

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA	:	Crim. No. 10-
	:	
v.	:	
	:	18 U.S.C. §§ 666(a)(1)(B),
L. HARVEY SMITH	:	981(a)(1)(C); 982(a)(1);
	:	1951(a), 1956(a)(1)(B)(i)
	:	and § 2; 28 U.S.C. § 2461

I N D I C T M E N T

The Grand Jury in and for the District of New Jersey,
sitting at Newark, charges:

COUNT ONE
Conspiracy to Obstruct Commerce by Extortion
Under Color of Official Right

1. At all times relevant to Count One of this Indictment:

Defendant L. Harvey Smith

A. Defendant L. HARVEY SMITH was a State Assemblyman representing New Jersey's 31st Legislative District, a district that included all of Bayonne and parts of Jersey City. As a State Assemblyman, defendant SMITH was a member of the Assembly Transportation, Public Works, Higher Education and Independent Authorities Committees. Prior to serving as a State Assemblyman, defendant SMITH served as a public official in various capacities in Hudson County, New Jersey, including as an appointed State Senator, Undersheriff of Hudson County, Acting Mayor of Jersey City, and Jersey City Councilman. Defendant SMITH also was a candidate for the office of Mayor of Jersey City in an election

held on or about May 12, 2009. Defendant SMITH did not prevail in that election.

B. As a State Assemblyman, defendant SMITH's official duties included, but were not limited to: (i) proposing, drafting and voting on legislation; (ii) conducting and participating in committee hearings; (iii) exercising legislative oversight with regard to State agencies and departments; (iv) making recommendations to and negotiating with State agencies; and (v) providing constituent services for New Jersey citizens and organizations, which services included defendant SMITH's bringing the merits of a constituent's position to the attention of a State department or agency, and making a recommendation on a matter in support of a constituent's position before a State department or agency. Defendant SMITH's annual salary as a State Assemblyman was approximately \$49,000.

Other Individuals

C. There was an individual who was a close associate of defendant SMITH ("Smith's Associate").

D. Edward Cheatom ("Cheatom") was the Affirmative Action officer for Hudson County government and a Commissioner on the Jersey City Housing Authority in Jersey City. Cheatom was a Deputy Mayor of Jersey City during the period that defendant SMITH served as Acting Mayor.

E. There was an individual, now deceased, who owned and operated a consulting firm based in Jersey City (the "Consultant").

F. There was an individual cooperating with law enforcement (the "CW") who held himself out to be a real estate developer interested in development in the Jersey City area, including on Garfield Avenue and in Bayonne, New Jersey. The CW represented that he did business in numerous states, including New York and New Jersey, and paid for goods and services in interstate commerce.

The Conspiracy

2. From in or about April 2009 to in or about July 2009, in Hudson County, in the District of New Jersey, and elsewhere, defendant

L. HARVEY SMITH

did knowingly and willfully conspire and agree with Cheatam, the Consultant, and others, to obstruct, delay and affect interstate commerce by extortion under color of official right--that is, by obtaining corrupt cash payments and illegal structured campaign contributions for the benefit of defendant SMITH from the CW, directly and indirectly, with the CW's consent, in exchange for defendant SMITH's official assistance, action and influence in State of New Jersey and Jersey City government matters as specific opportunities arose.

Object of the Conspiracy

3. It was an object of the conspiracy that defendant SMITH, Cheatam, the Consultant, and others would accept and agree to accept corrupt cash payments and illegal structured campaign contributions for the benefit of defendant SMITH in a concealed manner, through intermediaries (including Smith's Associate), from the CW in exchange for defendant SMITH's official assistance, action and influence in State of New Jersey and Jersey City government matters, as specific opportunities arose.

Corrupt Activity

4. It was part of the conspiracy that:

April 24, 2009 Meeting

A. On or about April 24, 2009, defendant SMITH traveled from New Jersey to Staten Island, New York, to meet with Cheatam, the Consultant and the CW at a restaurant. During the meeting, defendant SMITH was informed by the CW about the CW's interest in conducting a development project on Garfield Avenue in Jersey City (the "Garfield Avenue Project"). Defendant SMITH was further informed by the CW that the CW was seeking help expediting an anticipated zoning change with respect to the Garfield Avenue Project, and that the CW wanted to make sure that he had defendant SMITH's support.

B. Later during the meeting, while defendant SMITH was briefly away from the table, the CW inquired of Cheatam how the

initial corrupt payment to defendant SMITH would be made, first asking Cheatam if Smith's Associate was going to be joining them at the meeting. Cheatam responded that "[Smith's Associate] was going to be the intermediate person between, to do the thing but uh no, he couldn't make it." The CW interjected and asked Cheatam: "So what are we going to do? Just give it to [defendant SMITH] after?" Cheatam responded, "Give it to me and I'll have to give it to [defendant SMITH]. [Defendant SMITH] won't take it himself. . . ." The CW stated, ". . . oh so you gotta give it to him, he won't take it from me?" The CW then confirmed, with Cheatam, that defendant SMITH understood that the CW wanted defendant SMITH to assist the CW with the Garfield Avenue Project.

C. On defendant SMITH'S return to the table, Cheatam told him that "[the CW] here is a very generous person and he likes working with people. He's going to make a contribution to your campaign [for Jersey City Mayor]. His only thing is that his name is not connected to it, nor my name, nor [the Consultant's] name. He'll give you something now and you make the run-off and he'll keep contributing to you, to your success." The CW added, "Run-off or you get elected, or both, I told [Cheatam] I'll do the \$5,000 now and then 5 after the run-off and then after the election, just don't put my name anywhere or anything like that." Defendant SMITH said, "I can only put

the name on the check that is, who the check's coming from." Cheatam then made clear to defendant SMITH: "There is no check. There is no check. There is no check." The CW stated, "We don't want to have any conflicts" Defendant SMITH responded, "I understand and that's going to be difficult for me to deal with." The CW said: "Deal with [Cheatam] on it." Cheatam indicated to defendant SMITH that they would use Smith's Associate as an intermediary and that Smith's Associate would give the corrupt payment to defendant SMITH.

April 30, 2009 Meeting & \$5,000 Payment

D. On or about April 30, 2009, defendant SMITH, Smith's Associate, Cheatam, the Consultant, and the CW met at a restaurant in Bayonne, New Jersey. Before defendant SMITH arrived at the meeting, the CW inquired, in the presence of Smith's Associate, Cheatam, and the Consultant, "So I guess after breakfast we'll do our business with --." Cheatham interrupted, "After breakfast we'll do our business with [Smith's Associate]. [Smith's Associate] will take care of it."

E. When defendant SMITH arrived at the meeting, the CW said to him, "I didn't know you were still on the Assembly," and defendant SMITH said, "Yeah." The CW said, "I was telling [Smith's Associate and Cheatam] that I might need something [from you]." Defendant SMITH cautioned the CW, stating "You gotta stop talking like that, and I'll tell you why. Because we are forging

a relationship and whatever I can do to help you, I will, and when you talk like that, it puts me--" and the CW responded that he understood.

F. The CW then noted that Cheatam and the Consultant were "helping me out on Garfield Avenue with a project, you know we spoke about I think last time," to which defendant SMITH said, "Yes." The CW continued, "[A]nd, um, I have to check on the status but there's an application in the DEP [New Jersey Department of Environmental Protection] now for a No Further Action Letter [a written determination by the DEP that the area of concern is free of contaminants]. . . . [A]nd you know the way it works with the big agency, ahh, you know, they're delaying things, so maybe I'll get you that information." In response, defendant SMITH told the CW, "Well, I'll get the information. You give me the name and I'll find out what the status of the situation is with the DEP, if you write it down or something I'll go on and find out where they are with regards to the cleaning of that area." Moments later, defendant SMITH told the CW, "So write down all the stuff you want."

G. As defendant SMITH, Smith's Associate, Cheatam, the Consultant and the CW got up to leave the table, the CW said, "So I'll get that DEP information, we'll get you a zone application." Defendant SMITH replied, "All I need to know is what the project is, if you give me the name of the project and I'll find out the

site so I can question . . . what the status of the ahh, what what they're looking for, the status of the clean up."

H. In the parking lot outside of the restaurant, the CW said to defendant SMITH, "So I'll do business today there with [Smith's Associate]. Is that okay?" Defendant SMITH did not turn around or respond. The CW again said to defendant SMITH "I'll do business with [Smith's Associate] and then I'm going to do 5--" at which point defendant SMITH advised the CW "Stop talking -- just, I understand -- stop talking!" Defendant SMITH then added "[y]ou make me feel like I might want to pat you down to see if you got--" and then defendant SMITH laughed. The CW said, "After the election, I'll do the same again," to which defendant SMITH replied "thank you" and then got into his car.

I. Smith's Associate then accepted an envelope containing \$5,000 in cash from the CW. The CW said, "I told [defendant SMITH], this is \$5,000." Smith's Associate replied, "Okay." The CW continued on: "Just don't put my name on anything. I don't want any conflicts or anything. You know [defendant SMITH's] a good guy. I told him this is 5 now and after the election, I'll give him another 5." Smith's Associate replied, "Okay, all right." The CW asked Smith's Associate, "[w]hen he says he will help me expedite my [Garfield Avenue] application . . . I can trust him? [Defendant SMITH] won't forget my name and number, will he?" Both Smith's Associate and

Cheatam, who was standing nearby, acknowledged that defendant SMITH would not forget the CW.

J. Smith's Associate then entered the front passenger side of defendant SMITH's car, which was located in the parking lot outside of the restaurant, holding the envelope containing \$5,000 in cash that Smith's Associate had just accepted from the CW. Smith's Associate, thereafter, gave the \$5,000 in cash to defendant SMITH.

K. Later that same day, on or about April 30, 2009, defendant SMITH provided the \$5,000 in cash that he had received from the CW, through Smith's Associate, to Cheatam so that Cheatam could convert the cash into money orders and checks. Defendant SMITH did this so that defendant SMITH could deposit the CW's corrupt \$5,000 cash campaign contribution into defendant SMITH's "Team Smith 2009" campaign account for defendant SMITH's candidacy for Jersey City Mayor, and, in so doing, conceal the source and purpose of the corrupt payment that defendant SMITH had accepted.

Concealment of the \$5,000 Payment

L. On or about May 4, 2009, Cheatam gave \$2,500 in cash to a relative ("Individual No. 1") in order to convert a portion of the CW's corrupt cash payment into money orders that defendant SMITH could deposit in his Team Smith 2009 campaign account.

M. On or about May 5, 2009, Cheatam caused Individual No. 1 to purchase five separate money orders for \$500 each at a United States Post Office in South Orange, New Jersey. Individual No. 1 deliberately left the "payable to" line blank on all five money orders and falsely listed the names of friends and co-workers as the originator of each money order. The following day Cheatam received, from Individual No. 1, all five money orders. Thereafter, defendant SMITH accepted these money orders from Cheatam.

N. On or about May 6, 2009, Cheatam gave the remaining \$2,500 in cash to another individual ("Individual No. 2") and, in exchange, received from Individual No. 2 a personal check drawn on Individual No. 2's bank account and made out to "Smith Team." Defendant SMITH subsequently accepted this \$2,500 check from Cheatam, causing it, and the five money orders for \$500 each, to be deposited into his Team Smith 2009 campaign account at TD Bank in Hoboken, on or about May 6, 2009.

July 16, 2009 Meeting

O. On or about July 16, 2009, defendant SMITH, Cheatam, the Consultant, and the CW met at a diner in Jersey City. Prior to the Consultant's arrival at the meeting, defendant SMITH, Cheatam, and the CW discussed the CW's business interests in Jersey City and Bayonne, including the Garfield Avenue Project and a proposed development on Route 440 in Bayonne

(the "Bayonne Project"), and the areas in which defendant SMITH could help the CW with those interests, specifically, with matters relating to the DEP and the State of New Jersey Department of Transportation ("DOT"). When the Consultant arrived, Cheatam recounted what defendant SMITH, Cheatam and the CW had been discussing so far. Defendant SMITH then told the CW, "I need to just get a little list of what you're trying to do, so that before I go on vacation I can get the ball rolling. First of all, I can put in some calls to see where the DEP situation is." The CW said that he would get Cheatam the necessary information. Defendant SMITH continued, "The other thing that I'll do is, I'll be back in two weeks, and maybe I can talk to [State Assemblyman]" who the CW confirmed was "the Chairman of the DOT" and who "would be a big help for the Bayonne project." Defendant SMITH told the CW that State Assemblyman was "the chairman of our [State Assembly] committee," and Cheatam asked defendant SMITH, "You're on the [State Assembly] Transportation Committee?" Defendant SMITH confirmed that he was, and Cheatam said, "That's a plus for us, okay good."

P. Regarding the Garfield Avenue Project, defendant SMITH asked the CW what name was on the DEP application. Defendant SMITH was informed by the CW that it was registered under "Garfield Avenue Associates LLC." Defendant SMITH wrote down the information with a pen provided by Cheatam. Defendant

SMITH then asked for other information regarding the Garfield Avenue Project, and continued to take notes and the CW provided the information. Defendant SMITH then was informed by the CW that the CW was "looking for a guy that can help me out. You know me, I know you. I trust you. Just like before the election [referring to the \$5,000 corrupt cash payment from the CW that defendant SMITH accepted on or about April 30, 2009, prior to the Jersey City mayoral election], I was there for you, I'm a generous guy," and that the CW would provide additional corrupt payments for the benefit of defendant SMITH. Defendant SMITH pointed at the CW and said, "According to your standards you're generous," and all at the table laughed. Regarding the Garfield Avenue and Bayonne Projects, defendant SMITH said, "I'm going to find out what the deal is with this. I'm gonna get on it as soon as we finish here." Among other things, defendant SMITH indicated that he would speak to State Assemblyman, who also was an attorney in private practice. Defendant SMITH said, "I'm gonna say, 'Hey [State Assemblyman], would you be interested in handling [the Bayonne Project]?' " The Consultant added that State Assemblyman was a "very well-respected" State Assemblyman. Later in the meeting, defendant SMITH told the CW, "So what I'm going to do is this, just so you know is, I'm going to ask [State Assemblyman] if he would be interested in handling [the CW's application]. . . And so that way, give [State Assemblyman] the

business opportunity--." Defendant SMITH then said, "Okay, I'm going to try to at least put this in motion," and asked the CW for the CW's telephone number. Because defendant SMITH was going on vacation, defendant SMITH told the CW that he wanted to "get [State Assemblyman] and [the CW] together so you can play this out. I'll give [State Assemblyman] the generics, and [the CW] can handle the rest." Cheatom then told defendant SMITH to have the State Assemblyman call Cheatom. Defendant SMITH also confirmed that he was going to make inquiries about the Garfield Avenue project.

Q. Later in the meeting, defendant SMITH provided advice to the CW and Cheatom regarding how to handle any issues that might arise with a particular Jersey City Councilwoman regarding the CW's purported need for a zoning change in Jersey City. Defendant SMITH told the CW, "See, not only do you have my connections, . . . you got my . . . knowledge." Shortly thereafter, defendant SMITH said that he had to leave, but assured the CW that he would reach out to [State Assemblyman] on the CW's development projects. As Cheatom got up to walk defendant SMITH out of the diner, the CW told Cheatom that Cheatom could inform defendant SMITH that the CW would give defendant SMITH \$10,000 this time since defendant SMITH had made clear that "he wasn't happy with the five" [meaning the \$5,000 corrupt payment defendant SMITH accepted, through Smith's

Associate, on or about April 30, 2009]. Cheatam indicated that he would relay this information and then stepped away to speak with defendant SMITH in private. Minutes later, Cheatam returned from outside the diner and told the CW that "[defendant SMITH] would take that [meaning \$10,000] to get started." Cheatam also said that defendant SMITH was willing to meet with the CW the next day, July 17th.

July 17, 2009 Meeting & \$10,000 Payment

R. On or about July 17, 2009, defendant SMITH, Cheatam, the Consultant and the CW met at a diner in Hoboken, New Jersey. During this meeting, defendant SMITH told the CW, "Well, I made two calls yesterday." The CW told defendant SMITH, "You're a man of your word," and defendant SMITH replied, "I only do business one way." Defendant SMITH then began to reference notes in front of him and convey to the CW what actions defendant SMITH had undertaken on the CW's behalf following their meeting the previous day. First, defendant SMITH addressed what he had done for the CW with regard to the Garfield Avenue Project: "They got back to me while I was on the highway, and [an individual] is going to try and get me the information by the end of the day. -- [T]hey talked to the [DEP] Commissioner yesterday, they're taking care of that." Defendant SMITH went on to tell the CW that defendant SMITH had contacted the DOT Commissioner with regard to the Bayonne Project. The CW told defendant SMITH, "I appreciate

your support."

S. Later in the meeting, defendant SMITH told the CW that "[State Assemblyman] cannot, I should have known that, ethically we can't represent, ahh, his law firm couldn't represent you, but what [State Assemblyman] is willing to do to help me out is, with the DOT, if you need, if if my clout isn't enough, he'll make a phone call down the road to let them know how [State Assemblyman] supports this project." As the meeting was concluding, defendant SMITH told the CW, "I just wanted to give you that update -- and when I get the other information, I will give it to [Cheatam] to give it to you."

T. Defendant SMITH, Cheatam, the Consultant and the CW then left the diner. In the parking lot outside, as the CW took an envelope containing \$10,000 in cash out of the trunk of the CW's car, defendant SMITH said "okay," patted the CW on the shoulder and then began to walk toward his own car, which was parked nearby. The CW then provided the envelope containing the \$10,000 to Cheatam, who followed defendant SMITH to defendant SMITH's car, leaned in the open window, and handed the envelope to defendant SMITH. Cheatam returned to the CW and the Consultant and indicated to the CW that defendant SMITH had "said thank you" for the \$10,000 cash payment. The CW then approached defendant SMITH's car, said, "Harvey, I don't want you to call me a cheap skunk anymore," and proceeded to lean inside the open

window. Defendant SMITH replied, "Hey, it's not about that, it's just about, -- it's just about the fact that I'm a straight guy."

In violation of Title 18, United States Code, Section 1951(a).

COUNTS TWO AND THREE
(Attempted Obstruction of Commerce by
Extortion Under Color of Official Right)

1. Paragraphs 1 and 4 of Count One of this Indictment are hereby repeated and realleged as if set forth in full herein.

2. On or about the dates set forth below, in Hudson County, in the District of New Jersey, and elsewhere, defendant

L. HARVEY SMITH

did knowingly and willfully attempt to obstruct, delay and affect interstate commerce, and aid and abet such conduct, by extortion under color of official right -- that is, by directly and indirectly, obtaining the payments set forth below, for the benefit of defendant SMITH, from the CW, with his consent, in exchange for defendant SMITH's official assistance, action and influence in State of New Jersey and Jersey City government matters as specific opportunities arose:

COUNT	DATE	AMOUNT OF EXTORTIONATE PAYMENT
Two	On or about April 30, 2009	\$5,000
Three	On or about July 17, 2009	\$10,000

In violation of Title 18, United States Code, Section 1951(a) and Section 2.

COUNTS FOUR AND FIVE
(Acceptance of Corrupt Payments)

1. Paragraphs 1 and 4 of Count One of this Indictment are hereby repeated and realleged as if set forth in full herein.

2. The State of New Jersey was a state government and the DEP and DOT were State agencies that received more than \$10,000 in federal funds during the relevant one-year period.

3. On or about the dates set forth below, in Hudson County, in the District of New Jersey, and elsewhere, defendant

L. HARVEY SMITH

did knowingly, willfully, and corruptly accept and agree to accept items of value, namely, cash payments, as listed below, intending for defendant SMITH to be influenced and rewarded in connection with a business, transaction, and series of transactions of the State of New Jersey, the DEP, and the DOT, involving things of value of \$5,000 and more:

COUNT	DATE	AMOUNT OF CORRUPT PAYMENT
Four	On or about April 30, 2009	\$5,000
Five	On or about July 17, 2009	\$10,000

In violation of Title 18, United States Code, Section 666(a)(1)(B) and Section 2.

COUNT SIX
(Money Laundering)

1. Paragraphs 1 and 4(a) to (n) of Count One of this Indictment are hereby incorporated and realleged as if set forth fully herein.

2. On or about May 6, 2009, at the location set forth below, in Hudson County, in the District of New Jersey, and elsewhere, defendant

L. HARVEY SMITH

with the intent to conceal and disguise the nature, location, source, ownership and control of property that was the proceeds of specified unlawful activity, namely the attempted obstruction of commerce by extortion, bribery and conspiracy to obstruct commerce by extortion, contrary to Title 18, United States Code Sections 666(a)(1)(B) and 1951(a), as defined by Title 18, United States Code, Section 1956(c)(7) and Section 1961(1), did knowingly and willfully conduct, and attempt to conduct, financial transactions affecting interstate commerce and involving the use of a financial institution engaged in interstate commerce, specifically, utilizing "straw" donors to illegally structure a \$5,000 corrupt cash campaign contribution accepted by defendant SMITH and deposited into the Team Smith 2009 account at the bank set forth below:

LOCATION	AMOUNT OF TRANSACTION
TD Bank Hoboken, NJ	\$2,500
TD Bank Hoboken, NJ	\$500
TD Bank Hoboken, NJ	\$500
TD Bank Hoboken, NJ	\$500
TD Bank Hoboken, NJ	\$500
TD Bank Hoboken, NJ	\$500

In violation of Title 18, United States Code, Section 1956
(a)(1)(B)(i) and Section 2.

Forfeiture Allegations

As the result of committing the aforementioned offenses in violation of Title 18, United States Code, §§ 666(a)(1)(B), 1951(a), and 1956 (a)(1)(B)(i), as alleged in this Indictment, defendant L. HARVEY SMITH shall forfeit to the United States pursuant to 18 U.S.C. § 981(a)(1)(C), 18 U.S.C. § 982(a)(1), and 28 U.S.C. § 2461, all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the offenses, including but not limited to, approximately \$15,000 in United States currency, in that such sum constitutes or is derived, directly or indirectly, from proceeds traceable to the commission of the offenses of bribery of a public official, conspiracy and attempt to obstruct commerce by extortion under color of official right, and money laundering.

If any of the above-described forfeitable property, as a result of any act or omission of defendant SMITH:

- (1) cannot be located upon the exercise of due diligence;
- (2) has been transferred or sold to, or deposited with, a third person;
- (3) has been placed beyond the jurisdiction of the Court;
- (4) has been substantially diminished in value; or
- (5) has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to 21 U.S.C. § 853(p), to seek forfeiture of any other property of defendant SMITH up to the value of the above forfeitable property.

In violation of Title 18, United States Code, Sections 981(a)(1)(C), 982(a)(1) and Title 28, United States Code, Section 2461.

A TRUE BILL

FOREPERSON

PAUL J. FISHMAN
United States Attorney