

EOC

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

-v.- : INDICTMENT

EPHRAIM NADLER, : S6 05 Cr. 59 (DC)

a/k/a "Fred Nadler," and

BENON V. SEVAN, :

Defendants. :

-----X

COUNT ONE

(Conspiracy to Commit Wire Fraud and to Engage in  
Prohibited Financial Transactions with Iraq)

The Grand Jury charges:

1. From at least in or about mid-2000, up to and including at least in or about March 2003, in the Southern District of New York and elsewhere, EPHRAIM NADLER, a/k/a "Fred Nadler," the defendant, and others known and unknown, unlawfully, willfully, and knowingly did combine, conspire, confederate, and agree together and with each other to commit offenses against the United States, to wit, to violate Sections 1343 and 2332d of Title 18, United States Code.

2. It was a part and an object of the conspiracy that EPHRAIM NADLER, a/k/a "Fred Nadler," the defendant, and others known and unknown, unlawfully, willfully, and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, would and did

transmit, and cause to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, in violation of Title 18, United States Code, Section 1343.

3. It was further a part and an object of the conspiracy that EPHRAIM NADLER, a/k/a "Fred Nadler," the defendant, and others known and unknown, at least one of whom was a United States person, and knowing and having reasonable cause to know that Iraq was a country designated under section 6(j) of the Export Administration Act of 1979 as a country supporting international terrorism, would and did unlawfully and knowingly engage in financial transactions with the government of that country without complying with the licensing and authorization requirements of the Iraqi Sanction Regulations, in violation of Section 2332d of Title 18, United States Code.

#### MEANS AND METHODS

4. From in or about 1998, up to and including in or about mid-2001, EPHRAIM NADLER, a/k/a "Fred Nadler," the defendant, a United States citizen, assisted a co-conspirator ("CC-1") to obtain the right to purchase oil from the Government of Iraq under the United Nations Oil-for-Food Program (the "Oil-for-Food Program"). NADLER received a commission from CC-1 on each of these transactions.

5. From at least in or about 2000, up to and including in or about March 2003, officials of the Iraqi Government conditioned the sale of oil under the Oil-for-Food Program on the purchasers' willingness to pay a secret surcharge to the Government of Iraq (hereinafter, the "Surcharge Scheme"). These surcharge payments were not permitted under the Oil-for-Food Program or United States law. In or about mid-2001, with full knowledge of the Surcharge Scheme, NADLER assisted CC-1 in obtaining the right to purchase approximately one million barrels of oil (the "Phase 10 oil") under the Oil-for-Food Program.

6. At the same time that CC-1 obtained the right to purchase the Phase 10 oil in or about August 2001, CC-1 signed a contract with Iraqi officials in which CC-1 agreed to pay a secret surcharge to the Government of Iraq. This contract was not disclosed to officials at the United Nations, who relied upon materials faxed to Manhattan in approving CC-1's purchase of the Phase 10 oil in or about mid-2001.

7. In or about September 2001, CC-1 communicated by international telephone and facsimile transmissions with an oil company to complete the sale of the Phase 10 oil. In or about October 2001, CC-1 paid a commission to NADLER in consideration of NADLER's role in assisting CC-1 to obtain the right to purchase the Phase 10 oil.

8. In or about October 2001, CC-1 satisfied a portion of his illegal surcharge obligation to the Government of Iraq by transferring via wire approximately \$160,000 from a bank account in Geneva, Switzerland, to an account at the Jordan National Bank in Amman that was controlled by the Government of Iraq. In addition, around that same time, CC-1 transferred approximately \$90,000 to another co-conspirator ("CC-2"), who CC-1 believed to be closely associated with Saddam Hussein's regime, in apparent satisfaction of CC-1's remaining debt to the Government of Iraq.

9. In or about 2002, officials of the Government of Iraq and CC-1 frequently communicated via telephone and facsimile regarding the satisfaction of CC-1's surcharge obligation to the Government of Iraq.

#### OVERT ACTS

10. In furtherance of the charged conspiracy and to effect the illegal objects thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

a. In or about mid-2001, EPHRAIM NADLER, a/k/a "Fred Nadler," the defendant, and CC-1 agreed in Geneva, Switzerland, that NADLER would assist CC-1 to obtain the right to purchase Iraqi oil under the Oil-for-Food Program.

b. On or about August 13, 2001, CC-1 signed a contract in Baghdad to purchase approximately one million barrels of Iraqi oil.

c. On or about August 13, 2001, CC-1 signed a contract in Baghdad in which he agreed, among other things, to pay a surcharge to the Government of Iraq for every barrel of Iraqi oil that he exported under the contract described above in ¶10(b).

d. On or about August 13, 2001, CC-1 caused the contract described above in ¶10(b) to be sent via facsimile to officials at the United Nations in Manhattan.

e. On or about August 17, 2001, an official at the United Nations in Manhattan sent notification to CC-1 via facsimile approving CC-1's contract to purchase Iraqi oil under the Oil-for-Food Program.

f. In or about late August 2001, CC-1 negotiated via telephone and facsimile with an oil company regarding the sale of oil obtained pursuant to the contract described above in ¶10(b).

g. In or about October 2001, CC-1 caused to be transferred via wire approximately \$50,000 (in Euros) to a bank account in Geneva controlled by NADLER.

h. In or about October 2001, CC-1 caused to be transferred via wire approximately \$160,000 (in Euros) to a bank account in Amman controlled by the Government of Iraq.

i. In or about October 2001, CC-1 caused to be transferred approximately \$90,000 (in Euros) to CC-2.

j. On or about May 14, 2002, an official of the Government of Iraq communicated with CC-1 via facsimile regarding the payment of CC-1's debt to the Government of Iraq pursuant to the contract described above in ¶10(c).

k. On or about June 18, 2002, CC-1 sent a letter via facsimile to an official of the Government of Iraq regarding the payment of CC-1's debt to the Government of Iraq pursuant to the contract described above in ¶10(c).

(Title 18, United States Code, Sections 371 and 1349.)

COUNT TWO

(Wire Fraud)

The Grand Jury further charges:

11. Paragraphs Four through Ten of this Indictment are realleged, repeated, and incorporated by reference as if fully set forth herein.

12. From at least in or about mid-2000, up to and including at least in or about June 2002, in the Southern District of New York and elsewhere, EPHRAIM NADLER, a/k/a "Fred Nadler," the defendant, and others known and unknown, unlawfully, willfully, and knowingly having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises,

transmitted and caused to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, to wit, NADLER worked with CC-1 to use international telephone calls, facsimile transmissions, and wire transfers of money in the course of causing payments to be made to the Government of Iraq that were unauthorized by and concealed from the Oil-for-Food Program.

(Title 18, United States Code, Sections 1343, 1349, and 2.)

COUNT THREE

(Prohibited Financial Transactions with Iraq)

The Grand Jury further charges:

13. Paragraphs Four through Ten of this Indictment are realleged, repeated, and incorporated by reference as if fully set forth herein.

14. From at least in or about mid-2000, up to and including at least in or about June 2002, in the Southern District of New York and elsewhere, EPHRAIM NADLER, a/k/a "Fred Nadler," the defendant, a United States person, knowing and having reasonable cause to know that Iraq was a country designated under section 6(j) of the Export Administration Act of 1979 as a country supporting international terrorism, did unlawfully and knowingly engage in financial transactions with the government of that country without complying with the licensing and authorization requirements of the

Iraqi Sanction Regulations, to wit, NADLER worked with CC-1 to cause payments to be made to the Government of Iraq that were unauthorized by and concealed from the Oil-for-Food Program.

(Title 18, United States Code, Sections 2332d and 2.)

COUNT FOUR

(Violation of the International Emergency Economic Powers Act)

The Grand Jury further charges:

15. Paragraphs Four through Ten of this Indictment are realleged, repeated, and incorporated by reference as if fully set forth herein.

16. Title 50, United States Code, Section 1701, et seq., known as the International Emergency Economic Powers Act ("IEEPA"), grants the President the authority to, among other things, "investigate, . . . prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest by any person, or with respect to any property, subject to the jurisdiction of the United States . . . ." 50 U.S.C. § 1702(a)(1)(B). Section 1701 grants the President the power to exercise this authority upon declaration of a national emergency.

17. In Executive Order Number 12722, signed on August 2, 1990, President George H.W. Bush declared that "the policies and



actions of the Government of Iraq constitute an unusual and extraordinary threat to the national security and foreign policy of the United States," and declared "a national emergency to deal with that threat." On August 9, 1990, following passage of United Nations Security Council Resolution Number 661 (which dealt, in part, with sanctions placed on Iraq) on August 6, 1990, the President issued Executive Order Number 12724. Executive Order Number 12724 took "additional steps with respect to Iraq's invasion of Kuwait and the national emergency declared in Executive Order Number 12722." Executive Orders No. 12722 and 12724 prohibited certain trade-related activities with Iraq at all times relevant to this Indictment.

18. Executive Order Numbers 12722 and 12724 (the "Executive Orders") imposed economic sanctions, including a complete trade embargo, on Iraq. The Executive Orders prohibited, among other things, the export to Iraq of any goods, technology, or services from the United States and the performance by any United States person of any contract in support of an industrial, commercial, public utility or government project in Iraq. The Executive Orders also prohibited other activities relating to Iraq. For instance, Executive Order 12724 prohibited "any transaction by a United States person relating to travel by any United States citizen or permanent resident alien to Iraq ... after the date of this order, other than transactions necessary to effect (i) such

person's departure from Iraq, (ii) travel and activities for the conduct of the official business of the Federal Government or the United Nations, or (iii) travel for journalistic activity by persons regularly employed in such capacity by a news-gathering organization." In addition, both of the Executive Orders specifically prohibited "[a]ny transaction by any United States person that evades or avoids, or has the purpose of evading or avoiding, any of the prohibitions set forth in this order." The Executive Orders defined the term "United States person" as "any United States citizen, permanent resident alien, juridical person organized under the laws of the United States (including foreign branches), or any person in the United States, and vessels of U.S. registration."

19. From in or about 1990 through all times relevant to this Indictment, the President continued, on an annual basis, the national emergency with respect to Iraq. These successive Executive Orders authorized the Secretary of Treasury, in consultation with the Secretary of State, "to take such actions, including the promulgation of rules and regulations, as may be necessary to carry out the purposes" of the Executive Orders.

20. Pursuant to this authority, the Office of Foreign Assets Control ("OFAC"), the office within the Department of the Treasury charged with the responsibility of administering sanctions against foreign persons and entities, promulgated regulations to

implement the Executive Orders. The relevant regulations are located in Section 575 of Title 31 of the Code of Federal Regulations, and state, in part:

- a. "[N]o property or interests in property of the Government of Iraq that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of U.S. persons, including their overseas branches, may be transferred, paid, exported withdrawn or otherwise dealt in," and "any other dealing in any security (or evidence thereof) registered or inscribed in the name of the Government of Iraq and held within the possession or control of a U.S. person is prohibited," without first obtaining a license from OFAC. 31 C.F.R. § 575.201. By virtue of these prohibitions against dealing in Iraqi government property, or securities or interests therein, "[a] U.S. person may not, within the United States or abroad, conduct transactions of any nature whatsoever with an entity that the U.S. person knows or has reason to know is an Iraqi government entity unless the entity is licensed by the Office of Foreign Assets Control to conduct such transactions with U.S. persons." 31 C.F.R. § 575.408(c)(2);
- b. "[N]o goods, technology (including technical data or other information), or services may be exported from the United States, or, if subject to U.S. jurisdiction, exported or reexported from a third country to Iraq, to any entity owned or controlled by the Government of Iraq, or to any entity operated from Iraq," without first obtaining a license from OFAC. 31 C.F.R. § 575.205;
- c. Except in circumstances not applicable here, "no U.S. person may deal in property of Iraqi origin exported from Iraq after August 6, 1990, property intended for exportation to Iraq, or property intended for exportation from Iraq to any other country, nor may any U.S. person engage in any activity that promotes or is intended to promote such dealing," without first obtaining a license from OFAC. 31 C.F.R. § 575.206;

- d. "[N]o U.S. person may engage in any transaction relating to travel by any U.S. citizen or permanent resident alien to Iraq, or to activities by any U.S. citizen or permanent resident alien within Iraq," without first obtaining a license from OFAC. 31 C.F.R. § 575.207;
- e. "[N]o U.S. person may perform any contract, including a financing contract, in support of an industrial, commercial, public utility, or governmental project in Iraq," without first obtaining a license from OFAC. 31 C.F.R. § 575.209;
- f. "[N]o U.S. person may commit or transfer, directly or indirectly, funds or other financial or economic resources to the Government of Iraq or any person in Iraq" without first obtaining an OFAC license. 31 C.F.R. § 575.210; and
- g. "[A]ny transaction for the purpose of, or which has the effect of, evading or avoiding, or which facilitates the evasion or avoidance of, any of the prohibitions set forth in this subpart is hereby prohibited. Any attempt to violate the prohibitions set forth in this part is hereby prohibited." 31 C.F.R. § 575.211.

21. From at least in or about mid-2000, up to and including at least in or about June 2002, in the Southern District of New York and elsewhere, EFRAIM NADLER, a/k/a "Fred Nadler," the defendant, a United States person, unlawfully, willfully, and knowingly violated IEEPA, and the regulations promulgated thereunder, as described above, to wit, without obtaining the required OFAC approval, NADLER engaged in transactions relating to

the purchase of Iraqi oil and caused to be made unauthorized payments to the Government of Iraq.

(Title 50, United States Code, Section 1701, et seq.; Public Law 101-513, Section 586E (November 5, 1990); Executive Orders 12722 and 12724; Title 31, C.F.R. Section 575.201, et seq.; and Title 18, United States Code, Section 2.)

COUNT FIVE

(Conspiracy to Commit Wire Fraud & Theft or Bribery  
Concerning Programs Receiving Federal Funds)

The Grand Jury further charges:

22. Paragraphs Four through Ten of this Indictment are realleged, repeated, and incorporated by reference as if fully set forth herein.

23. From at least in or about 1998, up to and including at least in or about June 2002, in the Southern District of New York and elsewhere, EFRAIM NADLER, a/k/a "Fred Nadler," and BENON V. SEVAN, the defendants, and others known and unknown, unlawfully, willfully, and knowingly did combine, conspire, confederate, and agree together and with each other to commit offenses against the United States, to wit, to violate Sections 666, 1343, and 1346 of Title 18, United States Code.

24. It was a part and an object of the conspiracy that EFRAIM NADLER, a/k/a "Fred Nadler," and BENON V. SEVAN, the defendants, and others known and unknown, one of whom was an agent of an organization that received in a one-year period benefits in excess of \$10,000 under a federal program involving a

grant, contract, subsidy, loan, guarantee, insurance, and other form of federal assistance, to wit, the United Nations, unlawfully, willfully, and knowingly would and did corruptly solicit and demand for the benefit of a person, and accept and agree to accept, a thing of value, to wit, money, from a person, intending to be influenced and rewarded in connection with a business, transaction, and series of transactions involving a thing of value of \$5,000 and more, to wit, the Oil-for-Food Program, in violation of Title 18, United States Code, Section 666.

25. It was a further part and an object of the conspiracy that EFRAIM NADLER, a/k/a "Fred Nadler," and BENON V. SEVAN, the defendants, and others known and unknown, unlawfully, willfully, and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations and promises, would and did transmit and cause to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce, a writing, sign, signal, picture and sound for the purpose of executing such scheme and artifice, in violation of Title 18, United States Code, Sections 1343 and 1346.

### MEANS AND METHODS

26. At all times relevant to this Indictment, the United Nations was an organization that received more than \$10,000 in any one-year period in assistance from the United States Government.

27. At all times relevant to this Indictment, BENON V. SEVAN, the defendant, was a citizen of Cyprus and a resident of, among other places, New York. From in or about 1997, up to and including in or about mid-2003, SEVAN was employed by the United Nations as the Executive Director of the Office of Iraq Programme, which operated the Oil-for-Food Program.

28. While serving as Executive Director, from in or about mid-1998, up through and including in or about mid-2002, SEVAN received approximately \$160,000 from EFRAIM NADLER, a/k/a "Fred Nadler," the defendant, on behalf of the Government of Iraq. The proceeds for these payments were generated through the sale of Iraqi oil by CC-1 under the Program. After such sales, CC-1 paid commissions to EFRAIM NADLER, a/k/a "Fred Nadler," the defendant, who thereafter caused money to be delivered to SEVAN. SEVAN caused that money to be deposited, among other places, in banks in Manhattan.

### OVERT ACTS

29. In furtherance of the charged conspiracy and to effect the illegal objects thereof, the following overt acts,

among others, were committed in the Southern District of New York and elsewhere:

a. On or about August 17, 2001, an official at the United Nations in Manhattan sent notification to CC-1 in a foreign country via facsimile approving CC-1's contract to purchase Iraqi oil under the Oil-for-Food Program.

b. On or about August 18, 2001, BENON V. SEVAN, the defendant, traveled to Geneva, Switzerland.

c. On or about August 20, 2001, EFRAIM NADLER, a/k/a "Fred Nadler," the defendant, withdrew approximately \$40,000 cash from a bank account in Geneva.

d. On or about August 21, 2001, SEVAN traveled to Manhattan.

e. On or about August 22, 2001, SEVAN deposited approximately \$5,000 cash in a bank account in Manhattan.

f. On or about January 11, 2002, SEVAN deposited approximately \$1,200 cash in a bank account in Manhattan.

(Title 18, United States Code, Sections 371 and 1349.)

COUNT SIX

(Theft or Bribery Concerning Programs Receiving Federal Funds)

The Grand Jury further charges:

30. Paragraphs Four through Ten and Paragraphs Twenty-Six through Twenty-Nine of this Indictment are realleged,



repeated, and incorporated by reference as if fully set forth herein.

31. From at least in or about 1998, up to and including at least in or about June 2002, EFRAIM NADLER, a/k/a "Fred Nadler," and BENON V. SEVAN, the defendants, and others known and unknown, one of whom was an agent of an organization that received in a one year period benefits in excess of \$10,000 under a federal program involving a grant, contract, subsidy, loan, guarantee, insurance, and other form of federal assistance, to wit, the United Nations, unlawfully, willfully, and knowingly did corruptly solicit and demand for the benefit of a person, and accept and agree to accept, a thing of value, to wit, money, from a person, intending to be influenced and rewarded in connection with a business, transaction, and series of transactions involving a thing of value of \$5,000 and more, to wit, the United Nations Oil-for-Food Program.

(Title 18, United States Code, Sections 666(a)(1)(B) and 2.)

COUNT SEVEN

(Wire Fraud)

The Grand Jury further charges:

32. Paragraphs Four through Ten and Paragraphs Twenty-Six through Twenty-Nine of this Indictment are realleged, repeated, and incorporated by reference as if fully set forth herein.

33. From at least in or about 1998, up to and including at least in or about June 2002, in the Southern District of New York and elsewhere, EFRAIM NADLER, a/k/a "Fred Nadler," and BENON V. SEVAN, the defendants, and others known and unknown, unlawfully, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud that deprived the United Nations of the intangible right to his honest services by means of false and fraudulent pretenses, representations and promises, and for obtaining money and property by means of false and fraudulent pretenses, representations and promises, did transmit and cause to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce, a writing, sign, signal, picture and sound for the purpose of executing such scheme and artifice, to wit, intending to be influenced and rewarded in connection with SEVAN's administration of the Oil-for-Food Program, NADLER and SEVAN worked together and with others to solicit oil contracts from the Government of Iraq, and to obtain for SEVAN at least approximately \$160,000 in proceeds from the sale of that oil, the receipt of which proceeds deprived the United Nations of the intangible right of SEVAN's honest services.

(Title 18, United States Code, Sections 1343, 1346 and 2.)

FORFEITURE ALLEGATION

34. As a result of committing one or more of the conspiracy, wire fraud, and IEEPA offenses alleged in Counts One,

Two, Four, Five, Six, and Seven of this Indictment, in violation of 18 U.S.C. §§ 371, 666, 1343, 1346, and 1349, and 50 U.S.C. § 1701, et seq., EPHRAIM NADLER, a/k/a "Fred Nadler," and BENON V. SEVAN, the defendants, shall forfeit to the United States pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461, any and all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the offenses, and all property traceable to such property, including but not limited to: at least \$144,816,677.00 in United States currency, in that such sum in aggregate is property representing the amount of proceeds obtained as a result of the offenses charged in Counts One, Two, Four, Five, Six, and Seven of this Indictment, for which the defendants are jointly and severally liable.

Substitute Assets Provision

35. If any of the above-described forfeitable property, as a result of any act or omission of the defendants:

(a) cannot be located upon the exercise of due diligence;

(b) has been transferred or sold to, or deposited with, a third person;

(c) has been placed beyond the jurisdiction of the Court;

(d) has been substantially diminished in value; or

(e) has been commingled with other property which cannot be subdivided 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 said defendants up to the value of the above forfeitable property, including, but not limited to the following:

1. Any and all right, title, and interest in the real property and appurtenances known as 118 East 60<sup>th</sup> Street, Apartment 24-B, New York, New York, 10022 (Filing #90PN08751, New York County); and
2. Any and all right, title, and interest in the real property and appurtenances known as 25 Bluejay Way, East Quogue, New York, 11942 (Parcel #0900-313.00-01.00-042.048, Suffolk County).

(Title 18, United States Code, Sections 981, 1343, 1346, and 1349; Title 21, United States Code, Section 853(p); Title 28, United States Code, Section 2461; and Title 50, United States Code, Section 1701, et seq.)

  
Foreperson

  
MICHAEL J. GARCIA  
United States Attorney

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

- v. -

EFRAIM NADLER,  
a/k/a "Fred Nadler," and  
BENON V. SEVAN,

Defendants.

INDICTMENT

S6 05 Cr. 59 (DC)

(18 U.S.C. § 371, 666, 1343, 1346, 1349,  
2332d, and 2; 50 U.S.C. § 1701, et seq.;  
Public Law 101-513, Section 586E  
(November 5, 1990); Executive Orders  
12722 and 12724; 31 C.F.R. § 575.201, et  
seq.)

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MICHAEL J. GARCIA  
United States Attorney.

A TRUE BILL

  
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Foreperson.

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