

## The Janie Selby Story (part 2)



**On June 15, 2005, a federal grand jury in Portland, Oregon, indicted veteran BPA employee Janie Selby, age 48, on multiple counts of fraud, making false statements to federal investigators, conflict of interest and perhaps the most serious of all, tampering with a witness.**

The indictment alleged that Selby solicited a software company, Knowmadic, to hire her husband Scott as a salesman, and then used her influence at BPA to advocate for the expanded use of its products “as part of a scheme to defraud BPA.”<sup>1</sup>

At the time of the indictment, Knowmadic was defunct. The company – which had relied heavily on BPA revenue – had been forced to close its doors, but not before BPA paid it \$1.3 million to settle a contract claim it filed in 2003.<sup>2</sup>

### **BPA, the Icon**

The accusations against Selby rattled executives at BPA, which had long prided itself on its ethics. BPA is an icon in the Pacific Northwest; its history is intertwined with development and progress since the late 1930s, when Congress created the agency to market the power from Bonneville Dam, east of Portland. To this day, BPA supplies inexpensive hydropower to millions of people in the region.

“BPA does not tolerate even the appearance of misconduct, much less

### **In this Issue:**

**BPA Administrator Wright offers Selby money if she will plead guilty.**  
**Page 2**

**BPA destroys documents.**  
**Page 3**

**BPA refuses to answer questions.**  
**Page 12**

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an actual violation of well established standards of conduct every BPA employee should know," an internal memo to employees said on the day of Selby's indictment.<sup>3</sup>



BPA Administrator Stephen Wright wrote the agency's employees saying, "I believe we are all distressed by this apparent breach and am confident that BPA employees strive to maintain BPA's record of stewardship, which has been exemplary during the agency's 65 years."<sup>4</sup>

### The Offer

Within days of the indictment, BPA ethics officer Jeri Krier called Judy Snyder, a Portland lawyer who advised Selby on retirement and employment issues. At the time, BPA had placed Selby on unpaid leave-of-absence.

Krier said Administrator Wright would let Selby retire early from BPA with full pension and health care benefits *if* Selby pled guilty to one count and avoided

an "agonizing trial" that might embarrass BPA.<sup>5</sup> That was the offer.<sup>6</sup>

With early retirement, Selby could draw her retirement and health benefits immediately. Without it, she would have to wait for 13 more years, until she was 62. The amount of money involved, paid by BPA over the 13-year period, would have been significant, about \$650,000, Selby estimated.

But there were legal and ethical problems with Administrator Wright's offer:

- Selby had a legal right, as would any other BPA employee, to contest the criminal charges, if she wished to do so. The offering of money in the form of early retirement benefits put a price tag on her continued claims of innocence.<sup>7</sup> If Selby voluntarily became a convicted felon and eliminated the chance of a public trial that might embarrass BPA, Administrator Wright would approve the money.
- Federal laws and regulations allowed BPA to offer early retirement benefits only as part of

an effort to reorganize or reduce staff or make "other workforce restructuring."<sup>8</sup> Furthermore, federal agencies like BPA could not offer benefits to employees who had been notified they were to be "involuntarily separated [from federal employment] for misconduct or unacceptable performance."<sup>9</sup> BPA could not have met its promise to Selby without hiding the reasons for the offer. Was BPA willing to go that far? We do not know. In response to a Freedom of Information Act ("FOIA") request, BPA said it had no legal analysis or opinions regarding its authority to make the "plead guilty and we'll give you early retirement."<sup>10</sup> If this response is accurate, BPA Administrator Wright asked ethics officer Krier to make the offer on the agency's behalf without doing any legal homework at all.

- Krier was not an impartial intermediary. She was an attorney in BPA's Office of General Counsel who approved Selby's second disqualification statement and



offered legal advice to Selby. Unlike federal prosecutors, who regularly make “plea bargain” deals with defendants, Krier had a personal stake in the case: she had been a witness against Selby in the grand jury proceedings and would likely be a witness against her in the upcoming trial.

### Selby rejected BPA’s offer.

If BPA thought Selby would accept, they soon learned otherwise. Selby was in no mood to plead guilty on any charge, even if it meant money from BPA. She believed she was innocent. “It would have killed me to accept the money,” Selby told **BPA Watch**. “I couldn’t have signed a piece of paper like that. The money would have been a constant reminder that I couldn’t stand for what I believed in.”<sup>11</sup> Selby told BPA “no.”

The case of *U.S. v. Selby* would go to trial after all.

### The Calendars

To prepare for trial, defense counsel Olson told BPA ethics officer Krier he wanted BPA to preserve

documents, including calendars.

In response, Krier sent an e-mail to 13 employees on September 27, 2005, asking them to retain records. Among the recipients: vice president Charles Meyer; business analyst Mark Wilczewski; and former ethics officer Keshmira McVey. The subject line bluntly stated the e-mail’s purpose: DO NOT DESTROY ANY RECORDS.

Krier wrote: “I have been informed by Jane Selby’s attorney that documents, in electronic or hard form, emails or calendars that may be in your possession regarding Knowmadic and Jane Selby may be the subject of a future subpoena. I am requesting that you do not destroy any of these items because you are now informed that they are the subject of litigation.”<sup>12</sup>

Then, in June 2006, defense counsel Olson filed a motion in federal court asking it to issue a subpoena for numerous BPA records, including the calendars of vice president Charles Meyer between 2001-2003.<sup>13</sup>

Before the court could act,<sup>14</sup> someone at BPA

deleted Meyer’s electronic calendars. The destruction took place before BPA received the subpoena but long after defense counsel Olson asked BPA to retain the original documents. How this happened is not known. Was it accidental? On purpose? We do not know.

Although BPA deleted the electronic calendars, it retained hard copies. And those copies had a notation listing the date and time when Meyer’s electronic calendars were downloaded and printed out. The date: May 24, 2006. The time: 3:40 p.m. On or after that date and time, someone deleted the original electronic version.

Furthermore, the hard copies of Meyer’s calendars were incomplete. There were days on end with no appointments. On some days, the notation “more items” appeared in a box for a particular day. In the electronic version, it would have been possible to scroll down and see the additional appointments and items. In the hard version, that was impossible. The items had been deleted when the electronic version was destroyed.<sup>15</sup>

## 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.

Among the deletions from Meyer's calendars were his appointments in August 2002, when Selby met with him to discuss Knowmadic. Nor did the calendars show many meetings that occurred in the following months, after the IG and FBI began their investigation in July 2003.



### Selby's Trial Begins

Selby's trial started on Monday, November 27, 2006, before Judge Anna J. Brown in federal district court in Portland. That day, *The Oregonian* newspaper ran a long article about the charges against her and BPA's offer for her to plead guilty in exchange for early retirement benefits to avoid an "agonizing trial."

Although BPA Administrator Wright originally made the offer in June 2005, it was not until Selby's lawyers referred

to it in court documents in October 2006 that the offer became public.<sup>16</sup> The U.S. Attorney's Office confirmed that Wright had indeed made the offer but said it was not familiar with the details.<sup>17</sup>

BPA refused to comment to *The Oregonian*. Two prominent lawyers, however, were more forthcoming. Per Ramfjord, a lawyer with the Stoel Rives firm who specializes in defending white-collar crime, said: "I've never heard of anything like this. It creates an appearance of impropriety in terms of BPA trying to manipulate this woman. It potentially suggests they're trying to silence her in some way."<sup>18</sup>

John Kroger, then associate professor at Lewis & Clark Law School and now Oregon Attorney General, said: "Why would BPA have an interest in making an offer of taxpayer dollars to someone who may have committed a felony in their job? It doesn't sound like it's in the public interest."<sup>19</sup>

*The Oregonian* quoted court filings describing the gifts from Knowmadic to BPA employees in 2002. Mark Wilczewski, the business analyst

who helped design the ASCI product, received a \$349 Suunto watch. So did others at BPA. The newspaper also described the calls from venture capital firms to BPA staff, who were asked to say good things about the company and its software products. "At the end of this, I will owe a huge favor to [BPA manager] Mark Reynolds and Mark W. [an apparent reference to Wilczewski]," Knowmadic CEO Jona Khandekar wrote in one e-mail.<sup>20</sup> *The Oregonian* also reported that Scott Selby submitted an invoice to Knowmadic for spending \$112.98 on two bottles of wine for Reynolds and Wilczewski.<sup>21</sup>

A companion article described BPA's "tangled" use of computers and a highly critical Department of Energy audit report from 2004, questioning the effectiveness of BPA internal controls on information technology spending.<sup>22</sup>

### The Charges

By the time the trial started, the federal government had whittled down the charges against Selby. The original indictment consisted of 10 counts. Only four counts remained:

- **Felony conflict of interest.** The government alleged Selby violated federal ethics laws when she participated “personally and substantially” in decisions, recommendations and advice at BPA related to the Knowmadic contract in which her husband Scott had a financial interest.<sup>23</sup> (Scott was paid commissions on sales of Knowmadic’s ASCI product to BPA. His financial interest in the BPA-Knowmadic contract was clear. It was Selby’s role at BPA -- what she did or did not do -- that would become the focus of the trial.)
- **Wire fraud.** The government alleged Selby sent an e-mail to her husband in August 2002 with confidential BPA information. To prove wire fraud, the government had to show Selby participated in a scheme to defraud BPA and used the “wires” (e.g., the Internet) with “specific intent to defraud.”<sup>25</sup>
- **Witness tampering.** Selby told former Knowmadic vice president Burt Buser to lie to federal investigators, the government alleged.<sup>26</sup> The government had to prove that she “corruptly” attempted to get Buser to make a false statement to IG investigators with the intent to hinder, delay or prevent the federal investigation from going forward.  
  
In the opening days of the trial, a parade of BPA witnesses described the importance of the Knowmadic contract. Several employees testified about Selby’s involvement in 2002 when she supported increased BPA purchases of Knowmadic’s ASCI product.<sup>27</sup>
- **Making a false statement.** The government alleged Selby intentionally made a false statement that was “material” (significant). At issue was Selby’s statement in her second disqualification, which said her husband Scott started working for Knowmadic on June 1, 2002. That statement was false. The correct date was April 1, 2002.<sup>24</sup>

But much of the testimony was ambiguous and subject to interpretation. In this maze of testimony about BPA decisions and procedures, who would the jury believe? Yes, there were e-mails between Selby and BPA staff on the subject of ASCI, though they concerned technical issues that were difficult to understand. Was she pushing ASCI sales to benefit herself, or attending meetings only to aid in the implementation of the Knowmadic contract (a role she said BPA’s ethics officers had approved), or something halfway in between?

### Who would the jury believe?

Two potential witnesses were absent. The defense asserted marital privilege to block the government’s attempted use of Selby’s husband, Scott, as a witness. He was not allowed to testify. Nor did BPA business analyst Mark Wilczewski testify. Neither the prosecution nor the defense called him. Wilczewski’s name was mentioned – several witnesses credited him with having the technical skills to help design ASCI in the first place. But the

trial strayed away from the question: Why did BPA allow one of its employees to help design a product that Knowmadic would sell for a profit to BPA?<sup>28</sup>

### **Witness Tampering**

To support the witness tampering charge, assistant U.S. attorney Lance Caldwell relied exclusively on one person: former Knowmadic vice president Burt Buser, who supervised Scott Selby when he worked for the company.

### **Did Selby hinder federal investigators?**

Buser testified he met Janie Selby on August 1, 2003, for lunch at Beaches, a popular restaurant on the shores of the Columbia River, where she allegedly told him not to cooperate with federal investigators who had interviewed her only days earlier. And Buser said he agreed. Later that day, Buser had dinner with both Janie and Scott Selby, where they again allegedly discussed the pending investigation.

Then, in October 2003, Buser said he had another meeting with the Selbys,

this time at their home for dinner, where Janie Selby allegedly told him: “[She] was going to get it [the investigation] fixed. That it was a witch hunt, and that it would die off. And that she would have [BPA vice president] Chuck Meyer take care of it. And I believed her.”<sup>29</sup>

Buser also testified that Janie Selby took an active role at BPA in promoting Knowmadic. But Buser’s story differed significantly from what he said in 2003, when he volunteered to an IG investigator that “Janie went out of her way to stay out of anything related to our sales efforts at BPA. No discussions at home, never talked business with me after Scott started [working for Knowmadic].”<sup>30</sup>

Was that statement [made in 2003] true, prosecutor Caldwell asked Buser?

“No.”

“And why did you make that false statement...[to the IG investigator]?”

“Because I wanted to have him stop pursuing Jane Selby.”

“All right. Did you make that statement at her request?”

“Yes.”<sup>31</sup>

Under cross examination, Buser acknowledged the

federal government had given him full immunity from prosecution.<sup>32</sup> As the questions from defense counsel continued, Buser became testy.

Who at Knowmadic made the decision to hire Scott Selby in 2002?

“I could only guess,” Buser responded.

“Well, I don’t want you to guess.”

“Good, then I can’t answer that question.”<sup>33</sup>

### **The Royal Flush**

Buser said he wanted to win the free trip to Hawaii in 2002, paid for by Knowmadic for making sales of ASCI software to BPA. Knowmadic, however, abruptly fired him<sup>34</sup> and gave the free trip to Janie and Scott Selby.

Did Buser have an axe to grind?

The defense certainly thought so, and suggested as much to the jury, but not before Buser made one last, damning assertion. Buser said Knowmadic’s new CEO, Jim Stovell, told him in September 2002 that the company no longer needed him because Knowmadic “had Scott [Selby], who they called a royal flush.”<sup>35</sup>

### **“That’s Not My Interest”**

BPA’s testimony regarding its ethics advice was also unsettling, but for different reasons. Keshmira McVey, the ethics officer and attorney in the Office of General Counsel, testified she kept no notes of her conversations with Selby before approving her first disqualification statement in June 2002.<sup>36</sup>

Furthermore, McVey said she did not inquire what Knowmadic sold to BPA. “What Knowmadic does, I don’t even know what they offer, or what the agreement was with Bonneville. That’s not my interest,” McVey said.<sup>37</sup>

Nor was her successor, Jeri Krier, more convincing. Asked about her ethics advice regarding the 2002 trip to Hawaii, Krier said she told Selby that she -- Krier -- would not go on the trip because of the “appearance of a conflict of interest.” The reason: Knowmadic paid for the trip, a bonus for Scott Selby, for sales he made of ASCI software to BPA. But in an e-mail to Janie Selby, Krier said something different: it was *not* a conflict of interest, and Selby could go.<sup>38</sup>

Asked about the accuracy of Selby’s disqualification statement, Krier said: “I had no knowledge about when her husband went to work for Knowmadic, and I had no knowledge about what he was doing for Knowmadic. And I really had no knowledge, except for anything that she told me.”<sup>39</sup>

**The testimony of BPA’s ethics officers raised more questions.**

But her job was to find out. How could she draft a disqualification statement for Selby if she did not know what her husband did for Knowmadic? If Scott worked as truck driver for Knowmadic on salary only, Selby could not have influenced his income. The conflict of interest existed *because* Scott was paid for selling ASCI software and services to BPA.<sup>40</sup>

### **Meyer’s Version of Events**

When Charles Meyer testified, he only raised more questions about “who knew what and when” about Selby’s conflict of interest.

BPA had recently given Meyer a new job. On October 1, 2006, two months earlier, BPA named him its new executive vice president in charge of planning and governance.<sup>41</sup> At the same time, however, BPA also allegedly disciplined him for failing to properly supervise Selby, according to defense counsel filings in federal court.<sup>42</sup>

### **Making The Connection**

Meyer testified he learned in late spring or early summer of 2002 that Knowmadic had hired Janie Selby’s husband and he would work “on site” at BPA. It was Janie Selby who told him. Meyer said he encouraged her to put a recusal memorandum “in place” to avoid conflicts.

But Meyer insisted he did not make the connection between Knowmadic and ASCI – in other words, he did not learn that ASCI was a Knowmadic product – until November 21, 2002, *after* he approved Selby’s first disqualification statement, and *after* he had promoted Selby as internal operations manager. And yet his staff had regular meetings with him to discuss the status of different projects.<sup>43</sup>

## Selby's Version of Events

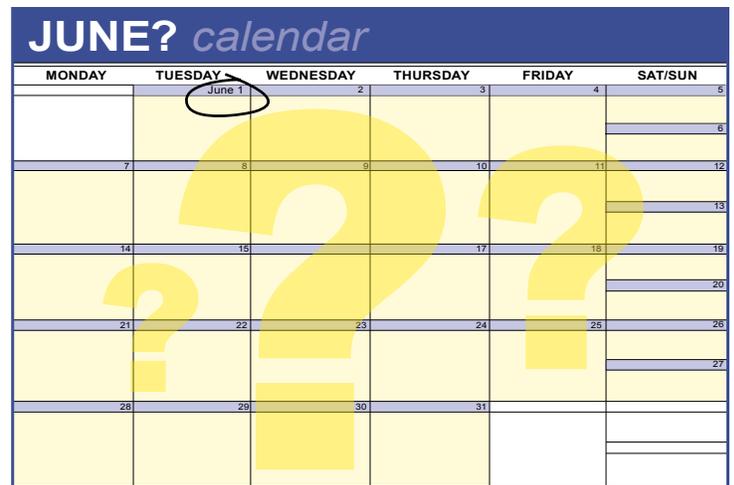
Janie Selby took the stand in her own defense on the last day of the trial, December 5, 2006. She began her career at BPA in 1980, she told the jury, starting as a clerk typist and rising through the ranks to become a mid-level manager. She earned about \$100,000 in her last position at BPA.

Selby said she had no supervisory authority when vice president Meyer put her on special detail in January 2002 to advise him on information technology projects. Nor did she sign contracts with vendors or buy software products.

Selby insisted she informed both Meyer and ethics officer McVey in March or April 2002 that Knowmadic had hired her husband. And why did it take so long, until June 2002, for her to finally sign the first disqualification statement? Because McVey had a big workload, Selby answered.

Selby said McVey had given her permission – orally, but not in writing – to work on the implementation of the Knowmadic contract because BPA had already decided to buy the ASCI

software. As long as Selby stayed away from procurement decisions, she could remain involved in matters relating to Knowmadic. And Selby said she relayed this information verbally to Charles Meyer, who said that approach sounded reasonable.<sup>44</sup>



JUNE? calendar						
MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SAT/SUN	
	June 1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

## The Wrong Date

Selby acknowledged she made a mistake when she told BPA in her second disqualification statement that her husband had begun work for Knowmadic on June 1, 2002, when the correct date was April 1, 2002. It was an error, Selby said. There was no intent to deceive anyone. "I made a mistake," she said simply.<sup>45</sup> Assistant U.S. attorney Lance Caldwell did not press her.

## The E-mail

Asked to explain the

## Taking Credit for ASCI

Under cross examination, Meyer admitted that in October 2002 – a month before he made the connection that ASCI was a Knowmadic product – he listed his supervision of the ASCI contract as a major accomplishment in a report to the Secretary of Energy. "When faced with continuing external system requirement changes [e.g., federal e-tagging requirements]...you took the innovative approach to instituting a backup system, ASCI/CWI..." he had written about himself.

"And so you were taking credit for implementing the ASCI product," Selby's lawyer, Whitney Boise, asked?

"That's correct."

"And that was in October of 2002?"

"Yes."

"But you're saying that you did not know at that time that ASCI was a Knowmadic product?"

"That's correct."

And wasn't it also true that Meyer told an IG investigator in 2003 that he never observed Selby asserting her influence on the ASCI project?

"I may have said that," Meyer responded.

e-mail she had forwarded to her husband, and which formed the basis for the government's wire fraud, Selby said she believed it was common information at BPA. It may have been "poor judgment on my part," she said. But she added: "I knew that it [the information in the e-mail] wasn't anything that wasn't already being discussed openly."<sup>46</sup>

Selby said she and Scott were careful not to reveal confidential information to each other. They agreed not to discuss Knowmadic contract negotiations at home when Scott worked for the company for seven and a half months in 2002. During that period, he earned \$95,000.

"Did you and he talk about boundaries, in terms of what you guys could talk about and what sorts of things you guys could not talk about," defense counsel Olson asked.

"Yes, we did."

"And what were the boundaries that you set?"

"I told Scott that I did not want to hear about any contract negotiations, any – any development issues."<sup>47</sup>

Under cross examination, Selby acknowledged that Scott could have received \$100,000, on top of his

salary, from commissions from the sale of the ASCI software to BPA.<sup>48</sup>

### The government said Selby played a "shell game."

BPA, however, balked at paying Knowmadic's invoice for \$2.75 million and it ultimately settled with Knowmadic by paying it half that amount, about \$1.3 million. But Selby said she did not learn of the size of the commissions until *after* Scott left the company.

"So this commission, had he received it, would have nearly doubled his income for that year [2002]," assistant U.S. attorney Caldwell asked?

"That's correct."

"And yet he did not discuss this with you at any time?"

No, Selby said.<sup>49</sup>

In the end, Knowmadic never paid \$100,000 to Scott. Instead, the company wrote him a check for approximately \$10,494 in January 2004, shortly after it settled the disputed invoice claim with BPA.<sup>50</sup> Soon after, Knowmadic closed its doors and went out of business. BPA had paid it a total of \$5.9 million since the first contract was

signed in 2001, primarily for software licenses and consulting fees.<sup>51</sup>

### Hiding the facts?

In closing arguments, prosecutor Caldwell questioned Selby's credibility: she played a "shell game" with the truth, hiding facts here and there, but never fully acknowledging her own actions and responsibility, he told the jury.

Caldwell ridiculed Selby's statements she did not know until December 2002, a month after her husband Scott left his job at Knowmadic, that he was in line to receive commissions for selling ASCI to BPA.

"So, first, how do a husband and wife – married and living together, spending their off time at home together, and spending much of their work time at BPA, working on the ASCI project – not ever share the information that Scott Selby could receive a lump sum commission of approximately \$100,000? The equivalent of Mrs. Selby's total annual income. How can that be? That statement is not believable," Caldwell said.<sup>52</sup>

## The Verdict and Sentence

On December 6, 2006, after deliberating for less than a day, the jury found Selby guilty of conflict of interest, wire fraud and making a false statement. “If you wanted to avoid any impropriety, it would have been simple. You just wouldn’t have had anything to do” with the Knowmadic project, one juror, who asked not to be identified, told *The Oregonian*.<sup>54</sup> But the jury acquitted Selby of tampering with a witness (former Knowmadic vice president Buser).

At BPA, the reaction was one of relief. In a brief e-mail to deputy Secretary of Energy Clay Sell, Administrator Wright said, “just wanted to make sure you knew that the BPA employee on trial was found guilty.”<sup>55</sup> Nothing more was said. And nothing more was asked by the Department of Energy.

Judge Brown pronounced sentence on May 7, 2007. The judge had received strong letters of support for Selby, including from the Northeast Emergency Food Program of the Ecumenical Ministries of Oregon, where Selby worked three days a week.

The program director said Selby “brings a spirit of joy and service that is the most important part of our program.”



Selby wrote to Judge Brown, too. “Although I have experienced some extraordinary situations in my life, this one never made it onto my radar screen,” she said. “I worked for BPA for 25 years. My motive was to serve the BPA to the best of my ability...Unfortunately, while in this position [the special detail under vice president Meyer], I involved myself in matters relating to my husband’s employer, Knowmadic... After what I have been through, I would do things a lot differently if given the chance...From a career perspective, BPA was my life. I continue to grieve that sense of loss and purpose. Your Honor, I humbly request that you exercise leniency in rendering my sentence.”<sup>56</sup>

## “In Broad Daylight”

Selby’s lawyer painted a different picture, of a loyal employee scapegoated by BPA management. Her actions involving Knowmadic were well known to her superiors, defense counsel Olson said. “Everyone in the world knew her husband worked for Knowmadic. Everyone in the world knew what Jane Selby was doing....It was all happening in broad daylight,” Olson told the jury.

**Selby’s lawyers said she was a scapegoat.**

When things turned badly at BPA – the missed deadlines, the BPA audit reports, the disputes over invoices, the improper work orders – people “started pointing fingers” and “running for cover.”<sup>53</sup> And Selby was caught in those internecine disputes. “The tale that the prosecution has just spun for you is completely and utterly divorced from facts, reality, the testimony you have heard from the government’s own witnesses,” Olson said.

In support of a tough sentence -- two years in an out-of-state prison -- assistant U.S. attorney Lance Caldwell attempted to use evidence of witness tampering introduced at Selby's trial, though she was acquitted of that charge.<sup>57</sup> Judge Brown, however, rejected that recommendation. Instead, she sentenced Selby to four months detention at the YWCA in Portland, and placed her on probation for five years.<sup>58</sup> Selby, the judge said, had already seen her personal, professional and financial life devastated by the trial.

But Judge Brown said Selby's conduct "can't be explained away. It wasn't an honest mistake. It wasn't naivete. It was criminal conduct that she hasn't acknowledged even today."<sup>59</sup>

### The Appeal

In 2007, Selby's lawyers filed an appeal, arguing that the evidence was insufficient as a matter of law for the jury to have convicted her, as it did, on three counts. The Ninth Circuit opinion, released January 15, 2009, rejected those contentions.<sup>60</sup> There was ample evidence for the jury in Selby's trial to conclude she was guilty

of each of the charges.<sup>61</sup> The opinion marked the end of Selby's legal saga.

### Moving On

Janie and Scott Selby still live in the Portland area. She works as the operations manager for a nonprofit school and continues to believe she is innocent of all the charges.

The judge gave Selby a light sentence.

Charles Meyer retired from BPA in October 2007 after serving for only a year as its executive vice president for planning and governance. In 2008, Meyer was named president of the Western Energy Institute, a trade association in Portland for utilities and pipeline companies. Meyer said he does not know what happened to the original electronic version of his calendars. "I am not familiar with the agency's policy or practice when data is removed from individual calendars," he told *BPA Watch* in response to an inquiry.<sup>62</sup>

Mark Wilczewski, the business analyst who helped develop the ASCI

product that Knowmadic sold to BPA, still works at the agency. BPA allegedly disciplined him in 2005 for accepting a Suunto watch and 24 lunches from Knowmadic, and for attempting to obtain consulting services from the firm while he worked full-time at BPA. Wilczewski's attempt to garner consulting work from Knowmadic did not succeed. Although he faxed a signed copy of a consulting agreement to Knowmadic on October 4, 2002, there is no record the company executed its part.<sup>63</sup> *BPA Watch* contacted him and asked him if he would talk about the Selby trial. He did not respond.

Jeri Krier, the BPA ethics officer who relayed BPA's "plead guilty and we'll give you early retirement" offer to Selby's lawyer, remains in her job. She teaches classes -- 200 last year -- on ethics to BPA employees and regularly cites the Selby case as an example of how employees can get into trouble.

As for BPA's automated transmission scheduling system, it went into place years late. BPA did not use the interim Knowmadic fix, and it ultimately abandoned the SoftSmith system at

a cost of between \$30-50 million. BPA finally hired a company based in Minnesota, OATI, to comply with the federal e-tagging requirements.

### **BPA refuses to answer questions.**

#### **What BPA Learned**

Stephen Wright remains as BPA Administrator. On February 4, 2009, **BPA Watch** sent him an e-mail with four questions for this newsletter:

- In retrospect, do you think it was proper to offer “early retirement” to Selby if she would plead guilty to a single count and thereby avoid an “agonizing” trial for BPA?
- After Selby’s indictment, did you review the ethics advice that BPA provided to her to see if it was accurate and sufficient? In other words, do you have confidence that BPA responded adequately to Selby’s requests in 2002-2003 for ethics advice?
- Has the process by which an employee

obtains ethics advice from the Office of General Counsel changed because of the Selby case? If so, how?

- In your opinion, did the Selby case illustrate any problems with BPA record retention practices? If so, what specific steps has BPA taken to correct the problem?

We followed up with numerous inquiries to Administrator Wright and BPA’s media affairs office, offering to print BPA’s answers verbatim.

A month later, on March 4, 2009, BPA responded with a general statement that carefully avoided answering the above questions. In its statement, BPA said:

“BPA is aware the U.S. Court of Appeals Ninth Circuit recently upheld the Selby conviction. But, even before that unfortunate event, BPA worked to improve its ethics program to ensure employees are fully aware of their responsibilities.”

“Shortly after Ms. Selby was indicted, BPA took its ethics program out on the road. Over a two-year period in 2006 and

2007 we made it a point to provide one and a half hours of in-person training to all BPA employees on ethics issues about which they should be aware. That training and the subsequent training provided in 2008 covers the following issues:

- financial conflicts of interest
- appearance of a conflict of interest
- misuse of position
- gifts from outside sources
- misuse of time/supplies/equipment
- post employment
- outside activities
- seeking employment

“In several ways, these training methods and audiences go beyond what is required by statute, which illustrates BPA’s commitment to ensuring employees are educated on ethics ‘dos’ and ‘don’ts.’ In addition to improvement in our training program, we have improved our process for providing ethics related advice to employees, including outreach to employees.”

And most importantly, if BPA does not want to provide answers to the above questions, and if BPA cannot show it has taken steps to correct these deficiencies, what is to prevent another ethics crisis at BPA in the future?

### END of PART 2



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BPA said nothing more. It avoided addressing the question about Administrator Wright's offer of early retirement to Selby, or the quality of the ethics advice provided in 2001-2002 to Selby, or the destroyed Meyer calendars.

Wright's refusal to answer these specific questions – to say *anything* meaningful about the Janie Selby affair – should not go unnoticed by the Obama Administration and its new Secretary of Energy, Steven Chu.<sup>64</sup> President Obama has made clear (during the campaign and after) that he intends to take ethics matters seriously. Yes, the Selby affair is over – in a literal sense. The Ninth Circuit's opinion in January 2009 ended the issue of whether Selby received a fair trial.

But the court opinion did not end the questions that remain about the integrity and competence of those in charge of BPA. What authority, if any, did Administrator Wright have to offer Selby federal retirement benefits to plead guilty? What happened to the calendars of vice president Meyer, which BPA was asked to preserve but did not?



## ENDNOTES

1. See press release from U.S. Attorney's Office, June 15, 2005.
2. The \$1.3 million settled the claim to a dispute over a \$2.75 million invoice submitted by the firm to BPA.
3. BPA "Talking Points," June 15, 2005, at page 2.
4. Letter dated June 15, 2005, from BPA Administrator Wright to BPA employees.
5. Why BPA would find a trial "agonizing" is a matter of some speculation. Was Krier, in relaying this offer, thinking about the trial itself, or was she thinking of the attention that a trial would bring to BPA's problems with its information technology ("IT") budget and e-tagging efforts? By coincidence, the day before Selby was indicted, a consulting company called KEMA submitted an evaluation to BPA of its IT operations. The KEMA report concluded: 1) BPA's annual IT budget was \$97 million and consisted of a huge number of different, complex projects; 2) BPA had 1,076 servers on multiple networks with poor coordination and poor usage (sometimes as low as 5-10%); 3) BPA spent an average of \$21,388 per employee for IT expenses, twice the utility industry average; and 4) BPA could take steps to cut 25% of its IT budget without jeopardizing the quality of its operations. BPA eventually took steps to address those problems. But in 2005, the KEMA report was a sensitive document – not something BPA wanted to see on the front page. Furthermore, the KEMA report followed on the heels of a critical 2004 report from the U.S. Department of Energy, which said BPA's contract for installing an automated transmission scheduling system (e-tagging) had increased from \$5 million to \$25 million, and was still growing. BPA had few management controls on the contractor, SoftSmiths, and the effort was years behind schedule.
6. The U.S. Attorney's Office had previously made a plea bargain offer to Selby a few days before BPA's offer. If Selby pled guilty to one charge, the U.S. Attorney would recommend no jail time. Selby turned it down. The BPA offer – sweetened by the prospect of early retirement, plus health benefits – was meant to induce Selby to change her mind.
7. The U.S. Attorney's Office acknowledged BPA made the offer. See *Government's Response to Defendant's Motion in Limine*, October 27, 2006, at page 7. "The government [prosecution] understands that [BPA Administrator] Wright did make such an offer, although the government is not aware of all the particulars."
8. The federal Office of Personnel Management ("OPM") must approve an agency's Voluntary Early Retirement Authority ("VERA"). BPA had a VERA plan in place for portions of FY 2005 and FY 2006.
9. See federal regulations, 5 C.F.R. § 831.114(k)(2)(iii), and 5 C.F.R. § 842.213(k)(2)(iii).
10. See BPA response to FOIA request #07-11 (February 1, 2007). The author asked for a copy of "all legal opinions or analysis prepared by or for BPA.... regarding the authority of BPA to grant or withhold retirement, life insurance, health insurance or other benefits if Selby were to plead guilty to a crime." BPA responded: "BPA has conducted a search of their files and have found no responsive documents."
11. Interview with Janie Selby, June 5, 2008.
12. Internal BPA e-mail, from Jeri Krier, BPA Office of General Counsel, to 13 employees, dated September 27, 2005.
13. Selby's lawyers filed the motion to subpoena BPA documents on June 30, 2006.
14. Judge Brown issued the subpoena on July 7, 2006.
15. BPA resisted releasing even the partially-deleted Meyer and Wilczewski calendars



long after the Selby trial ended. In 2008, **BPA Watch** submitted a Freedom of Information Act (“FOIA”) request for those documents. BPA argued the calendars of Meyer and Wilczewski were not “agency records” within the scope of FOIA and refused to release them. **BPA Watch** appealed to the Office of Hearings and Appeals (“OHA”) of the U.S. Department of Energy. In August 2008, the OHA ruled that Meyer’s calendars were agency records but sided with BPA on the Wilczewski calendars. See case no. TFA-0263, available on the OHA’s web site, [www.oha.doe.gov/FOIA/foia08.asp](http://www.oha.doe.gov/FOIA/foia08.asp) In response to the ruling, BPA then released the Meyer calendars to **BPA Watch**, but the documents were heavily redacted, as explained in the text.

16. Selby’s lawyers disclosed the BPA offer in documents filed with federal district court in October 2006. See *Memorandum in Support of*

*Defendant’s Motion in Limine*, dated October 16, 2006, at page 14.

“With an early retirement, Ms. Selby was told that she would also receive health and life insurance. Ms. Selby was told that if she were to be tried and convicted, she would be removed from [federal] service and would not receive life and health insurance,” the document said. The U.S. Attorney’s Office opposed admitting the BPA offer into evidence. “Assuming such an offer was made, it is not probative of anything except arguable to show bias on the part of Wright, the administrator of BPA who may be a government witness,” it argued. The government only intended to call BPA Administrator Wright to testify about limited background facts about BPA, nothing more. Selby’s lawyers responded by arguing that the BPA offer was relevant to impeach BPA ethics advisor Krier. “In an unusual set of circumstances, Ms.

Krier extended this offer at a time when she was expected to be a witness in this case. She had already testified before the grand jury. At trial, she will testify that Ms. Selby omitted certain facts when she sought advice from Ms. Krier...The defense will want to cross examine Ms. Krier about her effort to coax Ms. Selby into a felony plea, which would have obviated Ms. Krier having to explain the ethics advice she once provided to Ms. Selby,” Selby’s lawyers wrote in rebuttal. Judge Brown sided with the prosecution and did not allow defense counsel to discuss the offer during the trial.

17. See *Government’s Response to Defendant’s Motion in Limine and Government’s Motion in Limine* (October 27, 2006) at page 7. “The government understands that [BPA Administrator] Wright did make such an offer, although the government is now aware of all the particulars.” But the government argued

that, “Assuming such an offer was made, it is not probative of anything except arguably to show bias on the part of Wright...” The government said it would call Administrator Wright only to testify about limited, neutral, background facts. As a result, Judge Brown refused to allow Selby’s lawyers to use the “offer” in the trial. The jury did not learn of it.

18. *The Oregonian*, November 27, 2006. “Plea deal won’t fly, so BPA worker starts trial.”
19. *Id.*
20. *Id.*
21. *Id.*
22. *Id.*
23. 18 U.S.C. § 208(a).
24. 18 U.S.C. § 1001.
25. 18 U.S.C. § 1343.
26. 18 U.S.C. § 1512.
27. See testimony of BPA employees Tara Exe and Lorie Hoffman.
28. Several witnesses testified about Wilczewski’s role in helping to design the ASCI product. See, for example, the testimony of Knowmadic vice



- president Burt Buser, Selby Trial Transcript at pages 400-401.
29. Selby Trial Transcript at page 431.
  30. *Id.* at page 432. See September 12, 2003 e-mail from Buser to IG investigator Trevor Pearson, Government Exhibit 188-002.
  31. *Id.* at page 432.
  32. *Id.* at pages 436-440.
  33. *Id.* at page 468.
  34. *Id.* at pages 505-506.
  35. *Id.* at page 513.
  36. *Id.* at page 569. There was, however, a record of various drafts of the first disqualification statement sent between Selby and BPA ethics offer McVey. See Selby Trial Transcript at pages 570, 573 and 579. But McVey kept no notes of what she was intending to accomplish or what Selby told her about the conflict. Selby Trial Transcript at pages 564, 569 and 571.
  37. *Id.* at pages 572.
  38. *Id.* at page 587. See also Government Exhibit 140, dated October 30, 2002.
  39. *Id.* at page 599.
  40. The U.S. Attorney's Office attempted to downplay the significance of Krier's ignorance. "Krier did not know that Scott Selby actually had a badge and space [at] a BPA facility. Nor did she know that the defendant and her husband worked together on the ASCI team." See Government's Trial Brief (November 8, 2006) at page 17. The question is: Why not? Why didn't Krier ask Selby what her husband did for Knowmadic or how he was compensated?
  41. See BPA press release PR 77-06, dated September 18, 2006. "Chuck [Meyer] has a broad and deep agency experience and perspective, which makes him a great fit as our first executive vice president for Planning and Governance," deputy Administrator Steve Hickok said in the press release. BPA later offered an unconvincing explanation to the U.S. Department of Energy about the job change. When *The Oregonian* made inquiries regarding the Selby case, BPA said Meyer's job change was not a promotion. See November 3, 2006 e-mail from BPA general counsel Randy Roach to Department of Energy general counsel David Hill, released by BPA in response to FOIA #07-11. Roach wrote Hill: "A reporter [Ted Sickinger from *The Oregonian*] picked the [defense] pleading up, dug around more, and called asking... whether her [Selby's] then supervisor was subsequently promoted. After consulting with the U.S. Attorney, we told the reporter...that we do not comment on internal disciplinary matters, and that, as a matter of fact, Ms. Selby's supervisor was *not* subsequently promoted." (Emphasis added.) But BPA's own press release, announcing Meyer's new position, attests to the fact that he was given new, important duties at the agency. In Meyer's old job, he was a BPA *vice president*. In his new job, his title was *executive vice president*.
  42. Selby's lawyers alleged in court filings that BPA had disciplined Meyer – the precise date was not publicly revealed – for failing to adequately supervise Selby. BPA's alleged disciplinary action was not raised at the trial. But Meyer was criticized at the trial by his former boss, BPA vice president Mark Maher, who said Meyer was distracted by outside activities, particularly his part-time position on the Beaverton School Board. Maher said he pressured Meyer to meet deadlines, but "he would deflect it mostly. I'd hear long tales of problems and excuses. I didn't see Chuck taking a lot of responsibility, as much as I'd try to get him to do so." *The Oregonian*, December 29, 2006. Maher's testimony unintentionally raises more questions. Why didn't Maher himself do something about Meyer's supposed inattention to detail? Why did Maher accept these excuses? And where in this process was Administrator Wright,



- who ultimately had (has) responsibility for managing the agency?
43. See testimony of BPA manager Lorie Hoffman, who described regular meetings with BPA vice president Meyer. Selby Trial Transcript at page 245. Hoffman agreed it was “common knowledge” at BPA that ASCI was a Knowmadic product. Selby Trial Transcript at pages 247-248.
  44. Selby Trial Transcript at pages 847-848.
  45. *Id.* at page 896.
  46. *Id.* at page 943. See, also, *id.* at pages 872-873.
  47. *Id.* at pages 848-849.
  48. *Id.* at page 929.
  49. *Id.* at page 929.
  50. Government Exhibit 193.
  51. Government Sentencing Memorandum (April 2, 2007), citing Government Exhibit 3 in the Selby trial.
  52. See closing arguments at page 25-26 of transcript.
  53. There are a number of references in the trial transcript to personality conflicts and other behavior that may, if read in isolation, seem unprofessional or questionable. The assistant U.S. attorney, for instance, attempted to make much about an incident when Selby rebuked a Knowmadic subcontractor for writing an e-mail critical of her husband. The incident was introduced by the prosecution apparently to show the level of influence Selby exerted over Knowmadic, and, by implication, to suggest that she took vindictive actions against anyone who questioned her (or her husband’s) decisions.
  54. *The Oregonian*, December 8, 2006.
  55. See BPA response to FOIA request #07-011, submitted by the author. Administrator Wright sent the e-mail on December 11, 2006.
  56. Statement of Janie Selby to Judge Brown, May 2, 2007.
  57. Government Sentencing Memorandum, April 2, 2007, at page 2.
  58. Selby was granted early termination of her probation in 2009.
  59. Statement of Judge Brown at the time she sentenced Selby.
  60. *U.S. v. Selby*, No. 07-301873, before Judges Richard Tallman, Richard Clifton and Edward Korman.
  61. *Id.*, slip op., at 641 and 643.
  62. Email from Charles Meyer to **BPA Watch** publisher Daniel Seligman, March 1, 2009.
  63. See Government Exhibit 127 for the proposed Wilczewski-Knowmadic consulting agreement, October 4, 2002.
  64. Nor was the U.S. Department of Energy more forthcoming about what it had learned from the Selby trial. On February 15, 2009, **BPA Watch** e-mailed Susan Beard, the assistant DOE general counsel who handles ethics issues, with the following question: “When a BPA employee is charged with and/or convicted of an ethics-related charge, does the agency do its own review to better understand what happened and what the ‘lessons learned’ are for the agency (in this case, BPA, and for DOE)? In other words, does your office analyze the circumstances that led to the violation and offer suggestions/improvements for ways to avoid similar ethics problems in the future?”
- Beard referred the inquiry to BPA’s media affairs office. **BPA Watch** sent her a follow-up e-mail explaining that we had already contacted BPA with several questions. “My question to you is whether DOE has conducted its own review (apart from anything BPA might have done).” There was no response.