



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, 1992 to December 31, 1992. Information on nine new prosecutions was provided to us by U.S. Attorneys' offices and the Public Integrity Section of the Criminal Division of the Department of Justice with the assistance of the Executive Office for United States Attorneys. The attached recounts details of prosecutions as reported to this Office.

1992 Prosecution Survey

1. United States v. Raymond Fontaine -- Fontaine was the Comptroller of the General Services Administration. As such, he was responsible for implementing and overseeing GSA's contract with Diners Club for Government charge cards. Between 1986 and 1989, Fontaine accepted numerous expensive meals from Diners Club employees in Washington, DC. as well as accommodations, meals, and entertainment in Las Vegas and Phoenix. Fontaine pleaded guilty on August 3, 1992, to one count of conspiracy (18 U.S.C. § 371) and one count of receiving dual compensation (18 U.S.C. § 209), both misdemeanors. He was sentenced on October 20, 1992, to one year of supervised probation and a \$250 fine.

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

2. United States v. Henry Giugni -- Giugni, the Sergeant-at Arms of the United States Senate, was the chief purchasing agent for the Senate. In that capacity, he recommended that the Senate purchase and install a \$219,000 AT&T telephone system for the U.S. Capitol Police. Three weeks later, he accepted a round-trip Washington-Honolulu airline ticket, valued at \$2,700, from an AT&T employee. Giugni pled guilty on November 18, 1992, to one misdemeanor count of violating 18 U.S.C. § 203. He was sentenced on January 29, 1993, to one year of supervised probation, was ordered to pay full restitution of \$2,700, and also paid a \$5,000 civil fine under 18 U.S.C. § 216(b).

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

3. United States v. Prem Sarin -- Sarin was employed by the National Cancer Institute (NCI) of the National Institutes of Health. Sarin agreed to perform certain trials on a drug against the AIDS virus for a German pharmaceutical company, Degussa, informing them that he would need \$50,000 to begin the job. The company remitted \$25,000 to Sarin and NCI, the remainder payable upon completion of the work and receipt of Sarin's report. Sarin subsequently deposited the money into two accounts he controlled and ultimately used it for his own benefit. Sarin used Government laboratories, equipment and personnel in conducting the trials.

After Sarin was well along in the work, he submitted a Request for Approval of Outside Activity, which was false in several material respects, not the least of which was that he failed to disclose the amount of compensation he had received and would receive.

Since the money Degussa paid was paid to both NCI and Sarin, the theory of Count 1 of the indictment against Sarin was that he embezzled that portion of the money which rightfully belonged to NCI. Count 2 of the indictment against Sarin charged a § 209 violation complementing the embezzlement Count 1. To the extent that money paid by Degussa was intended to be paid to Sarin rather than NCI, that money represented an unlawful

supplementation of income. The jury evidently concluded that the money was NCI's, since they convicted Sarin of the embezzlement, but not the § 209 count.

Sarin also failed to secure approval for and failed to disclose on his annual financial disclosure form additional work he did for another company, Lyphomed. With respect to this count, the court granted a post-trial motion for judgment of acquittal since NIH's disclosure form only asked about financial information as of the date the form was filled out, not for the entire year. Thus, any interest owned or acquired during the year which would have given rise to a conflict was not required to be reported so long as it was not owned on the day the employee filled out the form. The court found that the false statement count relating to this non-disclosure failed to state an offense and that the evidence was insufficient to sustain a false statement conviction. [Note: the Governmentwide system for mid-level employee financial interest reporting on Standard Form 450 requires reporting of financial interests held anytime during the year. See 5 C.F.R. § 2634.907. This reporting system was implemented in 1992. The public financial disclosure system for high-level Government employees already required disclosure of this information on Standard Form 278.]

Sarin was sentenced to 3 years incarceration with all but 2 months suspended. (This was a pre-sentencing guidelines case.) The case is currently on appeal.

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

4. United States v. George Mitchell -- George Mitchell was a Regional Security Officer (RSO) at the American Embassy in Santo Domingo, Dominican Republic. Mitchell's primary duties included overseeing a small force of marines and a larger force of security guards employed by Wackenhut Dominicana, S.A., a subsidiary of Wackenhut International, a security company that operates world-wide.

While Mitchell had no authority to enter into procurement transactions on the Government's behalf, Mitchell, in two separate transactions, engineered the purchase of 8 vehicles for Wackenhut and some private citizens. Wackenhut's contract with the Government required that it use three vehicles for patrols. These vehicles were purchased in the United States and were free from substantial import duties when delivered to the Dominican Republic by virtue of applications by the United States Embassy for "exonerations" from the duties. Exonerations are given for property to be used by foreign missions. With respect to the purchase of the first 4 vehicles, Mitchell was given \$50,000 by Wackenhut. Mitchell carried at least \$39,000 in cash to Miami, which he illegally failed to disclose to customs officials, and purchased 4 vehicles for \$39,000. Mitchell kept the remaining \$11,000.

Later, when Mitchell purchased 4 vehicles for individuals, he was given \$55,000 in cash. Mitchell returned to Miami with at least \$35,000 in cash, which again he failed to report to Customs, and paid \$35,000 for 4 vehicles which were sent to Santo Domingo and "exonerated" from import duty after Mitchell encouraged the exoneration process and initiated certain of the paperwork through an Embassy employee. Mitchell retained the unspent \$20,000 difference between the purchase amount and the amount he had been given to purchase the cars.

Wackenhut also was required to provide weapons for its security force. Mitchell arranged to purchase the weapons for Wackenhut by first attempting to have certain firearm companies or retailers ship the weapons to the Dominican Republic, notwithstanding the fact that Mitchell did not have a license to export the weapons. These companies refused to sell the weapons to Mitchell. Subsequently, Mitchell purchased the weapons from a Baltimore gun shop after using Embassy letterhead and representing that he was authorized to purchase weapons for the State Department. The gun shop refused to ship the weapons to Mitchell. But Mitchell went to Baltimore and personally purchased the weapons and sent them in a lead-lined diplomatic box to the Dominican Republic. Mitchell gave most of the weapons to Wackenhut, but sold some extras that he purchased to citizens of the Dominican Republic at considerable profit. Mitchell also kept for himself the difference of \$2000 between the amount that Wackenhut had given him to purchase the guns and the amount that the gun purchase had cost him.

Mitchell was charged with making false statements to a firearms dealer, receiving something of value for performance of an official act in violation of 18 U.S.C. § 201, participating as a Government employee in a transaction in which he had a financial interest in violation of 18 U.S.C. § 208, stealing ammunition with a value in excess of \$100 from the United States, exporting firearms without a license, transporting monetary instruments into the United States for the purpose of carrying on a violation of the Arms Control Export Act and failing to make a true report to the Customs Service when carrying \$10,000 or more into the United States. The jury convicted Mitchell on the § 201 count and the count of the indictment pertaining to exporting firearms without a license. Mitchell was acquitted on the other counts.

On appeal, among other things, Mitchell claimed that his acquittal on the third count (the alleged § 208 violation) precluded his conviction on the § 201 count. The transaction to which the § 208 allegation was based was the obtaining of the exonerations for the import of the vehicles on which Mitchell stood to profit. Mitchell contended that his acquittal on Count 3 was evidence of his innocence on the other counts relating to the exoneration. The court of appeals indicated that the law insulates verdicts of acquittal from review and courts are reticent about inquiring into juror's deliberations, making it impossible to determine whether the acquittal was an exercise of lenity. For the court to conclude that the acquittal on Count 1 was proper but that the conviction on Count 2 was error would thus be inappropriate. The court found that the evidence as to Count 2 was sufficient to support the conviction. *United States v. Mitchell*, No. 90-5072, slip opinion (4th Cir. April 30, 1993).

Prosecution handled by the United States Attorney for the District of Maryland

5. *United States v. Thomas R. Caruso* -- Thomas R. Caruso, an electrical contractor, was charged with making contributions to and supplementing the salary of a public affairs officer and representative for small and disadvantaged businesses for the Army Corps of Engineers in violation of 18 U.S.C. § 209. This case arises out of the same facts as the case in the 1990-1991 Prosecution Survey reporting the convictions of Frank H. Madison, Leonard Conklin, James J. Scanlon, and Dr. Muhammed Ismail. Caruso was involved in the payment of money to Madison, the Public Affairs Officer, in return for Madison's assistance in facilitating the sale and

development of land for off-post housing around Fort Drum, New York. The defendant pled guilty to the § 209 charge and was sentenced to supervised probation for one year; the defendant was not required to pay a fine due to his inability to pay.

Prosecution handled by the United States Attorney for the Northern District of New York. The case was ultimately transferred to the Western District of New York for disposition through a guilty plea pursuant to the provisions of Rule 20, Federal Rules of Criminal Procedure.

6. United States v. Stephen William Kirby -- Storekeeper chief Kirby was the Logistic Support Officer for the Naval Recruiting District, Nashville. From on or about August 6, 1987 to August 20, 1987 he knowingly participated personally and substantially in recommending that the Navy enter into a contract with Office Supply Unlimited, a company in which he had a financial interest, for the purpose of purchasing two Adler-Royal compact facsimile machines. Kirby also engaged in recommending that the Navy enter into contracts for the purchase of office supplies and equipment from companies in which he had a financial interest. On June 22, 1992, Kirby entered a plea of guilty to an information which included one count of violating 18 U.S.C. § 208. Kirby also pled guilty to violating 18 U.S.C. §§ 641, 1001 and 1341. On November 17, 1992, he received a sentence of 12 months and was ordered to pay restitution in the amount of \$10,800.

Prosecution handled by the United States Attorney for the Middle District of Tennessee.

7. United States v. Enrique A. Mansilla-Villavicencio – The Defendant offered to pay \$40.00 to a U.S Customs agent if the agent would allow the export of two vehicles before the expiration of a mandatory 72 hour waiting period. The defendant waived indictment and pled guilty to a Criminal Information charging him with a violation of 18 U.S.C. § 209. He was sentenced to pay a \$100.00 fine and a \$25.00 special assessment.

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

8. United States v. Richard Nevers -- Richard Nevers was a Trade Specialist for the International Trade Administration (ITA), a sub-agency of the United States Department of Commerce. As a Trade Specialist, Nevers' job was to assist small businesses in exporting products or services to other countries. Primarily, he would provide free counseling on the mechanics and techniques of international trade, including finance, marketing, and shipping and documentation requirements. He would also refer clients to groups of private export firms, although recommendations to individual firms were prohibited by regulation.

Richard Nevers' wife was the incorporator of World Consultants International (WCI), an export firm. In the Spring of 1989, Murray Studley, founder of Studley and Associates, came to the ITA seeking assistance with a plan to export used busses. He was referred to Richard Nevers. Nevers and Studley met several times to discuss Studley's plans in general terms. At the fourth meeting between Studley and Nevers, Nevers presented Studley with a contract giving WCI exclusive rights to sell Studley's busses. Nevers did not explain that his wife was affiliated

with WCI. The contract contained several paragraphs barring Studley from disclosing the deal; in fact, the secrecy provisions of the contract were longer than its principal terms. Without signing the contract, Studley wrote to Nevers requesting the names of the principals of WCI and its financial statements. Nevers responded in a letter providing general information about export companies -- the type of information Studley had been seeking from the outset. Studley decided to look to the Texas Department of Commerce for help rather than the ITA. After explaining his experience to the export counselor at the Texas Department of Commerce, that official contacted the Regional Director of the ITA who in turn contacted the Inspector General of the Department of Commerce.

On February 19, 1992, Nevers was indicted and convicted on one count of violating 18 U.S.C. § 208. He was sentenced under the guidelines to three months imprisonment to be followed by one year of supervised release and fined \$2,500 on July 21, 1992. An appeal was filed and is currently pending.

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

9. United State v. K. Shahid Rab -- K. Shahid Rab was an architect employed by the U.S. Veterans Administration (VA). While so employed, Rab represented a Beltsville Maryland company named Larsen Engineers, Inc. in connection with an application for a contract with the United States Agency for International Development in Dacca, Bangladesh. Rab made two trips to Bangladesh to represent Larsen while employed by the VA, including a trip in February 1989 for which he was paid \$2090 by Larsen for expenses. Prior to the effective date of his resignation from the VA, Rab earned salary from Larsen totaling \$5,603.81. During this same period of dual employment, he earned \$5,540.57 from the VA. Rab was charged in a one count information with violating 18 U.S.C. § 205(a)(2).

Although the conduct occurred prior to the effective date of 18 U.S.C. § 216, in light of the defendant's willingness to cooperate with the Government's investigation, the Government allowed him to plead to a misdemeanor violation. Rab was sentenced to two years probation with a fine of \$1,000 and to complete 100 hours of community service.

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