



that all of the defendants were involved in a conspiracy to defraud the Community College, and were, in effect, "ghost" employees.

When interviewed by the FBI, the defendant explained that, although he did not perform any services during the period of time in question, he did in fact teach for the Community College and perform other services during the preceding two or three years, but had not been fully paid for those services. The salary checks charged in the indictment constituted payment for his earlier services, services which had actually been rendered.

The defendant did not testify at trial, but his counsel made arguments to the jury which can be reasonably interpreted as advancing that line of defense. Defendant contends that it was not until after trial that he became aware that his mother, when interviewed by the FBI, had confirmed that he was merely being paid for services rendered previously, and was not guilty of any conspiracy to defraud. In his view, either this constitutes "after discovered" evidence, or, if his trial counsel neglected to use the evidence to defendant's advantage at trial, this demonstrates the incompetence of his trial counsel, and he should be ordered a new trial on that ground.

I have great difficulty following that line of reasoning. Obviously, the defendant himself had knowledge of all of the relevant facts. If the salary checks were in payment for

services rendered earlier, defendant himself certainly knew that fact, and also knew that his mother was aware of that fact.

Even if Delores Weaver's statement to the FBI could have been received in evidence at trial (defendant's brief does not suggest any theory which would make it admissible), it would only have served to corroborate the defense now being asserted; the defendant did not testify at trial, nor did he present any other evidence in support of the alleged defense.

It seems farfetched indeed to charge trial counsel with being constitutionally inadequate for not having discovered, and used, information known by the defendant. But I need not dwell upon that issue, since challenges to the adequacy of trial counsel should be presented, if at all, in a motion under § 2255.

The motion for a new trial will be denied.

An Order follows.

