics officer apparently never gave the most obvious (and appropriate) advice to Selby: "You can't under federal regulations receive more than \$20 in free drinks or meals. If you think the event will exceed that amount, buy your own drinks or food."²⁹

Selby Returns To Her Old Job

On August 1, 2002, Selby's temporary assignment to vice president Meyer ended. She returned to her old job as transmission contracts manager – a position that, at least in theory – would keep her far away from the administration of the Knowmadic contract.

But Selby's activities on behalf of Knowmadic, prosecutors later alleged, actually increased in this critical period. It was during August 2002, prosecutors said, that Selby violated federal ethics law by "personally

and substantially" taking action at BPA that benefitted herself. Never mind the title of her job, they told the jury. Selby wielded influence. When Selby's boss, Charles Meyer, was on vacation for part of August, she filled in for him. Everyone knew she had Meyer's support and was his "heir apparent" if he received a promotion or retired. That's how the prosecution saw the events that followed.

The E-mail

On August 22, Selby received an internal BPA e-mail describing the need for BPA to move forward in implementing ASCI as soon as possible. Without asking permission, she forwarded the e-mail to her husband.

Selby wielded influence, the government said.

This single action would later serve as the government's evidence of "wire fraud." Prosecutors said Selby deliberately sent the sensitive e-mail to her husband, alerting him to internal deliberations at BPA. Her lawyers would say it was an error of no particular significance. The e-mail, they would argue,

contained no secrets.

Then, on August 26, Selby participated in a meeting where, according to prosecutors, she called for the increased use of Knowmadic's ASCI product, and set a date, September 10, at which time BPA would use ASCI to schedule power transactions on its transmission lines. Prosecutors alleged Selby also suggested to BPA vice president Meyer that he personally intervene with recalcitrant employees and bring the internal debate over ASCI's capabilities to a close.

Three days later, on August 29, BPA signed a \$2.75 million agreement for additional ASCI licenses and consulting services. The agreement was the result of negotiations over two days between BPA manager Mark Reynolds and several Knowmadic employees, including Selby's husband, Scott, who stood to gain commissions from those sales.

Prosecutors described those cumulative events as a deliberate effort by Selby (and by implication, Scott) to manipulate BPA – to "deprive BPA of its right to honest services"



and defraud the agency where she had worked for 25 years.³⁰

But there were two people at BPA who could have stopped the activities – who could have said to Selby, “No. You can’t do this.” BPA’s ethics officer clearly had the clout and could have said so.³¹

The other person was Selby’s boss, vice president Charles Meyer. Meyer, however, did not do so. In fact, he did the opposite. In mid-October 2002, Meyer announced he would create a new, permanent position called “internal operations manager” for BPA’s transmission marketing and sales group to oversee the SoftSmiths, Knowmadic and other information technology contracts.³² His choice for the job: Janie Selby.

Selby began her new job on October 20. Now, for the first time, she had direct control over information technology vendors, including Knowmadic. Furthermore, she now supervised information technology manager Mark Reynolds. She had once been his peer. Now, she was his boss.

Going to Hawaii

Ten days later, on October

30, Selby contacted BPA’s ethics officer -- again. This time, she wanted to know whether she could accompany her husband on a free trip to Hawaii that he had won based in part on Knowmadic’s “*work with BPA*.” The trip had a value of about \$2,500.

By then, BPA had a new ethics officer, Jeri Krier. Like her predecessor, Krier was an attorney in BPA’s Office of General Counsel. Krier told Selby in writing that the trip to Hawaii was like compensation and was no different than salary for Scott. It would therefore *not* violate any BPA rule for Selby to go on the trip “because she has disqualified herself from any decisions regarding Knowmadic,” Krier concluded.³³

But Krier expressed concern that Selby’s June 2002 disqualification statement was old and should be updated to reflect her new job as internal operations manager. Krier asked Selby to revise the statement.

Selby did not do so immediately. Instead, she and Scott discussed the ramifications of her new position at BPA; they decided the conflicts posed by their jobs was too

great. To avoid problems, Scott quit.³⁴ His last day at Knowmadic was November 19, 2002. He had worked there for only seven and a half months and earned \$95,000 in salary and commissions. But Scott was also eligible, according to prosecutors, for an additional \$100,000 in commissions from the sales of ASCI software to BPA.



It was those commissions that would come back to haunt Selby, even though she disclosed this financial interest on December 12, 2002, when she filed an annual financial statement.³⁵ On her form, Selby specifically listed her husband’s commissions payments from Knowmadic as an asset.³⁶ Once again, vice president Meyer approved her disclosure. Once again, there is no record he asked any probing questions. And once again, the disclosure form was given to BPA’s ethics officer for review.³⁷

The Disputed Invoices

A few days later, in mid-December 2002, Meyer received a phone call from a Knowmadic executive, Jim Stovell. There was a problem, Stovell explained. BPA was balking at paying the \$2.75 million invoice submitted by Knowmadic for sales it made in August to BPA.

A \$2.75 million favor?

In the weeks since Knowmadic had submitted its invoice, BPA had refused to pay it because the manager who signed the agreement to buy ASCI software, Mark Reynolds, had acted beyond his legal authority. In the meantime, Reynolds had retired from BPA. But the problems with Knowmadic lingered on. For help in resolving the invoice dispute, Meyer asked BPA's Internal Audit staff to review Knowmadic's invoice and provide him with a recommendation: Did BPA owe the money or not?

The BPA Audit Report

Shortly before the Internal Audit staff finished its report, one of the auditors

called Meyer to inform him Selby's husband stood to gain money in commissions *if* BPA paid the invoice.³⁸ Meyer approached Selby. Was this true? Yes, she told him.

BPA's Internal Audit staff released its report on January 10, 2003. The report confirmed that the documents, signed by Reynolds, represented an order to buy additional servers, licenses and consulting services from Knowmadic for \$2.75 million. Reynolds, according to the audit report, acknowledged he signed the document without reviewing it and believed it was "an option rather than a firm order to purchase," the audit report said.³⁹ Curiously, Reynolds told the auditors he approved the document as a favor to Knowmadic because the company wanted to show venture capital investors it had a potential revenue stream from BPA.⁴⁰ Why Reynolds was so eager to help Knowmadic has never been explained.

It Was Not Valid

In the BPA auditor's opinion, the agreement signed by Reynolds was not valid for two reasons. First, a Knowmadic consultant delivered the

Knowmadic licenses in a box in September 2002 to BPA without obtaining a receipt of acceptance. Furthermore, the auditor said Knowmadic should have known BPA would not take delivery of the licenses all at once, nor commit to buy the software, until it had equipment to install it on. "Because Knowmadic's delivery of the software is contrary to established business practices...we doubt its delivery qualifies as a completed business transaction," the audit report concluded.

Second, and more importantly, manager Reynolds did not have permission to commit BPA to exceed the existing cap of the Knowmadic contract. Reynolds could only sign a purchase order (also called a "task order") up to the contract cap – not more. As part of the transaction, Reynolds approved a \$500,000 increase in the contract cap, an action that was beyond his legal authority. Because of those deficiencies, the audit report concluded BPA was not bound by the document Reynolds signed in August.

Selby's Second Disqualification

On January 13, 2003, three days after the Internal

Audit staff gave its report to Meyer, Selby submitted a second disqualification statement to ethics officer Krier.

Selby would later say she delayed in filing the disqualification statement because her husband had quit Knowmadic in November 2002, and “I didn’t see it as – as urgent.”⁴¹ Selby would insist she did not learn until December 2002 that her husband was in line for significant commissions from Knowmadic.⁴² When she learned of his potential commissions, she took steps to submit the second statement to ethics officer Krier.

In the second statement, Selby wrote: “In June, 2002, I sought to recuse myself for all financial and business decisions related to the use of the Knowmadic software product because of a Conflict of Financial Interest. *From June, 2002, until November 19, 2002, my spouse was an employee with the company.*”⁴³ (Italics added.)

Selby added: “On November 19, 2002, my spouse resigned from Knowmadic. Between November 19, 2002 to present I continue to

recuse myself from any dealings associated with outstanding invoices submitted to BPA prior to my spouse’s resignation from Knowmadic, that could result in a commission payment to my spouse.”⁴⁴



The second disqualification statement concluded: “It is my understanding that I am free to engage with Knowmadic only in the area of new proposals/business discussion so long as they do not interfere with the outstanding contract issues mentioned above.”⁴⁵ (Underlining in original text.)

And once again, vice president Meyer approved Selby’s statement, as did ethics officer Krier. Little did they – or Selby – know that a single date above in a single sentence would form the basis of a federal criminal charge. Selby had said her husband started working for Knowmadic in June 2002. That was wrong. The correct date was April 1. Later, when Selby was on the stand,

she would say it was an honest mistake, a simple error. The prosecution would allege it was part of a deliberate attempt to deceive BPA.

But that is jumping ahead in our story.

The next event in our chronology took place in spring 2003, when two BPA employees, whose identities have never been revealed, complained to the Inspector General (“IG”) of the U.S. Department of Energy about the circumstances behind the signing of the \$2.75 million agreement and Selby’s alleged conflict of interest.

In response, the IG and Federal Bureau of Investigation began a criminal investigation in July of that year. Federal investigators inspected BPA records. They interviewed BPA employees, including Selby. No one knew where the investigation would lead.

END of PART 1



The author, Daniel Seligman, is an attorney-at-law, and the publisher of BPA Watch.



ENDNOTES

1. *U.S. v. Selby*, case no. 07-30183, available at www.ca9.uscourts.gov/opinion (released January 15, 2009).
2. Judge Anna J. Brown of the federal district court in Portland also sentenced Selby to five years of probation but that part of the sentence was terminated early based on Selby's good behavior.
3. BPA "Talking Points," June 15, 2005, at page 1.
4. *Id.* at page 2.
5. If Selby had accepted BPA's offer, she could have retired from the agency at age 49 with 25 years of service. Without it, she will have to wait until she is 62. The amount of money over this 13-period of time totals approximately \$650,000. See Part 2 of the Selby story.
6. At the time, BPA's system of scheduling relied primarily on its Real-Time Operations Dispatch and Scheduling ("RODS") system developed in the 1970s.
7. See two audit reports from the Inspector General of the U.S. Department of Energy: "Information System Development Practices at the Bonneville and Western Area Power Administrations," DOE/IG-0586 (February 2003); and "Electricity Transmission Scheduling at the Bonneville Power Administration," DOE/IG-0637 (February 2004).
8. BPA had retained Knowmadic initially in 2001 under a sole-source contract for \$409,000 (awarded with no competitive bids) to install market monitoring software known as a "web-scraper." The software allowed BPA staff to obtain power prices from around the country without surfing the Internet for individual transactions.
9. See internal e-mails from Knowmadic dated November 15, 2001. Government Exhibit 13. Other internal e-mails from Knowmadic in this period suggested the company wanted to put Wilczewski on its Technical Advisory Board and compensate him with stock – an action that never happened.
10. See e-mail from company CEO Khandekar to chief operating officer Brian O'Neill, dated February 7, 2002. Government Exhibit 18.
11. Government Exhibit 17. Other documents also refer to the importance of BPA employees taking calls from Knowmadic's potential venture capital investors. See Government Exhibits 10 and 24.
12. Selby Trial Transcript at pages 620 and 646. Selby described the challenge she faced in her special assignment this way: "...I was supposed to help overcome some of the cultural issues that were keeping people from moving forward or accepting the new [automated] systems. There was a lot of resistance. People really worried about their jobs, if this [transmission scheduling] was automated. What were they going to do in the future? Would their role be as valued? Where would they fit in?" Selby Trial Transcript at page 821.
13. Selby Trial Transcript at page 644.
14. *U.S. v. Selby*, slip op., at 633, quoting from the Selby Trial Transcript at page 401.
15. The reception and "showcase" was hosted jointly on February 18, 2002, by BPA, Knowmadic and two of the company's subcontractors, Avanade and Equarius. "We are using this event to preview our soon to be released pilot version" of ASCI, the joint announcement said. See Government Exhibit 19.
16. Government Exhibit 39.
17. *U.S. v. Selby*, slip op., at 639.
18. "Why is BPA the only company we bill for services?" asked Knowmadic vice president Burt Buser in an e-mail dated February 20, 2002. CEO Khandekar responded: "Why are you asking this question of everyone?...I am confused by the tone." Buser replied: "Because it pisses me off. I got an



e-mail from Debbie [a Knowmadic employee] that was clear to me that we need the BPA invoices covered to make payroll at the end of the month. That is putting all the pressure to me, as we have no other income from these folks and a lot of overhead.” Khandekar then sent an e-mail to another executive at the company: “We need to talk about this. I am pissed off....He [Buser] needs to be reprimanded. Let me know how you want to make it happen.” Government Exhibit 26.

19. See internal e-mail from Knowmadic employee Paolo Benzan to vice president Burt Buser, March 27, 2002. K01649, page 12003. “I had a chance to spend about an hour with Mark W. [Wilczewski] this morning chatting about all sorts of things,” Benzan wrote. Wilczewski “mentioned that at some time in the future 6-12 months) he would like to look for a position in the private sector. I told him to please talk to

us when he is ready to make his move as he would be an incredible resource on the staff. I would hire him on the spot if I had a chance. I also asked him if he is allowed to consult outside of BPA and he said yes as long as it is not in competition with his primary role at BPA.” The Knowmadic employee added in a postscript that he was very careful to make sure that he was not recruiting Wilczewski and that “I was only following a discussion that he initiated.”

20. Selby Trial Transcript at page 9.

21. At Selby’s trial, several BPA employees said they expressed concern about her conflict of interest. Manager Lorie Hoffman said she told Meyer on two occasions that she did not believe it was proper for Selby to remain involved with the Knowmadic contract when her husband worked for the company. Hoffman said she approached Meyer after employees under her control complained. See Selby Trial Transcript

at pages 224-225. Hoffman testified that Meyer told her he “trusted Janie, and that she would never do anything inappropriate. And that was the essence of the conversation.” But Hoffman did not put her concerns in writing and did not know the exact date she talked to Meyer.

22. Prosecutors later alleged that in the intervening two and half months -- between April 1, 2002, when Scott Selby started working for Knowmadic and June 12, 2002, when Janie Selby signed her disqualification statement -- she efficiently laid the groundwork for BPA to buy ASCI products. She went to meetings, edited documents and signaled strong support for increased use of ASCI. Her defense lawyers would say her involvement was incidental because she had no direct control over any employees.

23. The first draft of the disqualification statement from McVey to Selby was dated May 7, 2002, but McVey conceded that

Selby could have contacted her before then. See Selby Trial Transcript at page 575.

24. Government Exhibit 69.

25. *Id.*

26. U.S.C. § 208(a).

27. Government’s Trial Brief at page 10. See, also, Selby Trial Transcript at page 20.

28. Selby Trial Transcript at page 20.

29. 5 C.F.R. § 2635.204(a). The \$20-limit applies “per source, per occasion,” provided that the aggregate market value of individual gifts received from any one person does not exceed \$50 in a calendar year. For general standards of gifts from outside sources, see 5 C.F.R. § 2635.202.

30. See Government Trial Brief at page 22.

31. During the period when BPA was under contract with Knowmadic, and Selby’s husband worked for the company, there is no record that anyone inside BPA ever complained in writing to the agency’s ethics officer about her



actions. Some people grumbled in private. Others complained to their superiors, who in turn complained to vice president Charles Meyer. But there is no record that BPA employees ever complained directly to the ethics officer about the appropriateness of the arrangement.

- 32. Government Exhibit 130.
- 33. Government Exhibit 140, dated October 30, 2002. Krier's assessment was not entirely accurate. Selby's prior disqualification statement, signed in June 2002, was so awkwardly worded that Selby could argue that BPA had approved an exception: she could remain involved with budget, employee performance and human resource issues relating to Knowmadic. But Krier said it was ok to go to Hawaii, and the Selbys went.
- 34. Government Exhibit 151.
- 35. The financial disclosure statement that Selby completed was a common form, Office of Government

Ethics ("OGE") #450. The form is intended to inform BPA's ethics officer about potential financial interests that might warrant a disqualification (recusal) or other action to avoid liability under federal ethics laws. The form requires employees to list assets and income without specifying the dollar limit. The employee's supervisor (in this case, Charles Meyer) is expected to ask questions if someone lists an asset that might create a conflict of interest. Approximately 1,100 BPA employees fill out these forms once a year.

- 36. Defense Exhibit 469.
- 37. BPA's ethics officer and/or staff are supposed to review the forms, in addition to the employee's supervisor. Ethics officer Krier approved Selby's form on December 18, 2002. At Selby's trial, however, Krier said she had no recollection of examining the form. See Selby Trial Transcript at page 597.
- 38. Fred Lehr, an

employee in the BPA Internal Audit group, said he called Charles Meyer on December 20, 2002, to tell him Scott Selby stood to gain commissions on the disputed invoice. See Selby Trial Transcript at page 719.

- 39. BPA Audit Report, January 10, 2003, at page 1.
- 40. BPA Audit Report, January 10, 2003, Attachment at page 2. "Mr. Reynolds said Mr. Stovel [sic] [of Knowmadic] wanted BPA to execute an additional task order to show expanding sales for its third quarter financial statements, which would favorably encourage the company's venture partners. Mr. Reynolds said he asked Knowmatic [sic] to put together a cost proposal and assumed the proposal involved an option to purchase." *Id.*, at page 2.
- 41. Selby Trial Transcript at pages 888-890.
- 42. Selby Trial Transcript at page 890.
- 43. Government Exhibit 172.

- 44. *Id.*
- 45. *Id.*