



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: 1997 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, 1997 through December 31, 1997. Information on nine 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

1997 Conflict of Interest Prosecution Survey

1. United States v. Michael Leingang

United States v. Arthur Picou

United States v. Brent M. Smith

United States v. Brent Q. Smith -- Leingang and Brent Q. Smith were employees of the Internal Revenue Service (IRS). Picou and Brent M. Smith were co-owners of Payless Car Rental (Payless).

Payless was experiencing serious financial problems and had substantial Federal employment tax delinquencies. The co-owners of Payless, Picou and Brent M. Smith (the co-owners), met Leingang who introduced them to Brent Q. Smith. Brent Q. Smith told the co-owners how they could get their tax case transferred from the IRS office where it was pending to the IRS office where Brent Q. Smith was employed. At that point, Brent Q. Smith would permit Payless to remain in business and pay a minimal amount of its tax deficiency. The co-owners of Payless agreed to a payment of \$1,000 per month for this service. During this time period, the co-owners provided Leingang and Brent Q. Smith with free rental cars and a paid vacation to Florida. Brent Q. Smith also invested money in Payless and acquired an interest in the company.

In a separate scheme, Brent Q. Smith signed a one-year contract with the Orleans Levee Board to perform an economic study. The contract called for Smith to be paid \$85 per hour; he received approximately \$38,000 over the following year. At the same time, the Orleans Levee Board had tax disputes pending under Smith's supervision at the IRS. Smith did not disclose this fact to his supervisors at the IRS.

Leingang and Picou each pled guilty to violating 18 U.S.C. § 203, offering compensation to a Government employee for representational services rendered in a particular matter before a department or agency of the United States. Leingang received one year probation and a \$250 fine. Picou was sentenced to five years probation and \$90,191 restitution. Brent Q. Smith pled guilty to violating 18 U.S.C. § 208(a), taking official action in matters affecting a personal financial interest, as well as 18 U.S.C. § 201(b)(2) (bribery); he was sentenced to twelve months in jail, three years supervised release, and a \$3,000 fine. Brent M. Smith pled guilty to violating 18 U.S.C. § 201(b)(1)(A) (bribery) and was sentenced to five years probation and a \$3,000 fine.

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

2. [Case 2] [The Government employee] was appointed [to a position with] the United States Postal Service (USPS) on May 4, 1992. From 1977 through 1984, before becoming a Government employee, [he] had acquired shares of stock in the Coca-Cola Company (Coca-Cola).

Beginning in 1994, marketing personnel with USPS began exploring a potential "strategic alliance" between USPS and Coca-Cola. The [Government employee's] role was to advise the Board of Governors in connection with their consideration of the strategic alliance. Between

January and August of 1996, [the Government employee] attended approximately six meetings during which the strategic alliance between USPS and Coca-Cola was discussed. On July 15, 1996 and August 20, 1996, [he] directed a USPS employee to prepare a financial impact analysis of the proposed alliance with Coca-Cola so that the Management Committee could consider taking the matter to the Board of Governors for approval.

On or about August 22, 1996, [the Government employee] was advised by an attorney from the General Counsel's Office of USPS that his participation in matters relating to the proposed alliance with Coca-Cola was improper in light of his ownership of Coca-Cola stock. The following day, [the Government employee] formally recused himself from participation in consideration of the alliance with Coca-Cola. On or about September 10, 1996, [he] sold his Coca-Cola stock.

Pursuant to 18 U.S.C. § 216, 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 October 30, 1997, the parties signed a settlement agreement in which [the Government employee] denied liability but agreed to make a payment of \$27,550 to the United States in exchange for the dismissal of the United States' complaint against him. The amount of the payment represented the increase in the value of [his] Coca-Cola stock from the date he signed his public financial disclosure form, listing Coca-Cola stock among his assets, and the date of his formal recusal.

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. Andrew Pitt -- Pitt was an Assistant United States Attorney for the Central District of California.

On numerous occasions between April 1993 and July 1995, Pitt made favorable recommendations to the court, the probation office, and other prosecuting offices on behalf of cooperating witnesses and defendants in exchange for hundreds of thousands of dollars. For example, Pitt accepted \$98,000 from a cooperator who had previously been convicted in the Northern District of Texas and on whose behalf Pitt had argued for leniency at the sentencing hearing. In addition, Pitt used his official position to secure entry into the United States of foreign nationals whom Pitt believed would make substantial investments in a company in which he and his wife had a controlling financial interest. Once the foreign nationals entered the United States, two Iranian companies with which they were affiliated loaned a total of \$860,000 to Pitt's company.

On June 16, 1997, Pitt pled guilty to one felony conflict of interest count, 18 U.S.C. § 208, and two counts of wire fraud, in violation of 18 U.S.C. §§ 1343 and 1346. On September 8, 1997, Pitt was sentenced to two years in prison plus three years of supervised release and fined \$7,500.

Prosecution handled by the Public Integrity Section of the Department of Justice's Criminal Division. The United States Attorney for the Central District of California was recused from this case.

4. United States v. Kenneth Stevenson -- Stevenson was an engineer in the Contracts Department at Patrick Air Force Base.

Along with former military personnel and former Government employees, Stevenson started a business called DS&R, the "S" in DS&R standing for his last name. Stevenson was a major shareholder in DS&R. DS&R submitted a contract to Patrick Air Force Base and Stevenson provided the technical evaluations on the contract. Through the bidding process, DS&R was awarded the contract.

Stevenson was charged with participating personally and substantially in a particular matter in which he had a financial interest, in violation of 18 U.S.C. § 208. Pursuant to 18 U.S.C. § 216(a)(1), he pled guilty to a misdemeanor violation of § 208 on July 31, 1997. On October 23, 1997, Stevenson was sentenced to nine months probation and fined \$2,500.

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

5. United States v. Robert Atwell -- Atwell was a Colonel in the U.S. Army assigned as Program Manager for the development of the Longbow Apache attack helicopter built by McDonnell Douglas Helicopter Systems (MDHS).

During August 1995, Atwell talked with the senior vice-president and general manager of MDHS about going to work for MDHS. At the same time, Atwell was the principal briefer at three meetings of high-level Army officials whose role was to consider, based on the briefings, whether to request that the Undersecretary of Defense (DOD) commit \$1.2 billion to MDHS for full-scale production of the helicopter. During the briefings, Atwell recommended that the Army make the request of DOD. On August 23, Atwell submitted an employment application and resume to MDHS. The head of MDHS requested authorization from the president of its parent company, McDonnell Douglas Aerospace, to hire Atwell for the position of program manager for the development and marketing of its commercial helicopters.

Atwell was charged with violating 18 U.S.C. § 208, participating personally and substantially in a particular matter in which an organization with which he was negotiating for employment had a financial interest. He was also charged with violating 18 U.S.C. § 641, theft of public money not exceeding \$1,000, by using a Government issued telephone calling card to make personal long-distance telephone calls. On October 27, 1998, Atwell pled guilty to both counts. He is awaiting sentencing.

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

6. United States v. Pavol Forgac -- Forgac was an inspector for the Federal Aviation Administration (FAA) and reviewed the applications of aircraft component manufacturers.

Forgac was the FAA representative on a flight test of a Ground Proximity Warning System (GPWS) manufactured by Sunstrand Data Control/Allied Signal. A GPWS is a device which shows pilots whether they will fly into a mountain or hit the ground. In the course of his duties for the FAA, Forgac obtained access to information submitted to the FAA by the GPWS' manufacturer and intended for FAA use only. At the same time, Forgac was developing and marketing his own GPWS for sale to the public.

Forgac was charged with a violation of 18 U.S.C. § 208, participating personally and substantially in the FAA's test flight of a GPWS while developing his own GPWS; he pled guilty to the charge on June 30, 1997. He was sentenced to three years' probation and is appealing his conviction based on issues unrelated to the conflict of interest statute (i.e., counsel and discovery issues).

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

7. United States v. James Pike and Robert Miracle -- Pike was the cafeteria manager and contracting officer at the U.S. Naval Surface Warfare Center in Crane, Indiana. Miracle, Pike's father-in-law, started a computer equipment business for the purpose of making money with Pike.

Miracle and Pike concocted a scheme whereby Miracle bought computer equipment from a third party vendor through a computer supply magazine and Pike agreed to steer Government contracts to Miracle to purchase the computer equipment. Miracle and Pike overcharged the Government for the equipment and split the overcharge. Through the Government contract, Miracle was paid \$29,000 for \$11,000 worth of computer equipment. Pike and Miracle shared the \$18,000 overcharge.

Miracle pled guilty to a misdemeanor violation of 18 U.S.C. § 209 which prohibits the payment of supplementation to a Government employee's salary and Pike pled guilty to wire fraud and mail fraud. In their pre-indictment plea agreements, Miracle agreed to pay \$18,000 restitution and Pike agreed to pay an amount of restitution to be determined at the sentencing hearing. Both defendants are awaiting sentencing.

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

8. United States v. Naftali Applebaum -- Applebaum was not a Government employee; he owned the Elite Cab Company.

From 1989 until 1992, Applebaum conspired with Ronald Stokes, the Chief of the D.C. Office of Taxicabs, to provide illegal taxicab drivers' licenses to unqualified drivers. The drivers paid money to Applebaum who took the money and the drivers' names to Stokes. Stokes

prepared the illegal licenses. Applebaum also paid Stokes money for other illegal favors, such as registering vehicles that should not have been registered.

Applebaum was charged with supplementing the salary of a Government employee, in violation of 18 U.S.C. § 209. On September 23, 1997, Applebaum pled guilty to the § 209 violation and agreed to testify against Stokes. Stokes was convicted of nine felony counts, including accepting bribes and gratuities in violation of 18 U.S.C. § 201. Applebaum is scheduled to be sentenced on May 20, 1998.

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