

Anatomy of a Corruption Case

presented by

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I. Overview of Prosecuting Agencies

- U.S. Attorney
 - Grand Jury
 - Indictment
- District Attorney/State Attorney General
 - Complaint
 - Grand Jury

II. How A Prosecution Gets Started

- Undercover Operation
 - Bri-Spec
 - D.C. operation ABScam
 - Murtha on YouTube
- Anonymous Informant
 - Quackenbush/Grays unexplained wealth
 - FPPC fields calls anonymously
- Disgruntled Staffer
- Cooperating Defendant
- Disgruntled Contributor
 - Strip clubs; liquor licensees; others seeking favors for money
 - Scorned wife/husband

Congressman
John Murtha
(D-PA)

III. How Evidence is Gathered

- Witness interviews
- Do not count on Code of Silence
- Document subpoenas

IV. Potential Charges

■ Bribery

Section 666. Theft or bribery concerning programs receiving Federal funds

(a) Whoever, if the circumstance described in subsection (b) of this section exists -

(B) corruptly solicits or demands for the benefit of any person, or accepts or agrees to accept, anything of value from any person, intending to be influenced or rewarded in connection with any business, transaction, or series of transactions of such organization, government, or agency involving any thing of value of \$5,000 or more; or

Bribery, *cont.*

Section 666, *cont.*

(2) corruptly gives, offers, or agrees to give anything of value to any person, with intent to influence or reward an agent of an organization or of a State, local or Indian tribal government, or any agency thereof, in connection with any business, transaction, or series of transactions of such organization, government, or agency involving anything of value of \$5,000 or more;

shall be fined under this title, imprisoned not more than 10 years, or both.

- Little Used These Days in favor of Honest Services Mail/Wire Fraud

Honest Services Mail and Wire Fraud

■ Honest Services Mail Fraud

8.102 MAIL FRAUD—SCHEME TO DEFRAUD—DEPRIVATION OF
RIGHT TO HONEST SERVICES
(18 U.S.C. §§ 1341 and 1346)

The defendant is charged in [Count _____ of] the indictment with mail fraud in violation of Section 1341 of Title 18 of the United States Code. In order for the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant made up a scheme or plan to deprive [*victim*] of [his] [her] right to honest services;

Second, the defendant acted with the intent to deprive [*victim*] of [his] [her] right to honest services; and

Third, the defendant used, or caused someone to use, the mails to carry out or to attempt to carry out the scheme or plan.

A mailing is caused when one knows that the mails will be used in the ordinary course of business or when one can reasonably foresee such use. It does not matter whether the material mailed was itself false or deceptive so long as the mail was used as an important part of the scheme, nor does it matter whether the scheme or plan was successful or that any money or property was obtained.

Honest Services Mail and Wire Fraud, *cont.*

- Wire Fraud
 - Same elements but substitute use of the wires for use of the mails and add interstate nexus
 - Examples of wires
 - Use of phone
 - Interstate computer use
 - Criminal Record Check
 - Causing bank to wire money
 - Use of e-mail
 - Television transmission
- State Equivalent
 - Gov Code 1090, 81001(b), 87100, 87103
 - Penal Code 68

Honest Services Mail and Wire Fraud, *cont.*

A. History of Mail Fraud

1. 1970-1980s, Pre- *McNally* Era

In the 1970s and 1980s, federal prosecutors were allowed to extend the mail and wire fraud statutes to "schemes to defraud ... designed to deprive individuals, the people, or the government of intangible rights, such as the right to have public officials perform their duties honestly." See *McNally v. United States*, 483 U.S. 350, 358 (1987). With few exceptions, the prosecutions received little resistance from the courts until *McNally*, when the Supreme Court soundly rejected the "honest services" theory.

Honest Services Mail and Wire Fraud, *cont.*

2. *U.S. v. McNally* Case

In *McNally*, a Kentucky public official and others were convicted of mail fraud under 18 U.S.C. Section 1341 by conspiring to funnel insurance commissions from the company which handled Kentucky's workman's compensation insurance to a company they controlled. The Supreme Court overturned the convictions of a Kentucky public official and a private individual who had participated in the patronage scheme.

While acknowledging that the defendants may have deprived citizens of Kentucky of "certain 'intangible rights,' such as the right to have [Kentucky's] affairs conducted honestly," the Court employed the rule of lenity, adopted the less "harsh" interpretation of the mail fraud statute, and held that it was "limited in scope" to the protection of property rights, and did not encompass schemes to defraud citizens of their intangible rights of honest services and impartial government.

Honest Services Mail and Wire Fraud, *cont.*

3. Post *McNally* Legislation

In November 1988, Congress effectively overruled *McNally* by enacting §1346, in large part to ensure that mail and wire would again reach the deprivation of citizen's rights to the honest services of their public officials. The so-called honest services statute provides:

For the purposes of this chapter [i.e., the mail and wire fraud statutes], the term "scheme or artifice to defraud" includes a scheme or artifice to deprive another of the intangible right of honest services.

Honest Services Mail and Wire Fraud, *cont.*

2. *Congressman Randy "Duke" Cunningham*

The government spelled out its definition of honest-services fraud. The defendant "conspired and agreed to devise a material scheme to defraud the United States of its right to defendant's honest services, including its right to his conscientious, loyal, faithful, disinterested, unbiased service, to be performed free of deceit, undue influence, conflict of interest, self-enrichment, self-dealing, concealment, bribery, fraud and corruption."

Classic Public Corruption/Honest Services Mail Fraud

- a. Trading votes for money/property
- b. Citizens of San Diego entitled to his honest vote, not one paid for and influenced by defense contractors.

Honest Services Mail and Wire Fraud, *cont.*

B. Issues

- What, is the "intangible right of honest services"?
- What "honest services" are owed,
- By whom?
- How are such "honest services" breached?

Honest Services Mail and Wire Fraud, *cont.*

6. *Doolittle Investigation*

In exchange for Abramoff hiring Doolittle's wife's firm Doolittle voted in favor of Abramoff's client's interests.

7. *William Jefferson Investigation*

The FBI found \$75,000 in cash in his freezer.
Any questions?

8. Torres- RICO

Bought City Planning Commission members off to secure liquor licenses for business.

Honest Services Mail and Wire Fraud, *cont.*

C. Sample Cases

1. *San Joaquin County Sheriff*

- a. Conflict of Interest Case
- b. Sheriff failed to disclose personal, financial interest in company on Statement of Economic Interest form
- c. Sheriff used official office, capacity for his own financial benefit.

Honest Services Mail and Wire Fraud, *cont.*

3. *SDCERS Case*

The defendants were charged with conspiring to deprive the city and pensioners of their right to honest services by illegally obtaining enhanced retirement benefits for themselves in exchange for allowing the financially strapped city to under fund the pension system.

1. Personal/financial benefit obtained
2. Self-dealing
3. Failure to disclose material information that showed the public official benefited personally
 - a. Similar to Statement of Economic Interest.

Honest Services Mail and Wire Fraud, *cont.*

4. *Quackenbush Investigation*

Department of Insurance Commissioner and Deputy Commissioner investigated for using money obtained as a result of settlement monies paid by insurance companies after earthquake for personal and political reasons.

5. *Jack Abramoff*

Charged with Conspiracy, Honest Services Mail Fraud and Tax Evasion for illegally giving gifts and making campaign donations to legislators in return for votes or support of legislation.

V. The Likelihood of Prosecution

- Friends in high places
- McFall: A case in point
- Lonely at the bottom

VI. How To Avoid Being Indicted For Corruption

- a. Avoid the appearance of conflicts of interest.
 - Do not have an “on the side” consulting business where you could potentially vote on legislation that touches on your side consulting business.
 - Avoid conflict with family members.
 - Do not do anything that gives the appearance that you are using public money for private gain. The appearance is enough to get you in trouble.
 - Seek outside counsel advice.
- b. Avoid the appearance of any self-dealing, no matter how slight.
 - If you have to ask, you have a problem.

How To Avoid Being Indicted For Corruption, *cont.*

- c. **Disclose all information that could possibly touch on your conflict of interest or that of any other official..**
 - **Cover up becomes the crime**
 - **Martha Stewart, Scooter Libby**
 - **Statement of Economic Interest**
 - **Federal Jurisdictional hook**
 - **FPPC**

VII. Potential Sentences

- **Bring your toothbrush**
- **McFall – 10 years**
- **Abramoff – 5 years 10 months**
- **BriSpec sentences**
 - **Sen. Paul Carpenter – 87 months**
 - **Sen. Joseph Montoya – 78 months**
 - **Assemblyman Patrick Nolan – 25 months**
 - **Assemblyman Frank Hill – 46 months**
 - **Costal Commr. – Mark Nathanson – 60 months**
 - **Lobbyist Clay Jackson – 78 months**
- **Scooter Libby – 30 months**
- **Troy Ellerman – 30 months**

VIII. A Fine Line You Do Not Want To Walk

- **Perception is everything**
- **Quackenbush**
- **Criminalization of Politics**
- **Letter of the Law Defense**

IX. Why They Do It

- **Hollywood Syndrome**
- **Simple Greed**
- **Caught Up In The Process/Lost Personal Compass**
- **Fast Crowd/Peer Pressure**