



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

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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, 1994 to December 31, 1994. Information on ten 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.

Attachment

1994 Conflict of Interest Prosecution Survey

1. [Case 1] -- The stipulated facts of this case are as follows:

[The former Government employee] was the director of [an Office] at the United States Department of State from September of 1984 through October of 1986. [He] served as [an Ambassador] from August 1988 until his retirement from the State Department in October of 1991. Most recently, [he] served as [a Special Envoy].

During his tenure at [the Office], [he] participated personally and substantially in the 1985 Presidential Determinations that banned Middle East Airlines ("MEA") from flying passenger or cargo flights to or from the United States and from ticketing within the United States (the "Ban"). The Ban, which was imposed in the wake of the hijacking of TWA flight 847 from Greece to Lebanon, is still in effect.

In the fall of 1992, following [the former Government employee's] retirement from the State Department, a representative of MEA asked [him] whether he would advise MEA on how to have the United States Government lift the Ban. Shortly thereafter, the consulting company which [the former Government employee] co-owned, C&O Resources ("C&O"), with another company, [together known as] the "Consultants", submitted a proposal to MEA. That proposal set out how the Consultants could assist MEA in its efforts to have the Ban lifted through a coordinated campaign which would include contacts with various Government agencies and MEA and others taking specific actions to bring security at MEA and Beirut International Airport into full compliance with United States Government regulations.

The Consultants and MEA entered into a Consulting Agreement (the "Agreement"), dated June 5, 1993. The stated objective of the Agreement was for the Consultants to assist MEA in its efforts to have the Ban lifted on flying to and from the United States. The Agreement described the Consultants as knowledgeable of the requirements, organizations and officials of the United States Government that would have an effect upon the decision to permit MEA to resume operations in the United States as well as the security standards for aircraft, airports and airlines required by the United States Government. The Agreement called for MEA to pay the Consultants \$100,000 for the first year. It also provided for a "success fee," the amount of which depended on when the Ban was lifted. If the Ban was lifted before January 1, 1994, the consultants would receive \$350,000; if lifted during the first half of 1994, they would receive \$275,000; and if lifted after July 1, 1994, and within the two-year duration of the contract, they would receive \$225,000.

[The former Government employee] initially contacted officials at the State Department concerning the status of the Ban and what would be required to lift or amend it. Through meetings and memoranda, [he] informed officials at the State Department that he was representing MEA, that MEA hoped to resume flying to the United States, and that the Consultants had told MEA that full compliance with United States Government regulations would be a prerequisite for lifting the Ban. [The former Government employee] had similar meetings with an official at the National Security Council. In these meetings, [he] discussed

MEA's efforts to improve its security and the security at Beirut International Airport, MEA's base of operations. In one memorandum, [he] informed the State Department that if security improvements and other factors progressed as expected, a request to remove the Ban would be made within a few months. The purpose of these contacts was to assist MEA in its efforts to have the Ban lifted. [The former Government employee] never requested any government official to recommend that the Ban be lifted absent MEA's making significant improvements to its security and the security at Beirut International Airport. Nor did he suggest that MEA had made the requisite improvements.

In addition to contacting officials at the State Department and the National Security Council, [the former Government employee] sought to arrange a meeting with officials at the Department of Transportation and the Federal Aviation Administration ("FAA") to discuss the security conditions with which MEA would need to comply in order for FAA to consider recommending that the Ban be lifted. The FAA, however, determined that such a meeting was not advisable at that time. [The former Government employee] then sought to have officials at the State Department and National Security Council persuade the FAA to meet with MEA. In a letter, [he] told officials at the State Department that there was no policy reason or directive stopping FAA from meeting with MEA, and that FAA's refusal could cause MEA to drop their endeavor to improve security at BIA. [His] efforts to arrange such a meeting were not successful.

Prior to [his] retirement, the State Department provided him with the standard materials describing the conflicts of interest laws, including the lifetime bar provision. The Department also offered [the former Government employee] an opportunity to receive guidance on those laws, both at the time he left government and anytime afterwards. [He], however, states that he was unaware of the lifetime bar rules when he made his representations on behalf of MEA.

[The former Government employee] was investigated for violating the post-employment restriction, 18 U.S.C. § 207(a)(1), which imposes a lifetime bar on trying to influence Government action on a particular matter involving specific parties in which a former official participated personally and substantially while in the Government.

Pursuant to a settlement agreement entered into by [the former Government employee] and the Government, [he] paid a \$5,000 civil fine, agreed to make no further representations in the matter and to waive any fees he might have earned had his effort to have the Ban rescinded been successful.

Prosecution handled by the Public Integrity Section of the Justice Department's Criminal Division and the United States Attorney for the District of Columbia. The State Department's Office of Inspector General participated in the investigation. [The Department of Justice's public statement regarding this case stated that this civil resolution was equivalent to the maximum sentence available under the sentencing guidelines had the case been prosecuted.]

2. [Case 2] -- [The Government employee], the former Deputy Director, Personal Property Mail and Reproduction, United States Department of Agriculture ("USDA"), was responsible for USDA's administration of transportation, personal property management, mail and duplicating

services, including the Centralized Excess Property Operation, a warehousing operation for excess Government furniture and furniture in need of repair. In September 1989, [he] arranged with the Chief of the warehousing operation to negotiate on his behalf the refurbishing of [the Government employee's] personal furniture. [He] had the Chief of CEPO travel to his home and transport the furniture to CEPO for pick-up by the contractor. On October 2, 1989, the same day the contractor completed the work on the furniture, [the Government employee] authorized a procurement request for \$300,000 which obligated funds for a one-year service contract with the contractor. The cost to repair [the Government employee's] furniture was paid from the authorized funds.

The Government brought an action for civil penalties against [the Government employee] pursuant to 18 U.S.C. § 216(b) for a violation of 18 U.S.C. § 208. Pursuant to a Settlement Agreement, [he] paid a \$5,000 civil fine together with \$350 restitution to USDA. The fine was imposed pursuant to 18 U.S.C. § 216, which provides for civil and criminal remedies for violations of conflicts of interest statutes, including § 208.

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.

3. United States v. Gary Stephen Arnold [Not a conflict of interest prosecution, but instead a prosecution for filing deceptive financial reports] -- Arnold, formerly the Director of Domestic Development and Country Director to Belize, Central America, with the Peace Corps, pleaded guilty to a violation of 18 U.S.C. § 1001, for concealing outstanding debts in the amount of four million dollars on financial disclosure forms submitted to the Peace Corps.

In August of 1989 and September 1989, Arnold submitted financial disclosure forms which stated that he had minimal debt. On October 23, 1989, Arnold was hired by the Peace Corps to fill a position which obligated him to file financial disclosure reports. Arnold stated on two additional disclosures that he was debt-free. An administrative investigation of Arnold's handling of Peace Corps finances while he was stationed in Belize led to the discovery that Arnold had filed for Chapter 7 Bankruptcy on April 5, 1990 in Atlanta. The bankruptcy petition stated that Arnold was in over four million dollars of debt due to failed business ventures.

Arnold was sentenced to 2 years probation, 100 hours of community service and a \$50 assessment fee.

Prosecution handled by the Public Integrity Section of the Justice Department's Criminal Division. The Office of Inspector General for the Peace Corps participated in the investigation.

4. United States v. Kenneth W. Morin -- Morin was, from May 1985 until he retired during March 1990, a Supervisory Computer Scientist/Specialist for the U.S. Naval Research Laboratory ("NRL") in the District of Columbia. Mr. Morin's responsibilities at the NRL included duties as the Project Manager for certain Government contracts.

In July 1987, Mr. Morin incorporated Terry & Kim Systems, Inc. ("T & K S Inc.") in Virginia. Mr. Morin served as the Director and Chief Executive Officer for T & K S Inc. The investigation established that T & K S Inc., operated as a vendor and reseller of Macintosh computer equipment.

During January through May 1988, Mr. Morin participated substantially with NRL Official A in preparing the statement of work for a small business set-aside (8a) subcontract award through the Small Business Administration ("SBA"). The three-year, \$2,558,519 procurement was for the development of software, production of critical hardware and services for Local Area Network Systems for a section at the NRL. The subcontract for the procurement was awarded to Corporation X in September 1988. From about October 1988 until April 1989, Mr. Morin rendered advice and made recommendations concerning product selections and costs to Official A in compiling lists of Macintosh computer equipment and related hardware and software to be purchased under the contract.

The equipment lists were sent to the purchasing agent for Corporation X, who issued purchase orders to T & K S Inc., to secure the computer equipment requested under the contract. The purchasing agent for Corporation X dealt with Mr. Morin as the agent for T & K S Inc. in these transactions. Mr. Morin bought the equipment specified on the purchase orders from other vendors and sent itemized T & K S Inc. invoices to Corporation X for payment. T & K S Inc. invoice charges for the Macintosh and related computer equipment purchased under the contract totaled \$56,458.15. Mr. Morin personally endorsed and deposited three checks from Corporation X into the T & K S Inc. corporate checking account maintained at the NRL Federal Credit Union.

During January through June 1988 Morin participated substantially with NRL Official B in preparing the statement of work and contract package for another SBA small business subcontract award to Corporation Y of Belchertown, Massachusetts. This three-year \$1,903,000 procurement was for programming support for communications and operational systems. The subcontract for the procurement was awarded to Corporation Y in June 1989. During February through November 1989, Mr. Morin provided verbal direction and instructions to Corporation Y personnel. Mr. Morin also rendered advice and made recommendations concerning product selections and costs to Officials A, B, and C at the Office of the Assistant Secretary of the Navy who were compiling lists of Macintosh computer equipment and related equipment and supplies to be bought under the contract. During September 1989, Mr. Morin personally delivered to the Government the Macintosh computer equipment bought under the contract for the Office of the Assistant Secretary of the Navy. Between June 1989 and June 1990, Corporation Y submitted vouchers to the Government for payment of T & K S Inc. invoice charges in the amount of \$215,000 for Macintosh equipment, computer supplies and services bought under the contract.

The checks issued to T & K S Inc., under the contract were endorsed by Mr. Morin and deposited into the T & K S Inc., corporate checking account maintained at the NRL Federal Credit Union.

Mr. Morin concealed his relationship to T K & S, Inc. when he filed two financial disclosure statements with his agency and when he responded in writing to a supervisor who was

investigating the location of certain equipment that had been ordered from T K & S, Inc. Morin pled guilty on May 12, 1994, to a violation of 18 U.S.C. § 208 (felony). Morin received probation and a fine of \$5,000 and a \$5,000 civil penalty.

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

5. United States v. Richard Galik and United States v. Elaine Wilcomb -- Richard Galik was from December 1990 to March 1993 the Director of Communication Services Division of the Office of Thrift Supervision ("OTS"). Elaine B. Wilcomb was his Deputy Director. This division was responsible for publishing handbooks, pamphlets and other communications/graphics materials.

OTS records reveal that OTS made purchases pursuant to purchase orders starting in October 1989 from Fine Print, a Bladensburg, Maryland printing company.

Richard Galik and Elaine B. Wilcomb participated as members of the Technical Proposal Evaluation Committee on November 18, 1991, which resulted in the award of a major print service contract by OTS to Fine Print. Richard Galik was named the Contracting Officer's Technical Representative on this contract. By serving on the evaluation committee, Richard Galik and Elaine B. Wilcomb were required to sign a Procurement Integrity Certification for Procurement Officials.

From 1990 until 1993, Richard Galik and Elaine B. Wilcomb had, and exercised ordering authority against OTS purchase orders with Fine Print. Purchases included print, photocopying and distribution services. The total of OTS business with Fine Print during 1989 through 1993 was \$281,963.

Between 1991 and 1993, Richard Galik operated a personal desktop publishing business known as Communications By Design ("CBD") and in 1992 and 1993, Elaine B. Wilcomb operated her personal desktop publishing business as Green Mountain Graphics ("GMG").

Fine Print had a business relationship with Richard Galik's company, CBD, since June 1991, and Elaine B. Wilcomb's company, GMG, as of April 1992. Mr. Galik's and Ms. Wilcomb's companies provided graphic design, publications and programs for Fine Print.

The business relationship resulted in a substantial financial interest among CBD, GMG and Fine Print. As of June 1, 1993, CBD invoiced Fine Print for \$37,653.85 (19% of CBD's total billing of \$195,183.65). GMG invoiced CBD for \$11,746.45, 70% of its total billing of \$16,772. A review of cancelled checks from Fine Print revealed 56 checks issued to and deposited by CBD starting on May 17, 1991, through April 21, 1993 totalling \$31,673.53. Richard Galik and Elaine B. Wilcomb and Fine Print failed to advise or disclose to the Government these circumstances, and Richard Galik and Elaine B. Wilcomb did not make any attempts to recuse themselves from the contract selection process that resulted in the selection of Fine Print as an OTS contractor.

On May 16, 1994 Galik pled guilty to a felony pursuant to 18 U.S.C. § 216(a)(2) for violating 18 U.S.C. § 208(a). Wilcomb pled guilty to a misdemeanor under 216(a)(1) for violating 18 U.S.C. § 208(a). Both defendants received probation and paid civil penalties under 18 U.S.C. § 216 of \$7,000 and \$3,000 respectively.

6. United States v. Janet Scarlett -- Scarlett was a contracting officer with the Air Force. When the Air Force decided to cancel a catering contract under her supervision, Ms. Scarlett arranged for earlier than normal payment of the cancellation fee. At the same time, Ms. Scarlett was negotiating with the caterer for possible future employment. Ms. Scarlett pled guilty to one count of violating 18 U.S.C. § 208. She received three years probation, a \$500 fine, and paid a \$50 special assessment.

Prosecution handled by the United States Attorney for the Central District of California.

7. United States v. Frank Rehm -- Rehm was employed as a contracting officer in Rome, New York for the Air Force. In return for favorable treatment in contracting, employees of Sperry/Unisys agreed to provide him with money in the form of condominium rental payments between 1983 and 1988. That money was paid through different intermediaries in order to disguise the purpose and the source of the funds. In addition, the investigation disclosed that Sperry/Unisys purchased certain valuable goods and items for the condominium. Finally, the investigation disclosed that Sperry/Unisys purchased smaller value items, such as dinners and basketball tickets, for Mr. Rehm. Due to statute of limitations problems, the investigation focused on the payment of the smaller value items.

On January 27, 1994, Mr. Rehm pled guilty to an information charging a single misdemeanor count under 18 U.S.C. § 209, unlawfully augmenting his salary while employed by the Air Force. Mr. Rehm was ordered to pay a fine of \$6,000, which the Court calculated to be three times the value of those accepted items.

Prosecution handled by the United States Attorney for the Northern District of New York. The investigation arose as part of the Illwind Investigation into procurement fraud in the military. The investigation was jointly carried out by the Defense Criminal Investigation Service, the Air Force Office of Special Investigations and the Federal Bureau of Investigation.

8. United States v. Nuriel Vardi and David Vardi -- The defendants were brothers who paid a guard at a Government auction so that they would be given preferential treatment. Both defendants pled guilty on February 3, 1994 to a misdemeanor information charging violations of 18 U.S.C. § 209 (supplementation of a Government employee's salary). Sentence of probation and a fine of \$1,000 was imposed on each.

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

9. United States v. Richard J. McCarthy -- McCarthy served as the Manager of the Airway Facilities Branch for the Federal Aviation Administration and resigned on March 1, 1992. While serving as the Manager of the Airway Facilities Branch, McCarthy had official involvement in the procurement of "airway facilities training services." This FAA contract was valued at \$43,607,755.

On March 27, 1992, McCarthy accepted a position with a bidder for the above described contract as "Manager, Training Services on XYZ's Federal Aviation Administration's Airway Facilities Contract."

On August 10, 1992, the bidder included McCarthy's resume as "Program Manager" in the bid proposal. Members of the Source Evaluation Board became concerned as to the possible violations of procurement integrity laws after recognizing McCarthy's name, and sought advice from FAA legal counsel. An official investigation was requested by FAA legal counsel on June 8, 1993.

Evidence produced during the investigation indicated that McCarthy had personally reviewed, amended, and corrected the Statement of Work for the procurement. Additionally, McCarthy, when serving as the Manager of the Airway Facilities Branch, was responsible for the nominations of two selection board members for the contract. The selection board consisted of a group of FAA employees who would ultimately award the contract.

After resigning, McCarthy appeared before the FAA on behalf of the bidder, his then employer, at meetings pertaining to the procurement.

McCarthy was charged in a single count information with violating 18 U.S.C. § 207(a)(2). He entered into a plea agreement admitting the violation and on 7/12/95 was sentenced to one year of probation and was fined \$5000.

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

10. United States v. William Carter Alexander -- Alexander was the Director of Plans and Programs, Armstrong Laboratory, Brooks Air Force Base, San Antonio, Texas. Between July 29, 1993, and September 27, 1993, Alexander met with an FBI undercover agent whom Alexander believed was a businessman preparing to purchase Krug Life Sciences, Inc. ("KRUG"). KRUG was a private company based in Houston, Texas which had prime contracts with the U.S. Department of the Air Force, Air Force Material Command, Brooks Air Force Base and the National Aeronautics and Space Administration, Johnson Space Center. Alexander met the agent to negotiate future employment at KRUG. The agent offered Alexander the position of Chief Executive Officer and an annual salary of approximately \$200,000, if Alexander could provide Government information pertaining to KRUG on existing Government contracts. The agent told Alexander that such information would facilitate the agent's purchase of KRUG. Alexander gave the agent documents pertaining to contracts then existing between the Department of the Air Force and KRUG.

Alexander was charged in a one-count criminal information with violating § 208(a). Alexander pled guilty to the violation and was sentenced to two years probation, a \$2500 fine and 100 hours of community service.

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