Contracting with Uncle Sam: The Essential Guide for Federal Buyers and Sellers

By Bill C. Giallourakis

Naval Institute Press, Annapolis, MD, 2008. 297 pages, $32.95.

REVIEWED BY KATE M. MANUEL

Contracting with the federal government has seldom appeared—at least at first glance—more appealing, especially to small businesses new to government procurement. Federal spending on procurement contracts is increasing at a time when spending by state and local governments and the commercial sector is declining; and this is so despite the moratorium that the Omnibus Appropriations Act of 2009 imposed through Sept. 30, 2009, on contracting out commercial functions that were formerly performed by government employees. The American Recovery and Reinvestment Act, enacted in February 2009, is expected to generate $350 billion in new procurement contracts, and the drawdown of troops in Iraq and the buildup of troops in Afghanistan seem likely to create additional contracting opportunities. Moreover, the federal government is a comparatively "safe" buyer in tough economic times. Unlike other buyers, it is required by law to make prompt payments for goods and services, and it cannot go bankrupt. It can also sometimes make advance payments, or non-interest-bearing loans to small businesses to assist them in meeting the financial requirements of performing agency contracts.

For small businesses that may be newly tempted into the government market by the current economic climate, or attorneys who are new to representing such businesses, Bill C. Giallourakis' *Contracting with Uncle Sam* provides an enthusiastic, understandable, and accurate introduction to the federal procurement process. His use of real-life examples, coupled with his candor about contractors' thought processes in all stages of the contracting process—from deciding to bid on a contract to performing it—is particularly striking. In describing his own foray into government contracting in 1983, made possible by a Small Business Innovation Research grant, Giallourakis captures both the happy surprise of the first-time winning bidder, as well as the sinking realization of the actual magnitude of the work that the new contractor has agreed to perform:

> To my surprise I was selected for contract award. Some time later I found out that 2,902 proposals had been submitted, 283 of which had been selected for awards on various topics. Out of the 283 selected firms, only 2 were in my topic area—my one-man firm and Computer Sciences Corporation, a firm that now has more than eighty thousand employees worldwide providing services in information technology. ... When I returned late that evening on the first day [of a course on the FORTRAN programming language that was required to perform the contract] to the Bachelor Officers' Quarters, I was exhausted. ... There I realized that the contract work I had won was not a piece of cake but would require enormous effort. The working software model I had proposed to demonstrate at the end of the contract would require numerous hours of tedious coding and testing. Today that would lead one to team up with an offshore software development firm to do the detail software code creation work. ... I realized that I was stuck with what I had proposed.

Giallourakis walks the small business owner or attorney new to government contracting through the formation of federal procurement contracts, from conducting market research to writing a winning proposal. He does so concisely, integrating legal information with concrete advice on how would-be contractors might use this information to their benefit. Readers are told, for example, that "[m]any times the government places its draft [requests for proposals] on its Web site for comment by prospective offerors. Serious vendors avail themselves of this opportunity to influence the procurement in an ethical manner." Giallourakis' description of the Federal Supply Schedule (FSS) program, which allows government buyers to "search product information (i.e., national stock number, part number, common name, and review delivery options) and place orders directly with GSA [General Services Administration] schedule contractors," is similarly followed by practical advice on what listing on the FSS really means for would-be vendors:

> The frustrating part of this marketing plan is that winning an Indefinite-Delivery/Indefinite Quantity (IDIQ) Contract with GSA does not guarantee a steady stream of purchase orders. To the contrary, now the trader's work has really started. One has now to ferret out government users (forest rangers, infantry, helicopter pilots, field surgeons, tank commanders, etc.) and their buyers (contracting officers of material commands, training commands, supply depots, etc.) who need your services and/or products.

Giallourakis' melding of information and advice continues throughout the book, as he explains the different types of federal contracts; simplified acquisitions, sealed bidding, and acquisition of commercial items; contracting by negotiation; contracting assistance for small businesses; and protecting corporate intellectual property when submitting bids or offers and contracting with the government. The book's coverage of intellectual property is especially thorough and understandable, which is not surprising in light of Giallourakis' extensive experience in intellectual property law as well as in government contracting.

In a couple of respects, *Contracting with Uncle Sam* fails its intended audience of small business owners and attorneys who are new to government contracting. Its treatment of bid protests

is too brief and fragmented, and bid protests are not even mentioned in the chapters on contract specifications or invitations for bids, both of which can generally be protested. Rather, in these chapters, would-be contractors are told only, "If you do not feel the methodology [for determining to whom to make the award,] including the order of the evaluation factors and subfactors to be used is fair, you should consider passing." They are not told about the possibility of protesting solicitations whose terms are unfair or unlawful, much less the time frames for doing so. Indeed, even in the chapter on negotiated procurements—in which bid protests are discussed in conjunction with contract awards—Giallourakis, in effect, buries one of the key pieces of information about bid protests: that post-award bid protests before the Government Accountability Office must generally be made within 10 days of the agency's awarding the contract.

An even more significant difficulty with *Contracting with Uncle Sam* is that it gives short shift to *being*—as opposed to *becoming*—a government contractor, as it provides only a cursory discussion of the manifold requirements with which government contractors must comply while they perform federal procurement contracts. Out of the book's 267 pages of text, fewer than 40 are devoted to topics such as the Buy American Act, the prevailing wage requirements, or environmental requirements imposed on government contractors, or to other "contract administration" issues, as Giallourakis terms them. This lack of coverage reflects the book's focus on small businesses seeking their first government contract. However, to the degree that the requirements with which government contractors must comply during their performance of federal procurement contracts might affect their choice to contract with the government, this lack of coverage could be problematic, especially because small businesses often feel the impact of these requirements more strongly than do midsized or large businesses.

In addition, federal statutes and regulations that allow for debarment or suspension of government contractors, or require government contractors to provide timely disclosure of certain legal violations or overpayment to the government, can be particularly onerous for small businesses. Large firms are better able to avoid suspension and debarment than are small ones and often have compliance and reporting structures that are already like those required under the new disclosure rules, whereas small firms do not. This disparity in the difficulty that large and small firms have in complying with federal requirements seems likely to get worse, at least in the short term, as Congress struggles to reconcile its desire for increased contractor accountability and competition with its desire to assist small businesses.

Despite these failings, *Contracting with Uncle Sam* is an informative and understandable resource for newcomers to government procurement, and will help especially in considering both the potential benefits and the potential drawbacks of contracting with the government. **TFL**

Kate M. Manuel received her J.D. from George Mason University and is a legislative attorney with the Congressional Research Service at the Library of Congress.

JFK and the Unspeakable: Why He Died and Why It Matters

By James W. Douglass

Orbis Books, Maryknoll, NY, 2008. 510 pages, $30.00.

Reviewed by John M. Williams and George Costello

JFK and the Unspeakable is an important contribution to the extensive literature on John F. Kennedy's presidency and assassination. Its fresh approach may help to reinvigorate the debate over Kennedy's death, which many find no longer relevant. Most prior work has focused on Kennedy's presidency or on his assassination, but not on both; James Douglass focuses on both and shows the relationship between the two. Douglass describes how President Kennedy turned from a Cold Warrior into a leader determined to do all he could to avoid nuclear war. Douglass also describes how Kennedy's push for peace met with strong resistance within his own government and how this resistance led to his assassination.

Douglass juxtaposes the two stories throughout the book. As he describes how Kennedy reached back-channel agreements on peace initiatives with Soviet Premier Nikita Khrushchev, and how these actions isolated Kennedy within his own administration, Douglass also reveals the many indications that Kennedy's assassination was an inside job. As Douglass summarizes the events, the CIA's fingerprints were "all over the crime and the events leading up to it."

Douglass frames his story around the observations made by Thomas Merton, a Trappist monk whom Douglass describes as "the greatest spiritual writer of his generation." Prior to the Cuban missile crisis, Merton had an intuition of an impending nuclear crisis, and he doubted that Kennedy would be up to the challenge. Douglass quotes Merton:

> What is needed is really not shrewdness or craft, but what the politicians don't have: depth, humanity, and a certain totality of self forgetfulness and compassion, not just for individuals but for man as a whole: a deeper kind of dedication. Maybe Kennedy will break through into that someday by miracle. But such people are before long marked out for assassination.

Merton was prophetic. According to Douglass, Kennedy did break through to a deeper humanity, and for that he was assassinated.

Kennedy had brought to the presidency a horror of war borne out of his personal and family experiences during World War II. But it was during the Cuban missile crisis, when he and Khrushchev had brought the world to the brink of nuclear war, that Kennedy made his critical turn toward peace. Kennedy resisted intense pressures for an attack on Cuba that could easily have touched off nuclear war, and, as Douglass characterizes it, "thereby

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turned away from a terrible evil and began a thirteen-month spiritual journey toward world peace. That journey, marked by contradictions, would result in his assassination by what Thomas Merton would identify later, in a broader context, as the Unspeakable."

What does "the Unspeakable" mean to Merton and Douglass? It is an evil, Orwellian force lurking within our society and capable of controlling it—a "deceit [that] goes beyond the capacity of words to describe." Merton saw manifestations of the Unspeakable in the Vietnam War, the arms race, and the assassinations of JFK, Robert Kennedy, Malcolm X, and Martin Luther King Jr. In Merton's words, the Unspeakable is "the void that gets into the language of public and official declarations ... and makes them ring dead with the hollowness of the abyss. It is the void out of which Eichmann drew the punctilious exactitude of his obedience ... ." In Douglass' words, the Unspeakable is a "systemic evil that defies speech," a void represented by the doctrine of plausible deniability, interpreted by the CIA as "a green light to assassinate national leaders, overthrow governments, and lie to cover up any trace of accountability." Douglass adds that the Unspeakable is a "vacuum of responsibility and compassion" that we all share when we deny responsibility for "crimes of state done for our security."

During Kennedy's presidency, the Unspeakable was epitomized by the Cold War mentality that saw a pre-emptive first strike as a means of "winning" a nuclear war with the Soviets. Walking out of a briefing upon hearing such talk of pre-emptive war, Kennedy exclaimed in disgust to Secretary of State Dean Rusk, "And we call ourselves the human race."

Theologians of that day were also divided over the ethics of nuclear war. The young James Douglass was active in the debate, and he and Merton were drawn together in a determination to move beyond the rationalizations of a limited just war theory toward a fresh understanding of the threat to humanity posed by nuclear war. However, as a monk, Merton was forbidden to publish his reflections and convictions (he shared his views in letters), whereas Douglass was free to write and to publish his, as he did in his 1968 book, *The Non-Violent Cross: A Theology of Revolution and Peace*.

Vivid as they are, Merton's and Douglass' descriptions of the Unspeakable do little to identify the culprits in the Kennedy assassination. But that is not Douglass' purpose; *JFK and the Unspeakable* is not a whodunit. Douglass does not attempt to discover who fired the shots, and, moreover, he admits that "[w]e have no evidence as to who in the military-industrial complex may have given the order to assassinate President Kennedy." But, he concludes that the fact "[t]hat the order was carried out by the Central Intelligence Agency is obvious."

Douglass' reliance on Merton does not mean that *JFK and the Unspeakable* is just another theory in search of support. Douglass assembles strong and persuasive evidence to back his thesis. The work is skillfully written, carefully researched, and extensively documented, both as to Kennedy's presidency and as to his assassination. Douglass does a masterful job of analyzing the historical record of primary documents from the Kennedy years that have been released, and he supplements his analysis with insights gained from personal interviews with surviving witnesses.

President Kennedy was aware that he was risking assassination. Asked by friends what he thought of the novel *Seven Days in May*, which portrayed a military coup in the United States, and whether he thought that a military coup could actually happen in the United States, JFK replied that it could, under certain circumstances. If there were a young President and a Bay of Pigs, he said, there would be dissatisfaction in the military. Then, if that young President had another Bay of Pigs, the public would get uneasy. But, if there were a third Bay of Pigs, JFK said, "it could happen." Douglass believes that the Cuban missile crisis was the second Bay of Pigs. Although Kennedy and Khrushchev negotiated resolution of a confrontation that could easily have led to a nuclear holocaust, the reaction of military leaders was not relief, but anger with Kennedy for having refused to follow their advice to attack Cuba. The third Bay of Pigs, according to Douglass, was Kennedy's commencement address at American University in June 1963, in which he set forth his vision for an end to the Cold War, challenged Americans to re-examine their attitudes toward the Soviet Union and toward war and peace, and declared a goal of "general and complete disarmament." The fourth Bay of Pigs was the nuclear test ban treaty that Kennedy and Khrushchev negotiated over the summer of 1963 and that the Senate ratified that fall. The fifth Bay of Pigs was JFK's opening of a dialogue with Castro through intermediaries—a further betrayal in the eyes of the CIA and the anti-Castro Cuban-American community, which blamed the failure of the original Bay of Pigs invasion on Kennedy's refusal to send in air support. The last straw, according to Douglass, was Kennedy's decision to withdraw from Vietnam. He had ordered 1,000 military personnel home in December 1963 and had decided to get out completely in 1965, after the 1964 presidential election.

All of these Bays of Pigs that followed the initial failed invasion in 1961 were praiseworthy accomplishments of President Kennedy, not failed or misguided adventures. However, it was the negative reactions of the Joint Chiefs of Staff, the CIA, and others within the administration who were gripped by the Cold War mentality that made these accomplishments dangerous for the President.

Douglass paints a fascinating picture of the back-channel communications between Kennedy and Khrushchev. The most important and best known of these was the agreement that defused the Cuban missile crisis. During the crisis, both men had been horrified by the prospect of nuclear war, and afterward each saw the need to reach out to the other to prevent another dangerous crisis. Both heads of state had hardline advisers pushing for a show of military strength; at one point Kennedy confessed to Norman Cousins, editor of the *Saturday Review*, that "he and

Khrushchev had come to have more in common with each other than either had with his own military establishment." The two leaders built on their success during the missile crisis, aided, as they had been then, by Pope John XXIII and by Cousins. In his final days in the spring of 1963, the Pope gave Cousins an advance copy of his encyclical *Pacem in Terris* to give to Premier Khrushchev; and President Kennedy's American University speech in June of that year was prompted by a suggestion from Cousins that he speak publicly on the subject. These efforts had started to bear fruit when Kennedy was assassinated; the test ban treaty had been signed six weeks after the American University speech, and overtures to Castro were in progress.

President Kennedy was far more radical—and further ahead of his time—than is generally recognized. Kennedy's break with Cold War thinking was not limited to relations with the Soviets and Cubans but extended to the Third World as well. He rejected the idea of using developing nations as pawns in the Cold War, preferring instead to allow each country to find its own way. As he saw it, Third World nationalism could help prevent the spread of the Cold War. He rejected direct military intervention in the Congo in 1961, supported neutrality for Laos (a policy that the CIA and the military undermined), and even considered the same solution for Vietnam (but the State Department ignored his directive to explore that possibility). Shortly before his assassination, Kennedy had decided to accept President Sukarno's invitation to visit Indonesia—against the wishes of CIA and State Department officials who wanted Sukarno overthrown. Sukarno was overthrown two years later, with support from the Johnson administration.

The opposition to Kennedy's actions was cumulative, and it may well be, as Kennedy himself seemed to anticipate in his answer about the possibility of a coup, that no single event in his push to peace prompted his murder. One must read Douglass' entire book to discover the logic that connects these events and to appreciate how strong a case Douglass builds. Some examples, however, provide a glimpse of what was happening.

To illustrate how Kennedy was losing control of his government, Douglass recounts a White House meeting in September 1963 at which there was a discussion of whether or not to cut off commodity import aid to South Vietnam as a means of prodding President Diem to make concessions to protesting Buddhists. David Bell, head of the U.S. Agency for International Development (AID), the administering agency, said there was no reason to talk about it, because he had already done it. "Who the hell told you to do that?" asked an incredulous Kennedy. "No one," Bell replied. "It's an automatic policy. We do it whenever we have differences with a client government." According to Douglass, the AID was a notorious CIA front, and the President was being told that the CIA—not he—was calling the shots. Cutting off the aid had far-reaching consequences, because it was a signal to plotting South Vietnamese generals that the United States would condone a coup to remove Diem. Kennedy wanted to explore the possibility of persuading Diem to moderate his policies, but he was being thwarted by Henry Cabot Lodge, his ambassador to South Vietnam, as well as by key people within the State Department, the AID, and the CIA.

Douglass clearly establishes that Kennedy intended to withdraw American forces from Vietnam. To be sure, Kennedy equivocated both in his policies and in his public statements, but, although he agreed in 1961 to increase the number of advisers and support units in Vietnam, he adamantly opposed sending in combat troops, and he consistently refused to do so. As noted above, he had ordered the first 1,000 military personnel to return home in December 1963 (an order countermanded by Johnson even before Kennedy's funeral). Kennedy also had stated privately to a number of people (including Sen. Mansfield and Sen. Morse, Marine General Shoup, journalist Charles Bartlett, and friend Larry Newman) that he intended to withdraw completely after the 1964 election. Push may have come to shove sooner than that. Alarmed by casualty reports from Vietnam as he was preparing to leave for Texas the day before his assassination, Kennedy told Assistant Press Secretary Malcolm Kilduff that "there's no reason for us to lose another man over there. Vietnam is not worth another American life."

Douglass summarizes the situation as of the fall of 1963: "as the president ordered a U.S. withdrawal from Vietnam, he was being eased out of control, by friends and foes alike, for the sake of an overriding vision of war. They all thought they knew better than he did what needed to be done to win the war in Vietnam, and elsewhere across the globe against an evil enemy." In their minds, Kennedy's "defeatism" in trying to reach accommodations with the evil Communists rather than winning the war against them justified insubordination.

Just as Douglass constructs his case from cumulative evidence that Kennedy was pushing toward peace—a push being obstructed by forces within the administration—so too does he build a cumulative case that Kennedy's assassination originated within his administration. He does this mainly by revealing the many CIA "fingerprints" in the evidence concerning the assassination.

Douglass is not the first person to see signs of CIA involvement in Kennedy's assassination. Sen. Richard Schweiker, who had co-chaired a subcommittee of the Church Committee (the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities) in 1974–1975 that looked into the assassination, told Robert Tannenbaum, a deputy chief of staff for the House Assassinations Committee, that "the CIA's fingerprints are all over this assassination." New Orleans District Attorney Jim Garrison had unsuccessfully pursued the CIA angle in the late 1960s. Douglass dedicates his book to Vincent Salandria, one of the first to expose obvious signs of conspiracy, and to Martin Schotz, whose 1996 book, *History Will Not Absolve Us*, pointed to CIA responsibility for the assassination. Douglass also draws extensively on John Newman's *Oswald and the CIA*, the seminal work in deciphering CIA documentation related to Lee Harvey Oswald. Because more evidence was available to Douglass than to his predecessors, he has been able

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to build a stronger case.

Many of the CIA fingerprints relate to the evident framing of the accused assassin, Lee Harvey Oswald, whose background included a number of CIA associations. While in the Marines, Oswald served as a radar operator at Atsugi Air Force Base, one of two bases in Japan from which top secret U-2 spy planes took off on flights over the Soviet Union. After serving at Atsugi and in the United States, Oswald requested and was granted a discharge, and a few weeks later he was in the Soviet Union, telling an official in the American Embassy that he wanted to renounce his citizenship (he did not actually do so) and that he would tell the Soviets everything he knew. Some speculate that Oswald gave the Soviets information that contributed to the downing of U-2 pilot Francis Gary Powers. When, after spending more than two years in the Soviet Union, Oswald asked to return to the United States, the U.S. government arranged to help pay his passage home. When he returned, Oswald was not arrested or investigated for treason. Instead, he was taken under the wings of CIA asset George de Mohrenschildt in Dallas, found employment in several CIA-connected businesses, and was eventually passed off to Ruth Paine, whom Douglass claims was another CIA asset. According to Douglass, it was Paine who arranged for Oswald's employment in the Texas School Book Depository.

"How did this unrepentant enemy of his country merit treatment as a prodigal son," Douglass asks, "embraced by his country with financial help and preferential passport rulings while he continued to proclaim allegiance to the USSR and Cuba?" The answer, Douglass replies, is that Oswald was guided not by a "disturbed psyche," as the Warren Commission Report on the Kennedy assassination alleged, but by "intelligence handlers." According to Douglass, when Oswald was in the Soviet Union, he had been "on an assignment for American intelligence." This conclusion is reinforced when one learns that James Angleton's Counterintelligence Special Investigations Group in the CIA had a file on Oswald, and that such files were ordinarily limited to intelligence agents suspected of being security risks.

CIA manipulation of the Oswald story is evident in Oswald's alleged trip to Mexico City in late September and early October 1963. Whether or not Oswald actually traveled to Mexico City is unclear, and relatively unimportant. What is clear is that Oswald was impersonated in Mexico City in an effort to link him not just to Cuba and the Soviet Union but to the Soviet KGB agent in charge of terrorism and assassinations in the Western Hemisphere. In post-assassination reports to the FBI and President Johnson, the CIA misrepresented the fact that it had been Oswald, not an imposter, who had made the contacts; the CIA thereby raised the possibility of Soviet and Cuban involvement in the assassination. But moments after hearing this CIA scare story on the morning after the assassination, President Johnson learned from FBI Director Hoover that Oswald had been impersonated in Mexico City. The FBI, Hoover informed Johnson, had an audiotape of Mexico City phone calls allegedly made by Oswald, and the photograph of a man who had gone to the Soviet Embassy in Mexico City using Oswald's name; but, Hoover said, neither the voice nor the photograph was that of Oswald.

These contradictory reports to Johnson from Hoover and the CIA form one of the most revealing aspects of Douglass' historical analysis. One should not underestimate the weight of the decision that Johnson faced at that moment. Douglass maintains that Johnson understood his predicament and tried to steer the Warren Commission away from a serious investigation of possible conspiracy in order to avoid unpalatable alternatives: first, that public airing of the possibility of a Soviet or Cuban conspiracy could create insurmountable pressure for war, and second, that revealing CIA involvement in the assassination could trigger "a domestic political war" that could make the country ungovernable. The third alternative, of course, was to find that Oswald, the only person who had been arrested, had acted alone. Johnson, we know, used the nuclear war possibility to pressure Chief Justice Warren into chairing the investigatory commission, and to pressure Senator Richard Russell into serving on the commission. And, for whatever reasons, Johnson went along with covering up what Douglass calls the "silent coup d'état" of the Kennedy assassination; the FBI cooperated in the cover-up, and the Warren Commission, deprived of key evidence and perhaps influenced by Johnson, reported that Oswald had acted alone.

Another strong indication that insiders were controlling pre-assassination events is the fact that an FBI "FLASH" or "stop" watch on Oswald, initiated when he defected to the Soviet Union in 1959, was cancelled on October 9, 1963—the day before information about Oswald's (or the Oswald imposter's) Mexico City activities was reported to the FBI. Had Oswald still been on the watch list, the Mexico City information would have resulted in his placement on a "security index," and law enforcement agencies would have been alerted of this prior to President Kennedy's visit to Dallas. But, without Hoover's knowledge, Oswald was taken off the watch list just before alarm bells would have sounded and made framing him for the assassination difficult or impossible. According to Douglass, this means that insiders with intricate knowledge of the system were manipulating it. These insiders had decided that Oswald would not be identified as a security risk prior to the assassination and his value as a patsy would thereby be destroyed, but information would be in place after the assassination to link him to the Soviet Union and Cuba.

Of special interest is the story of an aborted plot to kill President Kennedy on a planned visit to Chicago 20 days before his assassination in Dallas. The parallels between the Chicago and Dallas plots are striking. There were two components to the Chicago plot—a four-man sniper team and a "lone nut" patsy. Like Oswald, the Chicago patsy, Thomas Arthur Vallee, was an ex-Marine who had been assigned to a U-2 base in Japan, had worked at a U.S. base where anti-Castro Cubans were trained, and had gotten a job in a warehouse overlooking a curved exit ramp along the President's Chicago motorcade route. Like Oswald, Vallee

possessed guns; but, unlike Oswald, Vallee had a history of mental problems stemming from head injuries. Two members of the sniper team were arrested a day before the President's planned visit because Secret Service agents tailing the snipers blew their cover; Vallee was arrested minutes after Kennedy's trip was cancelled, and just hours before the President's scheduled arrival in Chicago. Only the arrest of the patsy was publicized, however, and this was aired only after the events that occurred in Dallas. It was another plot by a gun-toting "lone nut" like Oswald, so the story went. There was no public mention of the snipers, and the Secret Service agents responsible for security in Dallas were not alerted. The two arrested members of the Chicago sniper team were questioned and quietly released, with no remaining records of their identities or of the identities of their two companions. As Douglass concludes, "what the Secret Service learned in Chicago should have made impossible what was then done copycat fashion in Dallas." But the Chicago information was suppressed prior to Kennedy's assassination, and the Dallas plot proceeded unimpeded.

Douglass weaves together a number of accounts of events leading up to the assassination. He navigates the swamp of information and disinformation adroitly and excels at connecting the dots to reveal the big picture. People who are knowledgeable about Kennedy's assassination will question the reliability of a few of the accounts that Douglass includes—for example, the assertion that Oswald, and not another Texas School Book Depository employee who resembled Oswald, is shown in a photo standing on the steps of the Depository at the time of the assassination. However, none of these questionable accounts is important to Douglass' thesis that Oswald was being manipulated by the CIA and was set up as the patsy for the assassination.

In the vast literature on the assassination of President Kennedy, there is no shortage of theories as to who was responsible. Much of the mainstream media as well as some historians have continued to endorse the Warren Commission's claim that the assassination was the work of Lee Harvey Oswald, whom they portrayed as an unstable individual acting on his own. Others have contended that it was the Mafia, or Texas oil interests, or anti-Castro Cubans, or Castro, or the Soviets, or the Secret Service, or the CIA, or "rogue elements" within the CIA. Now, more than 45 years after the crime, there is much more information available to provide answers. Although there are still gaps in our knowledge, we can draw conclusions as to who planned the assassination, even if we don't know and may never know the identities of the shooters or of those who ordered the plans to be developed and set in motion. Douglass, better than anyone else, has assembled enough pieces of the puzzle to give a clear view of the big picture—one that very strongly suggests that President Kennedy's assassination was an inside job coordinated by the CIA.

As for *why* Kennedy was killed, Douglass provides us with good reason to believe that the purpose was to ensure that the President's peace initiatives failed. There is a widespread misconception that Kennedy was a Cold Warrior throughout his presidency. Although that term may describe Kennedy during his first year or so in office, his turn toward peace has not been generally acknowledged, and Douglass has done a real service in exploring it. Douglass has also done a real service in exposing the opposition Kennedy's peace initiatives engendered from powerful Cold Warriors within his own administration and in linking his assassination to that opposition. We can hope that *JFK and the Unspeakable* will prompt other historians to re-examine Kennedy's back-channel negotiations and the connection these efforts had to his murder.

"Why It Matters"—the second half of the book's subtitle—should be obvious. It is not just a matter of understanding Kennedy's presidency and assassination, important though that is. Also important is the fundamental change in policy that followed Kennedy's death, as is evident in President Johnson's immediate countermand of Kennedy's initial Vietnam withdrawal order, and Johnson's subsequent expansion of the war. It is difficult to imagine how different the 1960s might have been if Kennedy had succeeded in extricating us from Vietnam and in implementing his other foreign policy objectives. But we do know, thanks to Douglass, that Kennedy was traveling along a very different path from the one his successors chose to take.

Yet, Douglass' book also has a present-day relevance. The mindset behind the "Global War on Terror" bears a chilling resemblance to the Cold War mentality that Merton and Douglass call "the Unspeakable." We have a new President who has ordered an end to the previous administration's torture policy, and has promised withdrawal of forces from a pre-emptive war in Iraq. We don't know how far President Obama will go in renouncing the Unspeakable as government policy—whether, for example, he will authorize the investigation and prosecution of war crimes. And we don't know whether his decision to increase forces in Afghanistan will merely substitute one foreign misadventure for another.

President Obama has quoted Kennedy's statement, "Let us never negotiate out of fear, but let us never fear to negotiate." Douglass tells us how costly it became for Kennedy to apply this inaugural rhetoric and how difficult it was to negotiate avoidance of a nuclear holocaust. Whether our country is now ready to abandon its recent militaristic path in order to pursue peaceful alternatives, as Kennedy was attempting to do, remains to be seen. **TFL**

John M. Williams, Ph.D, is professor emeritus of human development at the University of Wisconsin-Stout. He was awarded a grant to study the House Select Committee on Assassinations and interviewed the committee's first chairman, Tom Downing; the first staff director, Richard Sprague; and an investigator, Gaeton Fonzi. The interview with Fonzi was published in Probe *magazine (vol. 6, no. 6, 1999; with Sprague in vol. 7, no. 2 (2000) of the same magazine; and with Downing in vol. 7, no. 3 (2000). George Costello is retired from his positions as an attorney with the American Law Division of the Congressional Research Service and an editor of* The Constitution of the United States: Analysis and Interpretation. *He has reviewed two other books on the Kennedy assas-*

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sination: Gerald Posner's Case Closed *(*Federal Bar News & Journal*, March-April 1994), and James H. Fetzer's* Murder in Dealey Plaza *(*The Federal Lawyer*, May 2001).*

Federal Criminal Restitution

By Catharine M. Goodwin, Jay E. Grenig, and Nathan A. Fishbach

Thomson-West, Eagan, MN, 2008. 626 pages, $125.00.

Reviewed by Dean A. Strang

Restitution in a criminal case is like sales tax on the purchase of a used car: the participants in the main transaction—the criminal case or the used car sale—do not focus on the restitution or the sales tax. Those items are afterthoughts. The government actors—the judge and the prosecutor—have strong incentives to want restitution to be calculated correctly, just as taxing authorities do with respect to a sales tax. The parties on other side of the transaction—the criminal defendant or the used car buyer—want to pay as little as possible and to avoid payment altogether if lawful. In both settings, few participants really understand the rules entirely or wish to invest a great deal of time in mastering the rules.

This is unfortunate, because both federal and state statutes provide for restitution to victims in a wide array of criminal cases. Restitution is separate from fines, and may be imposed in addition to them. Not infrequently, judges impose restitution obligations at the same time that victims pursue civil remedies, and the two may overlap. Plaintiff and defense lawyers in such civil actions must understand the relationship between criminal restitution and civil damages.

Those grappling with sales taxes in atypical settings remain on their own, but, in *Federal Criminal Restitution*, Catharine Goodwin, Jay Grenig, and Nathan Fishbach offer aid to lawyers and judges struggling with restitution. The book takes a practical approach to restitution problems, reflecting the deep experience and broad perspectives of its authors, who collectively have worked as prosecutors, with private law firms, and in teaching.

The heart of the book consists of four successive chapters that walk the reader through assessing prospects for restitution, identifying compensable victims, sorting compensable from noncompensable harms, and measuring compensable harms. The book helpfully concludes with a chapter on practice pointers and strategies from the differing vantage points of prosecutors, the defendant and his lawyer, and the victim. Among the book's other useful features, the concluding chapter candidly considers advantages and disadvantages of criminal and civil remedies for victims.

The writing is lucid throughout. The book provides checklists, and, because Thomson-West is the publisher, each short section begins with research references to West's key numbers. Although this tool is not as valuable as it once was, given database and public domain research options now available online, it nonetheless supplements the book's value as a secondary source when a lawyer wants to dig deeper.

Although *Federal Criminal Restitution* focuses on federal law, state practitioners ought not rule it out. The concepts it introduces and its step-by-step approach to resolving issues of restitution may offer real help to state court practitioners even in states with restitution rules that differ from federal law. On close calls, too, where state law may be unclear, comparisons to the federal approach to restitution may prove persuasive. In all, judges, prosecutors, defense lawyers, and (not to be overlooked) plaintiffs' lawyers who represent victims of securities fraud, other swindles, or personal injuries will find this book a good purchase. And Thomson-West will figure out the sales tax. **TFL**

Dean A. Strang is a criminal defense lawyer in Madison, Wisc. He is a shareholder in Hurley, Burish & Stanton, S.C., and was Wisconsin's first federal defender. He is an adjunct law professor at the University of Wisconsin Law School and at Marquette University Law School. He is acquainted professionally with one of the authors of Federal Criminal Restitution.

Arbitrary Justice: The Power of the American Prosecutor

By Angela J. Davis

Oxford University Press, New York, NY, 2007. 248 pages, $29.99 (cloth), $19.95 (paper).

Reviewed by Harvey Gee

It has become almost a cliché that prosecutors—the most powerful officials in the criminal justice system—too often seek convictions instead of justice. They also prosecute more vigorously when a crime victim is educated or upper-income than when he or she is poor or uneducated, and they offer more lenient plea bargains to wealthy defendants than to disadvantaged ones. In this timely and well-written book, Angela J. Davis, a professor at American University's Washington College of Law, examines the expanding power of prosecutors. She discusses the causes of this development—such as mandatory minimum sentencing laws—that enhance prosecutorial control over the outcome of cases, and she discusses the increasing politicization of prosecutors. Davis knows her subject well, having gained trial experience and practical knowledge as a public defender and then agency director at the Public Defender Service for the District of Columbia, one of the leading indigent defense offices in the country.

Davis sees a serious problem in the lack of accountability for the everyday decisions of prosecutors; they hold vast power, according to Davis, because they are under-regulated and are rarely punished when they engage in misconduct. In fact, Davis asserts, they are often rewarded with promotion and career advancement as long as their conviction rates remain high. In her work as a public defender, Davis learned that prosecutors held and dealt almost all the cards and that prosecutors' decisions are largely discretionary and virtually unreviewable. Prosecutors generally answer only to other prosecutors.

The decision to seek the death penalty, Davis writes, "is far too arbitrary, often depending on the philosophy and

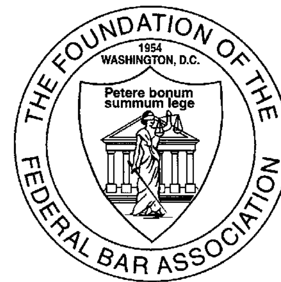
proclivities of the chief prosecutor instead of on legal principles, standards, or guidelines." Davis notes that the decision to seek the death penalty is often, in fact, based on politics—specifically on improving the prosecutor's chances of re-election.

Davis also discusses sentencing disparities among African-Americans, Hispanics, and whites. She tells compelling stories of cases she has handled to reveal how unfair and unequal the treatment of defendants and victims can be. Although Davis saw no evidence in her practice of prosecutors' intentionally discriminating on the basis of race or class, the consideration of class-neutral and race-neutral factors in the prosecutorial process often nevertheless produced disparate results along class and race lines. Davis urges that studies of the impact of the race of defendants and victims on sentencing be conducted because they will compel public debates about these disparities and help make prosecutors accountable for them to their constituencies.

Davis offers a sensible agenda for reform. She challenges the legal community and concerned citizens to enact meaningful standards of conduct and methods of accountability in order to help prosecutors serve their communities and the interests of justice. She suggests that national, state, and local bar associations conduct in-depth investigations to determine the adequacy of current controls over prosecutorial misconduct and possible reforms, including those brought about through legislation. She also urges greater public education about the role of prosecutors and increased transparency in prosecutors' offices. The organized bar might achieve this result, Davis suggests, by establishing prosecution review boards to review complaints and conducting random reviews of prosecutors' decisions in order to deter misconduct and arbitrary decision-making. Such boards would report specific practices and policies that either violated or complied with American Bar Association's Prosecution Function Standards. Accountability would be promoted by public release of all board reports, which would include information about disciplinary actions and promotions of prosecutors.

Arbitrary Justice is a good read that offers insight based on personal anecdotes, solid research, and case analysis about the power of prosecutors and the need for more accountability. It also gives readers a glimpse of the difficult job that defense attorneys have in representing their clients. **TFL**

Harvey Gee is an attorney in Washington, D.C.; he was formerly a deputy state public defender in Colorado.



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