



United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

August 12, 1997
DO-97-029

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 annual survey of prosecutions involving the conflict of interest criminal statutes (18 U.S.C. §§ 203, 205, 207, 208, 209) for the period January 1, 1996 through December 31, 1996. Information on ten new prosecutions by U.S. Attorneys' offices and the Public Integrity Section of the Department of Justice's Criminal Division was provided to us with the assistance of the Executive Office for United States Attorneys in the Department of Justice. Attached are summaries of the prosecutions reported to this Office.

Attachment

1996 Conflict of Interest Prosecution Survey

1. United States v. Edna Taylor -- Taylor was employed by the United States House of Representatives as a staff assistant to Congressman Sam Gibbons in his Tampa, Florida office. Taylor was also a member of the Town & Country Seventh-Day Adventist Church (Town & Country).

On May 28, 1990, Job Fleurimond, Pastor of Town & Country, submitted an application for permanent residence to the United States Department of Justice, Immigration and Naturalization Service (INS). The Southeastern Conference of Seventh-Day Adventists (Southeastern Conference) wanted Pastor Fleurimond to minister two of its congregations in Miami. On August 17, 1990, Congressman Gibbons sent a letter to INS on behalf of Pastor Fleurimond. On May 31, 1991, a second letter from Congressman Gibbons, this time signed by Taylor, was sent to INS. Both letters were written on Gibbons' Congressional stationery. On August 21, 1991, Pastor Fleurimond's application for permanent residence was approved. On July 8, 1993, Taylor received a \$500 gratuity from the Southeastern Conference for her efforts on behalf of Pastor Fleurimond.

Taylor used the same scheme to assist Pastor Gedeon Pierre Fontil in obtaining permanent residence so that he could serve as minister for two of the Southeastern Conference's congregations. Congressman Gibbons wrote to INS on July 26, 1993, on behalf of Pastor Fontil and the Southeastern Conference. Taylor assisted Pastor Fontil in his dealings with INS. On August 3, 1993, Pastor Fontil's petition for residence was approved by INS and, on February 3, 1994, Taylor received a \$500 gratuity from the Southeastern Conference for her efforts on behalf of Pastor Fontil.

On April 26, 1994, Carol Williams paid Taylor \$2,700 for assisting her in applying for permanent residence. Taylor submitted a petition to INS on Williams' behalf and signed the application as the preparer. Although the application contained a signature which purported to be that of Carol Williams, Williams claimed that it was not her signature and that she did not see the application prior to its submission. Taylor knew that Williams was not eligible to become a permanent resident of the U.S. but fraudulently misrepresented to her that she was eligible in order to induce Williams to utilize Taylor's services.

Taylor was charged with: (1) two counts of accepting gratuities for official acts performed, in violation of 18 U.S.C. § 201(c)(1)(B); (2) knowingly making a material false writing and presenting it to INS, in violation of 18 U.S.C. § 1001; (3) accepting compensation for services provided in relation to matters in which the United States has a direct and substantial interest, in violation of 18 U.S.C. § 203(a)(1); and (4) mail fraud, in violation of 18 U.S.C. § 1341. Taylor pled guilty to the five-count indictment on September 30, 1996 and was sentenced to 18 months' incarceration on April 18, 1997.

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

2. [Case 2] -- [The Government employee] was an engineer employed by the Federal Aviation Administration (FAA) at the Mike Moroney Aeronautical Center in Oklahoma City, Oklahoma.

While employed by the FAA, [he] attended and graduated from night law school. [He] continued his employment as an engineer but prepared wills, powers of attorney, and other legal documents on his own time. Without permission from the FAA, [he] agreed to represent a fellow FAA employee who was the target of a criminal investigation by the U.S. Attorney's Office. In August 1994, [the Government employee] contacted the U.S. Attorney's Office on behalf of his client. The Assistant U.S. Attorney recognized [his] telephone prefix as the prefix for the FAA.

The United States brought a civil action against [the Government employee] pursuant to 18 U.S.C. § 205(a)(2) and 18 U.S.C. § 216, which provides civil and criminal remedies for violations of conflicts of interest statutes. The parties entered into a consent judgment in September 1996 in which [the Government employee] agreed to pay a \$1,200 penalty.

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

3. United States v. James W. Nearen -- Nearen was an attorney for the Securities and Exchange Commission (SEC), Division of Enforcement in its Denver, Colorado office.

In 1993, Nearen was assigned to investigate a group of persons for securities fraud involving the payment of bribes to manipulate the market for the shares of certain companies. Bribes in this context refer to the practice by which stock promoters pay brokers kickbacks to tout the stock of companies. As part of this investigation, Nearen investigated stock promoters Grant Curtis and Timothy Masley in connection with their work promoting the stock of Integrated Resources Technologies, Inc. (IRTI). Curtis and Masley cooperated in Nearen's investigation and gave Nearen sworn testimony in February 1994. In their testimony, Curtis and Masley admitted to engaging in the payment of bribes intended to manipulate the share price of IRTI's stock.

Nearen left the SEC on February 20, 1995 under threat of suspension for unrelated misconduct. He was immediately hired by Curtis and Masley to serve as IRTI's legal counsel.

In January 1996, the SEC's New York office, working in conjunction with the U.S. Attorney's office in the Eastern District of New York, began an investigation of Curtis, Masley, IRTI, and others for the same conduct that Nearen had investigated, while an SEC employee, in 1993 and 1994. In February 1996, the SEC issued a subpoena to IRTI for documents relating to Curtis, Masley, and other matters that Nearen had himself investigated while employed by the SEC. Nearen, who was then IRTI's counsel and also on the company's board of directors, participated in responding to that subpoena. His participation included communications with SEC officials in violation of 18 U.S.C. § 207(a), which prohibits former Government employees from communicating with the Government in connection with particular matters in which they participated personally and substantially as Government employees.

Nearen and five other defendants, including Curtis and Masley, were indicted in October 1996 for securities fraud involving IRTI and two other publicly traded companies. After the five co-defendants pleaded guilty, Nearen was indicted on a host of new charges, including securities fraud, money laundering, and a violation of 18 U.S.C. § 207(a). Nearen pleaded guilty to three counts, including the § 207(a) charge. He is scheduled for sentencing in September 1997.

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

4. [Case 4] -- [The Government employee] worked at the National Security Council (NSC) as [an Assistant to the President].

On or about March 26, 1993, the Office of the Counsel to the President advised [the Government employee], in a memorandum, that his work at the NSC might involve him in matters that could create a conflict of interest with his ownership of certain oil and energy interests. The memorandum further advised [him] that he should discuss divestiture of his stock holdings in Exxon Corporation, Mobil Corporation, Teco Energy, Inc., and Duke Power Company (the Companies) with the Office of the Counsel to the President. On October 5, 1993 and October 21, 1993, the NSC's Legal Advisor's Office advised [the Government employee] of the White House Counsel's determination that the divestiture of [his] and his wife's stock in the Companies was necessary to avoid any actual or apparent conflicts of interest in the performance of [his] official duties. Thereafter, [the Government employee] requested, and on November 10, 1993 acquired, Certificates of Divestiture that would have permitted the sale of his and his wife's stock in the Companies without immediate tax consequences.

From November 1993 through June 1995, [the Government employee] received routine statements from his financial advisor which showed that he and his spouse still owned stock in the Companies. During this period, there were several issues that came before [the Government employee] in his official capacity that may have had a direct and predictable effect on Exxon Corporation and Mobil Corporation. [The Government employee] personally and substantially participated in at least one such issue in a particular matter concerning negotiations with a foreign country in which Exxon Corporation was a potential beneficiary.

The Legal Advisor to the NSC and/or the Counsel to the President advised [the Government employee], on June 14, 1995, that his stocks in the Companies had not been sold. [The Government employee] telephoned his financial advisor and instructed him to sell the stocks. The stocks were sold on June 16, 1995.

The United States filed a civil complaint against [the Government employee] alleging a violation of 18 U.S.C. § 208, taking official action in matters affecting a personal financial interest. On February 7, 1997, the parties signed a settlement agreement in which [the Government employee] denied liability but agreed to make a payment of \$5,000 to the United States in exchange for the United States' dismissal of its complaint against him.

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

5. [Case 5] -- [The Government employee] was an Assistant United States Attorney for the Southern District of Texas and was the Violent Crimes Coordinator for that office.

In August 1995, [he] became interested in obtaining distribution rights for the Quadro Tracker, a device which allegedly could be used by law enforcement officers to detect items such as controlled substances, handguns, and missing persons. On August 21, 1995, [he] took personal leave from the United States Attorney's Office to visit the Quadro Tracker manufacturer's corporate headquarters in South Carolina, where he negotiated for distribution rights to the Quadro Tracker for Alabama, Arkansas, New Mexico, and Wyoming.

[The Government employee] organized a demonstration of the Quadro Tracker at the August 23, 1995 meeting of the United States Attorney's Office's Law Enforcement Coordinating Committee (LECC). At the meeting, which was attended by numerous law enforcement officials, [he] was introduced as the Violent Crimes Coordinator. Acting in his official capacity, [he] described the capabilities of the Quadro Tracker, provided price information, and minimally assisted in the demonstration of the Quadro Tracker. Although the LECC meeting was designed exclusively for law enforcement officials, [he] arranged for a potential co-investor, who was not a law enforcement official, to attend in order to encourage his investment. On August 25, 1996, [he] submitted a cashier's check for \$13,600 to the Quadro Tracker's manufacturers to obtain the distribution rights which he had negotiated on August 21, 1995.

The United States brought an action against [the Government employee] for a violation of 18 U.S.C. § 208(a). On January 24, 1997, the parties reached a settlement in which [the Government employee] denied liability but agreed to pay a \$5,000 civil fine pursuant to 18 U.S.C. § 216. The \$5,000 fine would have been the maximum fine available under the Sentencing Guidelines had the case been prosecuted criminally.

Prosecution handled by the Public Integrity Section of the Department of Justice's Criminal Division and the United States Attorney for the Eastern District of Texas.

6. United States v. David C. Miller -- Miller was a Central Intelligence Agency Contracting Officer's Technical Representative (COTR). His duties as a COTR included the technical supervision of two Government contracts with a particular company (the Company) through which the Government funded a classified program (the Program).

In 1992, Miller used his position as a COTR to cause the Company to hire a friend of Miller's as a consultant to the Program. The friend owed a substantial sum of money to Miller and Miller's wife and did not have the financial means to repay the Millers. At no time did Miller disclose to the Government or the Company that the friend owed Miller money.

The Government charged that, under these circumstances, Miller had a financial interest in the Company's decision to enter into a consulting agreement with the friend and that Miller violated 18 U.S.C. § 208 by participating in that decision. On November 7, 1996, Miller pled guilty to a felony violation of § 208.

Miller also pled guilty to a charge of possession of child pornography obtained through his unauthorized personal use of a Government-furnished computer. Miller arranged for the purchase of the computer for Government purposes in furtherance of the Program and the computer was delivered to his home in McLean, Virginia in mid-1994. On May 22, 1996, when Miller voluntarily relinquished control of the computer, the hard drive contained ten photographic images of children under the age of 18 years (and at least one child under the age of twelve) engaging in various sexual acts. Miller had obtained the images through his use of a commercial Internet computer service.

On January 17, 1997, Miller was sentenced to 15 months' incarceration for his section 208 and child pornography convictions. He received three years' supervised release and was ordered to pay a \$4,000 fine.

Prosecution handled by the Public Integrity Section of the Department of Justice's Criminal Division and the United States Attorney for the Eastern District of Virginia.

7. United States v. Thomas W.W. Ward -- Ward was a Special Agent of the Federal Bureau of Investigation (FBI) assigned to the Firearms Training Unit in Quantico, Virginia. He was in charge of the Less Than Lethal Weapons Program, the purpose of which was to research and test nonlethal weapons that could be used to control individuals resisting arrest and for self-defense. Ward became the FBI's leading expert on nonlethal weapons.

One of the chemicals Ward tested as part of his official duties was oleoresin capsicum which is derived from cayenne peppers. When sprayed on a subject's face, it causes inflammation and swelling of the mucous membranes, swelling in the lining of the throat, and temporarily paralyzes the larynx. At the time, the product on the market which used oleoresin capsicum was "Cap-Stun," an aerosol spray sold and distributed by Luckey Police Products (Luckey) in Ft. Lauderdale, Florida. Based on his research and testing, Ward recommended Cap-Stun to the FBI for use by agents. The FBI made its initial purchase of Cap-Stun in November 1989. Following the FBI's use of Cap-Stun, law enforcement agencies throughout the country purchased Cap-Stun, resulting in a dramatic increase in Cap-Stun's sales.

During this time, Ward actively assisted Luckey through a company owned by his wife, Teynham Designs, Inc., which received approximately \$5,000 per month from Luckey. From December 1989 through December 1990, Luckey made payments to Teynham Designs, Inc. totaling \$57,500.

Because of his financial interest in Cap-Stun and his participation in the FBI's decision to purchase Cap-Stun for its agents, Ward was charged with a violation of 18 U.S.C. § 208(a). He

pled guilty to the charge on February 15, 1996 and was sentenced to two months' incarceration and three years' supervised release on April 26, 1996.

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

8. United States v. Charles Meyers -- Meyers was a civilian employed by the Army as a contracting officer. He traded in stocks of companies whose Government contracts he administered and failed to disclose these stock holdings on the required financial disclosure forms.

Meyers was charged with, and pled guilty to, a violation of 18 U.S.C. § 208 for participating personally and substantially as a Government employee in decisions in which he had a financial interest. On January 24, 1997, Meyers was sentenced to six months' probation and a \$4,000 fine. In addition, the plea agreement required Meyers to disgorge all profits earned in the stock transactions.

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

9. United States v. [name withheld] -- The defendant was a Contract Representative for the United States Department of the Navy.

The defendant allegedly obtained an estimate of hurricane damage to the defendant's personal residence, from a Government contractor, at the time the defendant was supervising the contractor in his official capacity. The contractor signed an estimate of damage, upon the defendant's request, which the defendant submitted to his insurance company. The defendant then received compensation from the insurance company.

The Government argued that the defendant violated 18 U.S.C. § 208 because he had a financial interest in obtaining insurance proceeds for alleged damage to his residence and sought the assistance of a subcontractor whose Government contract he supervised in his official capacity.

The Magistrate Judge dismissed the Information, finding that the defendant did not have a financial interest in a particular matter in which he participated personally and substantially in his official Government capacity. Specifically, the Magistrate Judge found that section 208 does not prohibit "private, financially related dealings by a Government official with any individual who may be subject to decisions of the official through some type of Government proceeding or contract." In this case, the defendant did not have a financial interest in a Government contract over which he had supervisory authority but had simply requested the assistance of a Government contractor in an entirely private matter.

Prosecution handled by the United States Attorney for the Northern District of Florida.

10. The following case is not a conflict of interest prosecution but was a civil action for noncompliance with the financial disclosure requirements of the Ethics in Government Act, 5 U.S.C., app. 4, § 101, et seq. (1994).

[Case 10] -- [The Government employee] was the Chairman of the Equal Employment Opportunity Commission (EEOC). His position with the EEOC terminated on April 2, 1993.

The Ethics in Government Act of 1978 required [the Government employee] to submit, after his employment with the EEOC terminated, a financial disclosure report for the period January 1, 1992 through April 2, 1993. Instead of doing so, [he] copied his public financial disclosure report (SF 278) from calendar year 1991 but changed the first page of the report to state that it covered the relevant time period. Upon review of [the Government employee's] SF 278, the EEOC and the Office of Government Ethics (OGE) observed that certain entries were inapplicable to the reporting period or were technically inaccurate. On numerous occasions from July 13, 1993 through February 15, 1995, the EEOC and OGE contacted [the Government employee] by phone and by mail in an attempt to encourage him to file an accurate SF 278.

On January 28, 1997, the United States brought a civil action against [the Government employee] for violating the Ethics in Government Act. On April 25, 1997, the parties entered into a settlement agreement which provided that [the Government employee] was to file an accurate financial disclosure report for the relevant time period and pay a civil penalty to the United States in the amount of \$4,000. In return for [his] performance, the United States agreed to dismiss the action with prejudice.

Case handled by the Federal Programs Branch of the Department of Justice's Civil Division.