



United States
Office of Government Ethics
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MEMORANDUM

TO: Designated Agency Ethics Officials and Inspectors General

FROM: Stephen D. Potts
Director

SUBJECT: Conflict of Interest Prosecution Survey

This Office has recently completed its survey of conflict of interest prosecutions around the country for the period January 1, 1993 to December 31, 1993. Information on seventeen new prosecutions by U.S. Attorneys' offices and the Public Integrity Section was provided to us with the assistance of the Executive Office for United States Attorneys in the Department of Justice. The attached summarizes the prosecutions reported to this Office.

1993 Conflict of Interest Prosecution Survey

1. [Case 1] -- [The Government employee] was Deputy Secretary of Commerce. He received from his father-in-law, the owner of a company doing business with the Department of Veterans Affairs (VA), a letter complaining of delays experienced by the company in modifying its contract with the VA. [The Government employee] referred the letter to the Deputy Secretary of the VA on behalf of his father-in-law; he also contacted the Deputy Secretary of the VA by telephone. As a result of [his] intervention, the company received the modification it sought more quickly than it would have absent [his] action. [The Government employee] agreed to a civil settlement, including a \$5,000 fine, which would have been the maximum fine available under the sentencing guidelines had the case been prosecuted criminally. A complaint for civil penalties was filed pursuant to 18 U.S.C. § 216(b) for a violation of 18 U.S.C. § 205 and dismissed in accordance with the settlement agreement.

Prosecution handled by the Public Integrity Section of the Criminal Division of the Department of Justice and the United States Attorney for the District of Columbia.

2. [Case 2] -- [The former Government employee] resigned from her position as a senior member of the Board of Governors of the Federal Reserve System (the Fed) in March 1991. Following her resignation, [she] was elected to the boards of directors of a number of companies, including Kroger Company. Kroger was affected by a guideline issued by the Fed and other bank regulatory agencies called the highly leveraged transaction (HLT) guideline. In July 1991, the agencies, including the Fed, requested public comment on the HLT guideline. Kroger submitted a written comment to the Fed and in August 1991, Kroger officials met with a member of the Fed's Board of Governors. [The former Government employee] both arranged and attended the meeting. [She] introduced the Kroger officials to the member of the Fed's Board of Governors, but said nothing during the substantive part of the meeting. Kroger paid [the former Government employee] \$1,500 for her participation in the meeting. [She] agreed to pay a \$5,000 civil fine in connection with an agreement resolving a criminal investigation by the Public Integrity Section into whether [she] violated the one-year bar of 18 U.S.C. § 207(c), the post-employment conflict of interest statute. A complaint for civil penalties was filed pursuant to 18 U.S.C. § 216(b) for a violation of 18 U.S.C. § 207(c) and dismissed in accordance with the settlement agreement.

Prosecution handled by the Public Integrity Section of the Criminal Division and the United States Attorney for the District of Columbia.

Note about civil settlements: The civil "Settlement Agreements" entered into in the above two cases were accompanied by "Factual Stipulations" agreed to by the parties. The defendants, while agreeing to the factual stipulations, did not admit that the conduct set forth in the stipulations violated any provision of title 18.

3. United States v. J. Bert Vargas -- While an Assistant United States Attorney in Tucson, Vargas prosecuted an individual for illegally killing a bighorn sheep on an Indian Reservation.

As a result of the prosecution, the hunter forfeited the bighorn sheep and trophy (skull and horns), valued at approximately \$5,000, to the Arizona Game and Fish Department.

Pursuant to a request from Vargas, the Arizona Game and Fish Department entered into an agreement with Vargas allowing him to publicly display the skull and horns in his office, but requiring its return upon request. This agreement with the Arizona Game and Fish Department was not brought to the attention of anyone else in the U.S. Attorney's office. Rather than displaying the skull and horns in his office, Vargas obtained possession of the skull and horns after leaving employment with the U.S. Attorney's office and treated them as his personal property. When Vargas was questioned about a year later about his possession of the skull and horns, he claimed that an unspecified Indian had sent the skull and horns to him in appreciation for his work on the prosecution of the hunter. Investigation showed that such a gift would have been contrary to tribal practices and no member of the tribe could be found who knew anything about the alleged gift. The Government then regained possession of the skull and horns from Vargas and returned them to the tribe. Vargas thereafter agreed to plead guilty to violating 18 U.S.C. § 209 regarding his obtaining possession of the skull and horns.

Prosecution handled by the Public Integrity Section of the Criminal Division after the United States Attorney's office in Tucson recused itself due to Vargas' prior employment with that office.

4. United States v. Edmond L. Nichols -- Nichols was Minister-Counselor for Agricultural Affairs to the United States Missions to the European Communities (USEC) and Spain. Nichols was a career Senior Foreign Service Officer employed by the United States Department of Agriculture's Foreign Agriculture Service (FAS), assigned to the USEC in Brussels, Belgium. He pled guilty to a one count criminal information charging him with a misdemeanor violation of Section 208 for authorizing payments to his wife, through a fictitious catering firm, for providing official entertainment services. Specifically, he approved payment of 12 invoices -- totalling \$4,393 -- to a purported catering firm called The Party Planner, knowing that in fact there was no such firm and that the catering services had been provided by his wife for official parties which he had hosted. Regulations prohibit spouses from being compensated for such services. Nichols was recalled from his post in Spain in connection with the investigation that led to his plea. As part of his plea agreement, Nichols submitted to involuntary retirement from the FAS, and repaid \$1,849 in FAS funds which he had obtained through other false claims unrelated to the fraudulent catering invoices. On December 13, 1993, Nichols was sentenced to one year probation. He was also ordered to pay a \$2,500 fine, costs of supervision, and to perform 50 hours of community service.

Prosecution handled by the Public Integrity Section of the Criminal Division.

5. United States v. Richard Ashby -- Ashby was a Resident Agent in Charge of the United States Customs Office located in Yuma, Arizona. While serving in this position, he arranged for his wife to receive payments from the Government by claiming that she was a confidential informant who was providing Customs with information. Ashby was prosecuted for several

counts of mail fraud and one count of violation of 18 U.S.C. § 208 for working on a particular matter in which he, through his wife, had a financial interest. The defendant was convicted of a violation of 18 U.S.C. § 208, but acquitted on the mail fraud counts.

The conviction was originally nullified when the trial judge granted a judgment of acquittal in favor of the defendant. This order was based on the District Court's finding that the Government had entrapped Ashby by estoppel. The District Court had reasoned that Ashby should be absolved because his superiors knew his wife was an informant.

On appeal by the Government to the United States Court of Appeals for the Ninth Circuit, the jury verdict was reinstated. The Ninth Circuit, in an unpublished decision, ruled that to establish entrapment by estoppel, a defendant must show that a Government official told the defendant that the defendant's conduct was legal and the defendant reasonably believed the official. Applying this standard, the court held that Ashby had failed to show that any Government official told him that his conduct was legal. Moreover, the court held that Ashby had failed to show that his superiors were aware of his illegal conduct. Lastly, the court held that policy reasons preclude application of the estoppels theory because Ashby could have avoided liability under § 208 by obtaining a waiver pursuant to § 208(b).

As of September 1994, sentencing in this case was pending.

Prosecution handled by the Public Integrity Section of the Criminal Division.

6. *United States v. Edward D. Hews* -- From 1983 to September 1988, Hews served as Deputy Manager and, at times, Acting Manager of the Federal Crop Insurance Corporation (FCIC), an agency within the United States Department of Agriculture. In early 1988, a major crop insurance corporation began the FCIC appeal process with respect to adverse FCIC decisions on certain claims (including the case of a certain Maine potato farmer) by sending to Hews a notice of intent to appeal. Later that year, Hews left the FCIC and joined the crop insurance corporation as a consultant. After the FCIC rejected the appeals that the company had initiated while Hews was employed by the FCIC, Hews repeatedly tried to persuade agency officials to reconsider the denial of the appeal involving the Maine potato farmer.

On October 29, 1993, Hews pled guilty to two counts of violating the two year restriction on post-employment contacts codified at 18 U.S.C. § 207(a)(2) and was sentenced to probation.

This case was handled by the Public Integrity Section of the Criminal Division.

7.a. *United States v. Robert Bostick* -- Bostick was the Associate Deputy Under Secretary for International Labor Affairs at the Department of Labor. As part of his responsibilities, Bostick was involved in an effort to promote low-income housing subsidized by the Mexican Government for low-paid Mexican workers living along certain sections of the United States-Mexican border.

Bostick was assigned the duty of pursuing arrangements for a low-cost housing project in the fall of 1991. The project was to be financed with private funds. Bostick briefed the Deputy Under Secretary for International Labor Affairs on the progress of the project. During November 1991, Bostick met with United States officials in Mexico City to discuss, among other things, private sector initiatives to construct low-cost housing along the United States-Mexican border. Bostick met in Washington, DC and in Mexico City and other places with several real estate developers interested in low-cost housing along the border. Bostick and the real estate developers met with Mexican banking and housing officials concerning the low-cost housing and the possibility that the project would be financed through a Mexican low-income financing authority. After several meetings, Bostick told the real estate developers and the Mexican housing officials that he would not be able to participate in the joint venture that the real estate executives were forming due to his status as a Government employee.

On July 22, 1992, Bostick accepted the offer of the joint venturers to work for the joint venture in dealings with the United States. He was offered 10 percent of the net profits generated by the project. The project involved the building of 6,000 condominiums and would generate about \$10,000,000 in net profits. The anticipated total cost of the project was in excess of \$120,000,000. Bostick had an intermediary act on his behalf in signing a Memorandum of Agreement with the real estate developers.

Bostick, throughout the period in question, requested travel authorizations and submitted travel vouchers to the Government for travel to Mexico to work on the Mexican worker housing project. Bostick advised his superior as to the status of the project. In Count one of the complaint against Bostick, the Government charged that he agreed to accept compensation for representational services before the United States in relation to a particular matter, the housing project, in which the United States Department of Labor had a direct and substantial interest in violation of 18 U.S.C. §§ 203(a) and 216(a)(2). The Government also claimed that Bostick was acting as part of a conspiracy against the United States in violation of 18 U.S.C. § 371. Bostick pled guilty to the charges and was sentenced to probation for 5 years pursuant to the sentencing guidelines.

This prosecution and the two prosecutions described immediately below were undertaken by the United States Attorney for the District of Columbia.

b., c. United States v. Leonard Malcolm and United States v. Terence Nolan -- Msrs. Nolan and Malcolm were principals of Interamericana Development Group, Inc., a Government relations and financial consulting company with offices in Mexico. Malcolm and Nolan were charged with being actors, along with Robert Bostick, in the conspiracy against the United States. By promising to pay Robert Bostick ten percent of the net profits of the joint venture, these individuals were charged with violating 18 U.S.C. § 203(a)(2), for compensating a public official for representational services before the Government. Malcolm and Nolan were also charged with a felony violation of 18 U.S.C. § 209(a) for knowingly promising ten percent of the net profits from the housing project to Bostick as a contribution to and supplementation of Bostick's United States Government salary. Defendants Malcolm and Nolan both pled guilty and were sentenced to three years probation under the sentencing guidelines.

8. *United States v. Richard M. Mitchell* -- In approximately 1981, Mitchell began working in the Office of Scientific Authority at the United States Fish and Wildlife Service, where his duties included implementing international wildlife conservation programs, advising persons on import and export requirements and reviewing applications for the same.

Mitchell, while assigned by the Fish and Wildlife Service to work on wildlife conservation projects in Pakistan and China began setting up sport hunting programs and promoting the hunting of exotic wild animals, all with the intention of leaving Federal Government service and going into the big game outfitting and hunt guiding business.

Mitchell incorporated a tax-exempt organization known as the American Ecological Union (AEU) for which he solicited donations from wealthy big-game hunters. Many of those who contributed to AEU were thereafter given opportunities to hunt exotic wild animals in Pakistan and China through Mitchell's efforts. As a favor to one of his most generous "contributors," Mitchell imported from Pakistan into the United States the hides and horns of three wild animals which the contributor/hunter could not lawfully hunt, export from Pakistan, or import into the United States.

Mitchell was indicted on nine counts including several violations of internal revenue laws pursuant to 26 U.S.C. §§ 7212(a) and 7206(2) (Counts 1, 3-7); a violation of 18 U.S.C. § 208 (Count 2); with taking and transporting wild animal parts, in violation of foreign law, 16 U.S.C. § 3372(a)(2) (Count 8); and with illegally importing animal parts, in violation of 18 U.S.C. § 545 (Count 9).

The theory of the Government with respect to the 208 count was that Mitchell had a financial interest in his administration of the conservation projects in Pakistan and China. In his official position, Mitchell answered inquiries and reviewed import and export applications, including those of big game hunters and organizations. In China, Mitchell tried to obtain the cooperation of the Chinese Government in setting up wildlife management and hunting programs. Mitchell was directed by the Government to travel to Pakistan on a regular basis and initiate programs for technical training of Pakistani wildlife personnel in wildlife management and conservation. Mitchell, meanwhile, was involved in arranging and participating in hunting trips for big game hunters in Pakistan and expressed interest in doing the same in China. The prosecution contended that Mitchell was working on matters in his official capacity that affected his personal financial interests.

One of the hunters paid Mitchell \$1,000 to bring animal trophies, for which the hunter had been unable to obtain export permits, from Pakistan to the United States. Mitchell failed to declare that he was importing the illegal animal trophies on the appropriate forms when he entered the United States.

The only two counts that were allowed to go to the jury were Counts Two and Nine. Mitchell was convicted of Count Nine, the illegal importation charge and acquitted of the conflict of interest charge (Count Two). On August 13, 1993, the district court sentenced

Mitchell to a two-year term of probation and fined him \$ 1,000 for his conviction on Count Nine. Mitchell appealed his conviction but the Fourth Circuit affirmed the decision.

This prosecution was undertaken by the United States Attorney for the Eastern District of Virginia.

9. United States v. Pamela Deloney -- Deloney was a secretary at a Federal prison who accepted money from an inmate in exchange for performing services for him, including allowing him to place unauthorized calls on her office phone. The Defendant pled guilty to the charge of receiving compensation from a non-Government source for doing her Government job (18 U.S.C. § 209(a)) and was sentenced to two years probation.

This prosecution was undertaken by the United States Attorney for the District of Arizona.

10. United States v. Arturo Urias-Mendez -- Urias-Mendez offered \$1,000 to an immigration inspector to help him get two family members into the country. The defendant was originally charged with a violation of 18 U.S.C. § 201, the bribery statute. After a trial resulting in a hung jury, the defendant pled guilty to a misdemeanor 18 U.S.C. § 209 violation of making supplemental payments to a public official.

This prosecution was undertaken by the United States Attorney for the District of Arizona.

11. United States v. Edwin Ray Haddock -- Haddock was employed as a Soil Conservation Technician for the Soil Conservation Service, U.S. Department of Agriculture. An investigation was initiated after the U.S. Department of Agriculture received a complaint from a soil contractor. The contractor, who had dug ponds and conducted soil construction work in the Clarksville, Texas area, stated that he was receiving competition for work from a Soil Conservation Service employee and that the same employee was being overly critical of the contractor's work.

It was determined that Haddock, had established two companies, HER Construction and Pennington Dozer Company and did not disclose these two businesses to the Soil Conservation Service as outside interests.

The investigation disclosed that at least 16 landowners were involved with Haddock and that his construction of ponds or restoration of land after flood damage resulted in approximately \$66,900 in U.S. Department of Agriculture funds being diverted to him. Those funds were in addition to the salary the defendant received from the Soil Conservation Service.

The investigation further revealed that, typically, a landowner would request help from the Soil Conservation Service and Haddock would survey the request and then approve it, enabling the Soil Conservation Service to assist the landowner with the cost of the project. Haddock would then arrange for the work to be done.

Sometimes Haddock would contract for the work to be done by others and in some instances he did the actual work. But in either circumstance, the landowner would not be aware that Haddock was the recipient of the funds expended for the work completed.

Haddock was charged with three (3) counts of false statement (18 U.S.C. § 1001) and three (3) counts of taking official action in matters affecting a personal financial interest (18 U.S.C. § 208).

After a mistrial (2/22/93-2/25/93), Haddock pleaded guilty to one (1) count of violation of 18 U.S.C. § 208 and was sentenced on 8/13/93 to three (3) years probation, six (6) months at the Salvation Army Halfway House in Texarkana, Texas (he was not eligible for any furloughs during this time), a \$10,000 fine and a \$50.00 special assessment.

Prosecution handled by the United States Attorney for the Eastern District of Texas.

12. United States v. Louise Albert Garcia -- Garcia was employed as an Employee Assistance Counselor responsible for providing assessment, referral, and follow-up counseling services to Postal employees and/or their family members having a chemical dependency and/or behavioral problems.

Beginning in 1990 and ending on or about January 9, 1992, Garcia received, in addition to at least \$37,000 per annum as his lawful salary from the Postal Service, cash, a telephone credit card, limousine services, food, hotel accommodations and travel reimbursement for himself, his wife and his brother from Parkview Hospital, Topeka, Kansas. These benefits had an aggregate value of in excess of \$45,000. Parkview Hospital is a psychiatric care and drug-alcohol dependency treatment facility.

Garcia was charged with fifteen counts of violating 18 U.S.C. § 209, for accepting dual compensation. He pled guilty to a violation of § 209 on November 23, 1993. Sentencing has been continued indefinitely until a related case has been completed.

Prosecution handled by the United States Attorney for the District of Kansas.

13. United States v. Wayne N. Kuntz -- On March 6, 1992, Kuntz contacted an Internal Revenue Service Officer regarding the purchase of a road grader (held in IRS inventory). Subsequently, Kuntz paid the Officer \$200 on March 16, 1992, and \$1,090 on April 14, 1992, for arranging the sale of the grader to Kuntz. Kuntz claims he was following advice given to him at a seminar and was not attempting to bribe the Officer. Kuntz does admit, however, to making direct payments totaling \$1,290 to the Officer on March 16, 1992, and April 14, 1992, which would have supplemented the Officer's regular Government salary.

Kuntz was charged pursuant to 18 U.S.C. § 216(a)(1) with a misdemeanor violation of 18 U.S.C. § 209(a). Kuntz pled guilty, pursuant to a written plea agreement, on May 17, 1993, to

an Information charging supplementation of a revenue officer's salary in violation of 18 U.S.C. §§ 209(a) and 216(a)(1). He was sentenced on July 7, 1993, to one year of probation, 50 hours of community service, and a \$25 special assessment.

Prosecution handled by the United States Attorney for the District of North Dakota.

14. United States v. James L. Murphy and Mansour Nejatifar -- Nejatifar worked as an aerospace engineer in the landing gear area at Hill Air Force Base. All employees at Hill Air Force Base are entitled to submit suggestions to the "Suggestion Program." If the suggestion benefits a problem outside their "line of duty," the employee may receive a monetary award which is determined based upon the tangible savings to the Government. If the suggestion is within the employee's line of duty, the suggestion is processed in a different manner and may, for example, result only in a certificate of appreciation acknowledging the contribution or a smaller monetary award.

In April 1992, Robert Willbanks submitted a suggestion for a method to rework certain cylinders that were used on landing gear, which would save the Government money by reducing the need to purchase new parts each time there was a problem. Willbanks claims the idea was his. Nejatifar claims the idea was his and that at his request Willbanks submitted the suggestion; because it was directed at a problem within Nejatifar's normally assigned duties, Nejatifar stated that he thought that he might not receive as large a monetary award as Willbanks would if Willbanks submitted the suggestion. Nejatifar had begun implementing the reworking process on the cylinder in March 1992.

The co-defendant, Murphy, was assigned to be an evaluator of the suggestion. Nejatifar was the engineer assigned to evaluate the technical viability of the suggestion, and after completing the assessment, he recommended that the suggestion be approved.

Willbanks later received a cash award of over \$4,000 (in pre-tax dollars). According to Willbanks, Nejatifar asked him repeatedly for a share of the money because he had assisted in obtaining approval for the award. Willbanks reported the matter to his supervisor and, later, to the Inspector General and the Office of Special Investigations.

Nejatifar and Murphy met Willbanks in a parking lot on base in order to receive their "cut" of the money. Willbanks gave \$600 to Nejatifar and to Murphy. Nejatifar and Murphy were arrested at that time.

According to Nejatifar, and contrary to Willbanks' statement, at the time Nejatifar asked Willbanks if Willbanks wanted to submit the Nejatifar suggestion, the terms of the offer included an agreement that Willbanks split any monetary award evenly among himself, Nejatifar, and Murphy. Nejatifar claims that he asked Willbanks for the money because Willbanks appeared to be renegeing on the agreement.

Both defendants were indicted under title 18 U.S.C. §§ 201(c)(1)(B) and pleaded guilty to one count of a misdemeanor information alleging a violation of title 18 U.S.C. § 208(a). They each received a sentence of one year probation and 100 hours of community service.

Prosecution handled by the United States Attorney for the District of Utah.

15. United States v. (name withheld)

The defendant approved small construction contracts for the Army. He solicited a \$200 and a \$500 loan from a vendor and then later approved a contract for that vendor, while still owing the vendor the \$700. The defendant also increased the amount of a contract for the vendor without the vendor's request. The defendant maintained that increasing the amount of the contract had no relation to the loans. The employee was charged with a violation of 18 U.S.C. § 208 and the case was referred to Pretrial Services for pretrial diversion.

Prosecution handled by the United States Attorney for the Western District of Texas.

16. United States v. Igor Shoykhet -- Shoykhet acted as an "immigration consultant" who assisted resident aliens with the process of obtaining INS travel papers. Shoykhet offered compensation to an INS officer to speed-up the application process. Shoykhet pled guilty to a misdemeanor violation of 18 U.S.C. § 203(a)(2) on January 27, 1993, and on June 2, 1993, was sentenced to one year probation, 6 months' home detention, and a \$25 special assessment. Shoykhet was also prohibited from working in the immigration consulting business.

Prosecution handled by United States Attorney for the Southern District of New York.

17. United States v. Victor Wan -- Wan was arrested on December 9, 1992, for attempting to bribe an INS agent. He pled guilty to a misdemeanor violation of 18 U.S.C. § 209(a) and was sentenced on April 23, 1993, to pay a \$250 fine.

Prosecution handled by United States Attorney for the Southern District of New York.