

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

FILED IN OPEN COURT
ON 2/15/07
Dennis P. Iavarone, Clerk
US District Court
Eastern District of NC

NO. 5:07-CR-42-1-D

UNITED STATES OF AMERICA)

v.)

JAMES BOYCE BLACK)

a/k/a Jim Black)

CRIMINAL INFORMATION

The United States Attorney charges that:

SOLE COUNT

At all times material to this Information:

1. JAMES BOYCE BLACK, a/k/a Jim Black, was Speaker of the North Carolina House of Representatives. In said position, he wielded great influence over legislation and conducted state business on a regular basis.

2. During every one-year period covered by this Information, the government of the State of North Carolina received benefits in excess of \$10,000 under Federal programs involving various forms of Federal assistance, including, but not limited to, Medicaid.


3. Individual chiropractors and members of the North Carolina Chiropractors Association had an interest in potential legislation before the North Carolina General Assembly, including, but not limited to: (1) "spinal safety" laws; (2) legislation affecting the amount of co-payments insurers could require patients to pay chiropractors; and (3) legislation requiring that insurers'

review of chiropractic treatment be performed by a licensed chiropractor. Such proposed legislation impacted Federal programs involving forms of Federal assistance, including, but not limited to, Medicaid.

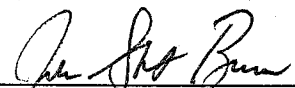
CHARGE

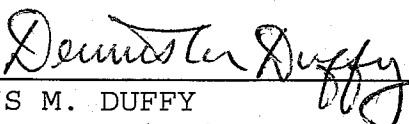
Beginning in the year 2000 and continuing through 2005, JAMES BOYCE BLACK, a/k/a Jim Black, defendant herein, being an agent of a State government, and under the circumstance described in Paragraph 2 above, did corruptly, knowingly, and willfully solicit for his own benefit, and did accept and agree to accept, things of value, that is, money in the form of U.S. currency, from several persons, specifically, members of the chiropractic profession, intending to be rewarded in connection with business of said State government involving things of value of more than \$5,000.

All in violation of Title 18, United States Code, Section 666(a)(1)(B).


GEORGE E. B. HOLDING
United States Attorney

February 15, 2007
Date

BY: 
JOHN STUART BRUCE
First Assistant U.S. Attorney

BY: 
DENNIS M. DUFFY
Assistant United States Attorney

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WAIVER OF INDICTMENT

I, JAMES BOYCE BLACK, who is accused of corruptly accepting things of value concerning programs receiving federal benefits, in violation of Title 18, United States Code, Section 666(a)(1)(B), and being advised of the nature of the charges, the proposed Criminal Information, and of my rights, hereby waive in open court on February 15, 2007, prosecution by indictment and consent that proceeding may be by Criminal Information rather than by indictment.

James Boyce Black JSR
JAMES BOYCE BLACK
Defendant

Kenneth D. Bell
KENNETH D. BELL
Attorney for the Defendant

Before James C. Dever
JAMES C. DEVER, III
UNITED STATES DISTRICT JUDGE

2/15/07

Date

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FACTUAL BASIS

The United States of America, by and through the United States Attorney for the Eastern District of North Carolina, hereby presents to the Court, for its consideration pursuant to Fed. R. Crim. P. 11(b)(3), the Government's proffer of the factual basis for the guilty plea being entered by the defendant, to the offense of corruptly accepting things of value concerning programs receiving federal benefits, in violation of 18 U.S.C. § 666(a)(1)(B). If this matter were contested at trial, the Government would establish by competent evidence the following facts:

1. From 1999 to 2006, the defendant James Boyce Black a/k/a Jim Black served as Speaker of the North Carolina House of Representatives. In such position, he wielded great influence over legislation and other state business, such as the budget of the State of North Carolina. All state laws and appropriations of state funds must pass both houses of the North Carolina General Assembly ("the Legislature"), which consists of the Senate and the House of Representatives.

2. During every one-year period while Jim Black was Speaker,

the State of North Carolina received millions of dollars in benefits under scores of Federal programs involving various forms of Federal assistance. Among such programs receiving such Federal assistance are many that impact health care services, including Medicaid.

3. Speaker Black raised money from many different individuals in interest groups who had an interest in matters before the legislature. Among these groups were individual chiropractors who were members of the North Carolina Chiropractic Association. These chiropractors had several legislative goals during the years that Jim Black served as Speaker, including, but not limited to:

a. "Spinal safety" laws: The chiropractors sought passage in the legislature of laws limiting who would be permitted to treat patients by manipulating their spine so that such acts could only be performed by licensed chiropractors and certain other health care professionals.

b. Patient co-payments: The chiropractors sought legislation prohibiting health insurers from requiring patients to pay higher co-payments for visits to chiropractors than for visits to physicians. During the 2005 legislative session, Speaker Black caused legislation to be drafted to accomplish this goal, and helped get it inserted into the House version of the Budget Bill (Senate Bill 622). The provision was ultimately passed into law. See North Carolina Session Laws, 2005-276, § 6.29, amending N.C. Gen. Stat. § 58-50-30(a3).

c. "Chiropractic Treatment Review": The chiropractors sought legislation requiring that any evaluation of the appropriateness or effectiveness of chiropractic services be performed by licensed chiropractors with an active practice. Legislation was drafted to accomplish this and it was introduced during the 2006 legislative session as House Bill 2869. The legislation would have had broad application to any form of public or private health insurance wherein the medical necessity of treatment was reviewed. Speaker Black helped the bill advance, but then later decided not to bring it to a vote during that session, telling one of the chiropractors that he did not want to cause controversy.

4. Between 2000 and February of 2002, Speaker Black approached two chiropractors and informed them that cash payments would be more helpful than campaign contributions made by check. The two chiropractors agreed to provide Speaker Black with cash payments and ultimately recruited a third chiropractor to provide cash payments to Speaker Black.

5. During the period from February, 2002, through December, 2005, the three chiropractors planned fund-raisers for Speaker Black, met with Speaker Black to discuss legislation relevant to their practice, made in-kind payments for the benefit of Speaker Black which were not reported by Speaker Black to the North Carolina Board of Elections, and delivered cash payments totaling at least

\$25,000 to Speaker Black.

6. In February of 2002, the chiropractors met Speaker Black at a private dining club in Charlotte and delivered \$8,000 in cash to Speaker Black. In December of 2002, the chiropractors again met with Speaker Black at a private dining club in Charlotte and delivered approximately \$10,000 in cash to Speaker Black. On or about February 14, 2004, approximately 15 members of the North Carolina Chiropractic Association held a fund-raiser for Speaker Black at a restaurant in Concord, North Carolina. During this event, two of the chiropractors met Speaker Black in a restroom for the purpose of secretly delivering cash payments totaling at least \$4,000. At the same event, a third chiropractor provided Speaker Black with a check, in the amount of \$4,000, made payable simply to "Jim Black." Speaker Black deposited this check into his personal bank account.

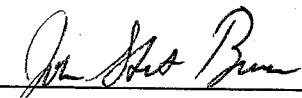
7. On December 3, 2005, a fund-raiser for Speaker Black was held by a group of chiropractors at the Capital Grille in Charlotte, North Carolina. During the fund-raiser, a chiropractor met Speaker Black in a restroom in order to secretly deliver to Speaker Black a \$3,000 cash payment. When a restaurant employee entered the restroom, the chiropractor and Speaker Black stepped just outside the restroom and completed the delivery. Upon receiving the \$3,000 in cash, Speaker Black stated to the chiropractor, "This is just between me and you. Don't you ever tell anybody about this."


8. The three chiropractors who made cash payments to Speaker Black each received a Grand Jury subpoena requiring their appearance before a Federal Grand Jury in Raleigh, on August 16, 2006. On August 15, 2006, Speaker Black personally visited one of the chiropractors. Indicating that he aware of the subpoenas, Speaker Black suggested that the three chiropractors should tell the Grand Jury that the cash payments to Speaker Black consisted of "a little bit of money to help [Black] with expenses along the road while [Black] was out running around the country."

9. Speaker Black did not deposit the aforementioned cash payments totaling at least \$25,000 into the bank account of his campaign and did not report the payments to the North Carolina State Board of Elections as campaign contributions. In receiving these payments and converting them to his own use, Speaker Black intended to be rewarded in connection with the business of state government in which he participated, said state business involving millions of dollars.

Respectfully submitted, this 15th day of February, 2007.

GEORGE E. B. HOLDING
United States Attorney

BY: 
JOHN STUART BRUCE
First Assistant U.S. Attorney

BY: 
DENNIS M. DUFFY
Assistant United States Attorney

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MEMORANDUM OF PLEA AGREEMENT

The United States of America ("Government"), by and through the United States Attorney for the Eastern District of North Carolina ("USA-EDNC"), and the Defendant, JAMES BOYCE BLACK, a/k/a JIM BLACK, with the concurrence of the Defendant's Attorney, KENNETH D. BELL, have agreed that the above-captioned case should be concluded in accordance with this Memorandum of Plea Agreement as follows:

1. This Memorandum constitutes the full and complete record of the Plea Agreement. There are no other agreements between the parties in addition to or different from the terms herein.

2. The Defendant agrees:

- a. To waive Indictment and plead guilty to the one count Criminal Information herein.
- b. To make restitution to any victim in whatever amount the Court may order, pursuant to 18 U.S.C. §§ 3663 and 3663A. Said restitution shall be due and payable immediately.
- c. To waive knowingly and expressly all rights, conferred by 18 U.S.C. § 3742, to appeal whatever

sentence is imposed, including any issues that relate to the establishment of the advisory Guideline range, reserving only the right to appeal from a sentence in excess of the applicable advisory Guideline range that is established at sentencing, and further to waive all rights to contest the conviction or sentence in any post-conviction proceeding, including one pursuant to 28 U.S.C. § 2255, excepting an appeal or motion based upon grounds of ineffective assistance of counsel or prosecutorial misconduct not known to the Defendant at the time of the Defendant's guilty plea. The foregoing appeal waiver does not constitute or trigger a waiver by the United States of any of its rights to appeal provided by law.

- d. To waive all rights, whether asserted directly or through a representative, to request or receive from the United States any records pertaining to the investigation or prosecution of this matter, except as provided in the Federal Rules of Criminal Procedure. This waiver includes, but is not limited to, rights conferred by the Freedom of Information Act and the Privacy Act of 1974.
- e. To assist the Government in the recovery and forfeiture of any assets which facilitated and/or

were acquired through unlawful activities, including all such assets in which the Defendant has any interest and control. The Defendant further agrees to sign any documents necessary to effectuate the forfeiture and waives any further notice. In addition, the Defendant forfeits and otherwise waives any ownership right in all items seized during the investigation of the acts alleged in the Criminal Information. The Court has jurisdiction over the disposition of such items in such manner as provided by the agency's regulations. Forfeited firearms may be ordered destroyed.

- f. To pay a special assessment of \$100.00, pursuant to the provisions of 18 U.S.C. § 3013. If the assessment is not paid at sentencing, the Defendant agrees (1) that the assessment is payable in full immediately, and (2) to participate in the Inmate Financial Responsibility Program while incarcerated.
- g. To complete and submit, if requested, a financial statement under oath to the Office of the USA-EDNC no later than two weeks after the entry of the guilty plea.

- h. To abide by any conditions of release pending sentencing and report timely for service of sentence.
- i. Whenever called upon to do so by the United States,
 - (1) to disclose fully and truthfully in interviews with Government agents information concerning all conduct related to the Criminal Information and any other crimes of which the Defendant has knowledge, and
 - (2) to testify fully and truthfully in any proceeding. These obligations are continuing ones.The Defendant agrees that all of these statements can be used against the Defendant at trial if the Defendant is allowed to withdraw the guilty plea.
- j. If the Defendant provides false, incomplete, or misleading information or testimony, this would constitute a breach of this Agreement by the Defendant, and the Defendant shall be subject to prosecution for any federal criminal violation. Any information provided by the Defendant may be used against the Defendant in such a prosecution.
- k. To submit to a polygraph examination whenever requested by the Office of the USA-EDNC. The results of these examinations will be admissible only at the Defendant's sentencing, and at any hearing as to whether there has been a breach of

this agreement. The United States may rely on these results in determining whether the Defendant has fulfilled any obligation under this Agreement.

3. The Defendant understands:

a. That as to the one-count Criminal Information to which the Defendant is pleading guilty, the charge, code section, elements, and applicable penalties are as follows:

COUNT ONE OF THE CRIMINAL INFORMATION:

(1) Accepting things of value in connection with the business of a state government receiving federal funds.

(2) 18 U.S.C. § 666(a)(1)(B).

(3) Elements:

First: Beginning in the year 2000 and continuing through 2005, the Defendant, being an agent of the government of the State of North Carolina;

Two: Said state government having received benefits in excess of \$10,000 in each year of the offense, under grants and other forms of federal assistance;

Three: Corruptly agreed to accept and accepted things of value, specifically, cash, intending to be rewarded in connection with the business of state government.

(4) Maximum term of imprisonment: 10 years.

(5) Minimum term of imprisonment: None.

(6) Maximum term of supervised release: 3 years..

(7) Maximum term of imprisonment upon revocation of supervised release: 2 years.

- (8) Maximum fine: \$250,000.
 - (8) Restitution pursuant to 18 U.S.C. §§ 3663 and 3663A, and as agreed to in Paragraph 2.b. above.
 - (9) Special assessment: \$100.
 - (10) Other penalties: None.
 - b. That any sentence imposed will be without parole.
 - c. That the Court will take into account, but is not bound by, the applicable United States Sentencing Guidelines, that the sentence has not yet been determined by the Court, that any estimate of the sentence received from any source is not a promise, and that even if a sentence up to the statutory maximum is imposed, the Defendant may not withdraw the plea of guilty.
 - d. That, unless Defendant is found unable to pay, the Court will impose a fine, and failure to pay it will subject Defendant to additional criminal and civil penalties pursuant to 18 U.S.C. §§ 3611-14.
4. The Government agrees:
- a. That it reserves the right to make a sentence recommendation.
 - b. That it reserves the right at sentencing to present any evidence and information pursuant to 18 U.S.C. § 3661, to offer argument or rebuttal, to recommend

imposition of restitution, and to respond to any motions or objections filed by the Defendant.

- c. That the USA-EDNC will not further prosecute the Defendant for conduct constituting the basis for the Criminal Information or other conduct now known to the USA-EDNC; however, this obligation is limited solely to the USA-EDNC and does not bind any other state or federal prosecuting entities.
- d. That it will make known to the Court at sentencing the full extent of the Defendant's cooperation, but the United States is not promising to move for departure pursuant to U.S.S.G. §5K1.1, 18 U.S.C. § 3553(e), or Fed. R. Crim. P. 35.
- e. Pursuant to U.S.S.G. §1B1.8, that self-incriminating information provided by the Defendant pursuant to this Agreement shall not be used against the Defendant in determining the applicable Guideline range, except as provided by §1B1.8 and except as stated in this Agreement. The United States will not, however, withhold from the United States Probation Office any evidence concerning relevant conduct.
- f. That the USA-EDNC agrees not to share any information provided by the Defendant pursuant to this Agreement with other state or federal

prosecuting entities except upon their agreement to be bound by the terms of this Agreement.

5. The parties agree to the following positions as to the below-listed sentencing factors only, which are not binding on the Court in its application of the advisory Guideline range; provided that if Defendant's conduct prior to sentencing changes the circumstances with respect to any such factors, the United States is no longer bound to its positions as to those factors:

- a. For purposes of U.S.S.G. §§2C1.2(b)(2) and 2B1.1(b)(1), the applicable value figure is not more than \$30,000.
- b. An aggravating role adjustment pursuant to U.S.S.G. §3B1.1 is not warranted in this case.
- c. A downward adjustment of three levels for acceptance of responsibility is warranted under U.S.S.G. §3E1.1.

This the 13th day of February, 2007.

GEORGE E. B. HOLDING
United States Attorney

BY: Dennis M. Duffy
DENNIS M. DUFFY
Assistant United States Attorney
Criminal Division

BY: John Stuart Bruce
JOHN STUART BRUCE
First Assistant U.S. Attorney

James Boyce Black
JAMES BOYCE BLACK, a/k/a JIM
BLACK
Defendant

Kenneth D. Bell
KENNETH D. BELL
Attorney for the Defendant

APPROVED, this 15 day of February, 2007.

James Dever
UNITED STATES DISTRICT JUDGE