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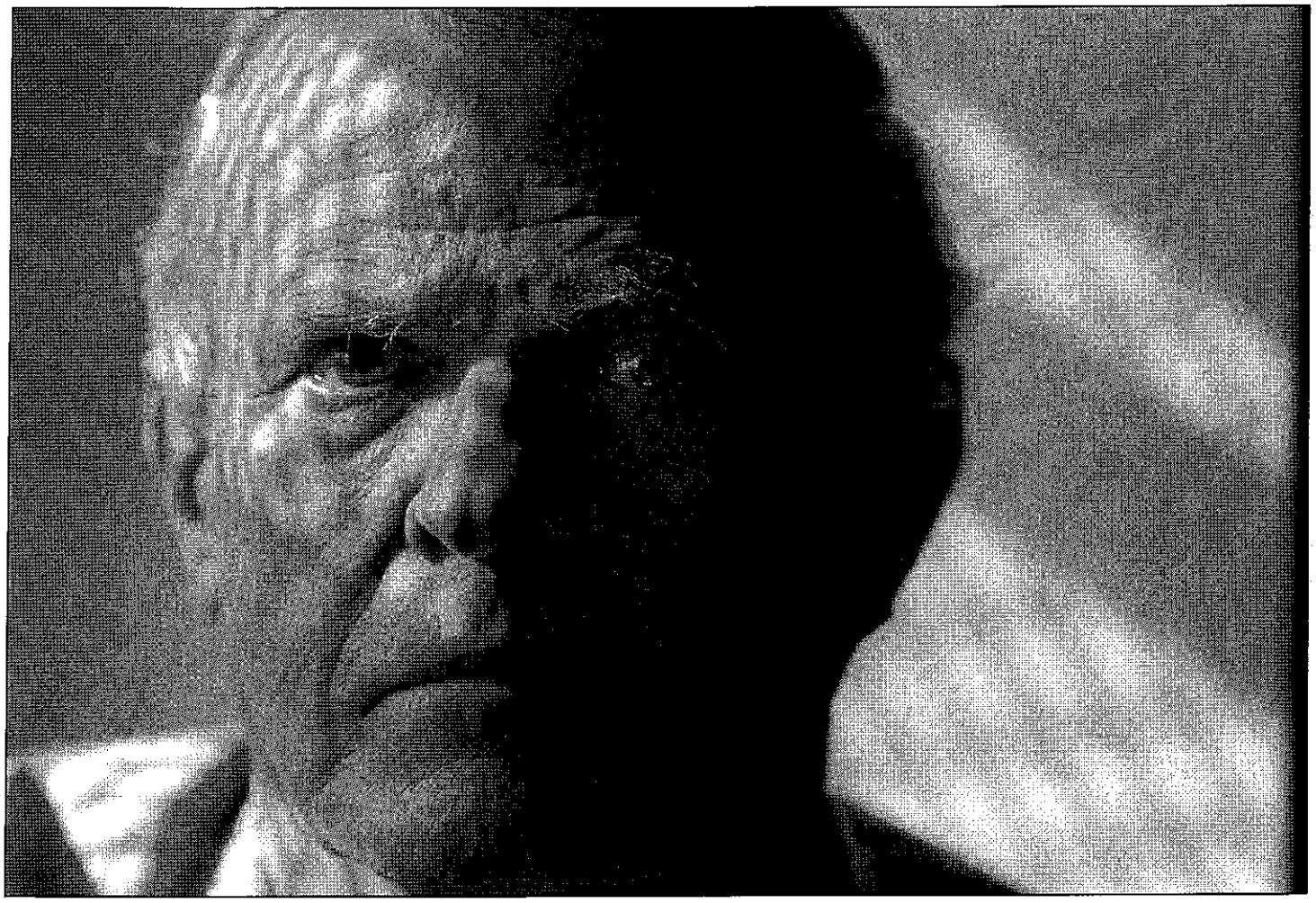
Win at all Costs

Part 1 of 10

Government misconduct in the name of expedient justice

Out of control

Legal rules have changed, allowing federal agents, prosecutors to bypass basic rights



Joe Patronite

Loren Pogue had never been involved with drugs until a government informant tied him to a phony real estate deal after lying about a drug cartel link. The informant got cash for the information. Pogue, 65, got 22 years in prison, even though he's still not sure why he was the target of an investigation to begin with.

Misconduct by federal prosecutors almost never penalized

By Bill Moushey
Post-Gazette Staff Writer

Loren Pogue has served eight years of a 22-year federal prison sentence on drug conspiracy and money laundering charges.

Pogue, a Missouri native, never bought drugs, never sold them, never held them, never used them, never smuggled them, never even saw them.

But because federal prosecutors allowed a paid government informant to lie about Pogue's involvement in the sale of a parcel of land to supposed drug smugglers, he was convicted. Under tough federal sentencing guidelines, a judge had no choice but to give the Air Force veteran what might effectively be a death sentence.

Pogue — father of 27 children, 15 of them adopted — is 65. He doesn't expect to leave prison alive, and as details later in this story will show, he is baffled that the government he served for more than 30 years worked so hard to betray him.

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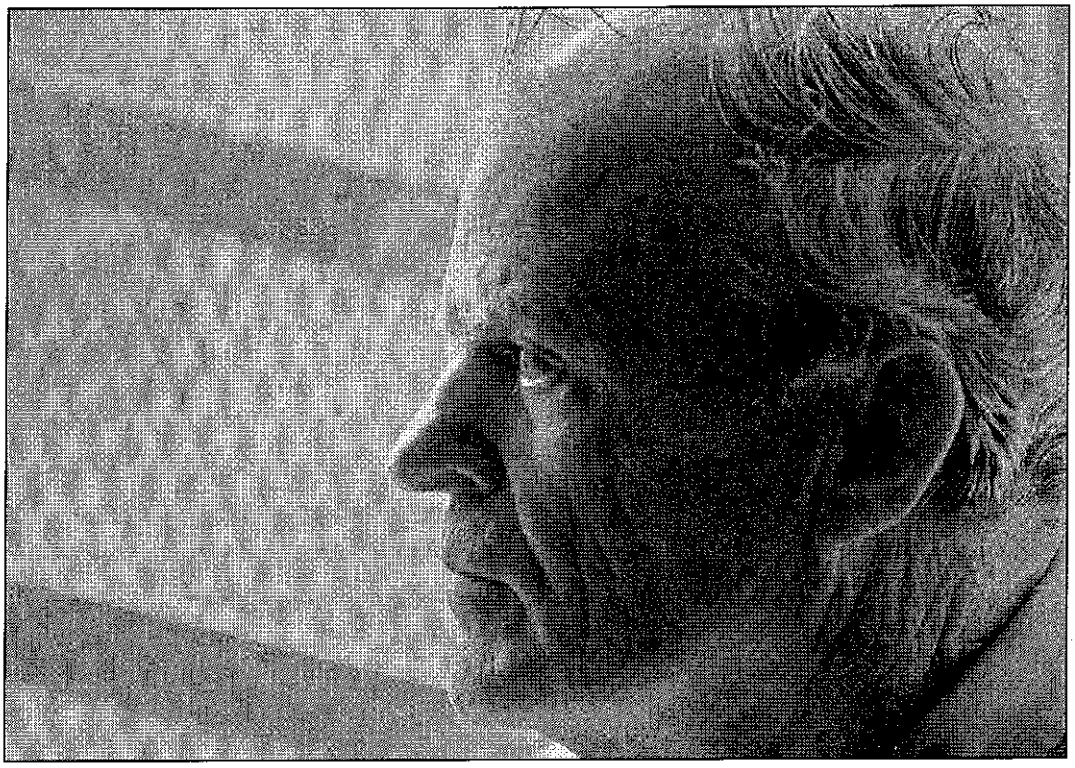
In another case, hundreds of miles away, federal agents interrogated businessman Dale Brown for four hours at a Houston, Texas, warehouse. When he tried to leave, they stopped him. When he asked for a lawyer, they refused to get him one.

After Brown finally was charged in a government sting called Operation Lightning Strike, federal prosecutors denied that the warehouse interrogation had even happened. They said the dozen others who reported the same coercive tactics in the sting were making it up, too.



Joe Patronite

Loren Pague, above was caught in a government sting driven by a paid informant. When the sting failed to snare big-time drug-dealers, the informant trapped someone he knew: Pogue.

Federal sting operations are supposed to snare criminals, but in Operation Lightning Strike, federal agents spent millions of dollars entrapping innocent people who worked on the periphery of the U.S. space program.

The evidence against them was contrived. The guilty pleas were coerced. Those who fought the charges won.

Brown said all it cost him was his business, his savings, his family and his health.

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In Florida, prisoners call the scam "jumping on the bus," and it is as tantalizing as it is perverse. Inmates in federal prisons barter or

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About this series

Hundreds of times during the past 10 years, federal agents and prosecutors have pursued justice by breaking the law.

They lied, hid evidence, distorted facts, engaged in cover-ups, paid for perjury and set up innocent people in a relentless effort to win indictments, guilty pleas and convictions, a two-year Post-Gazette investigation found.

Rarely were these federal officials punished for their misconduct. Rarely did they admit their conduct was wrong.

New laws and court rulings encourage federal law enforcement officers to press the boundaries of their power while providing few safeguards against abuse.

Victims of this misconduct sometimes lost their jobs, assets and even families. Some remain in prison because prosecutors withheld favorable evidence or allowed fabricated testimony. Some criminals walk free as a reward for conspiring with the government in its effort to deny others their rights.

Today, in the first of a 10-part series, the Post-Gazette examines a law enforcement culture that has allowed the pursuit of a conviction to replace the pursuit of justice, no matter what the cost.

Tools used to trap criminals sometimes snare the innocent

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gation — from the huge pools of money available for federal investigations to the lack of safeguards and oversight to the use and abuse of grand juries.

One key component of how federal law enforcement is supposed to work has received only passing notice. In rulings reiterated over and over during the past 50 years, the Supreme Court has made clear that federal agents and prosecutors have a broader duty than simply investigating, capturing and prosecuting criminals. They also are entrusted to ensure that the constitutional rights of suspects and defendants are not abused.

"The function of the prosecutor under the federal Constitution is not to tack as many skins of victims as possible against the wall," said the late Supreme Court Justice William O. Douglas. "His function is to vindicate the rights of the people as expressed in the laws and give those accused of crime a fair trial."

There is every reason to believe that most federal agents and prosecutors respect Douglas's edict, but this investigation found a significant minority do not, and their numbers seem to be on the rise.

"The problem is at the margins — but the margins are growing," said an article titled "Curbing Prosecutorial Excess," which Arnold I. Burns co-wrote in the July 1998 issue of The Champion, a publication of the National Association of Criminal Defense Lawyers.

Burns is no left-wing zealot. A lifelong Republican, he was appointed deputy attorney general by Reagan, resigning that office in the wake of accusations about the conduct of Burns' boss, Attorney General Edwin Meese.

There is a fragile balance between the rights of a defendant and the power of the government, Burns said in a recent interview. That balance has shifted, resulting in misconduct in every phase of federal criminal cases — from the investigation, to the grand jury, to the arrest, to the trial, to the sentencing, he said.

Despite Douglas's eloquent admonition to the contrary, federal law enforcement officers charged with enforcing the law too often decide they're above it.

The powerful prosecutor

Some would argue that's nothing new.

Federal law enforcement officers, after all, have always wielded great power. U.S. courthouses attract the politically ambitious, who can trade on a U.S. prosecutor's crime-fighting stature to pursue higher office.

"The [federal] prosecutor has more control over life, liberty and reputation than any other person in America," said former Attorney General and Supreme Court Justice Robert H. Jackson. And that was in 1940.

But Jackson would have found the array of crime-fighting tools available to federal agents and prosecutors today staggering — from racketeering to money laundering to conspiracy laws.

At the same time, Congress has eliminated many of the checks and balances aimed at preventing the abuse of this power, from trimming protections against illegal searches and seizures to punishing people who plead innocent rather than guilty in federal court. A person who fights a federal charge must, by law, receive more prison time than someone who pleads guilty to the same crime.

Presidents Reagan, Bush and Clinton have signed on to this new crime-fighting order, and a more conservative Supreme Court has upheld these new laws at almost every turn.

The Justice Department — the cabinet agency that is supposed to ensure that these new powers are administrated fairly — has downplayed that role to the point that few complaints about abuse are even investigated.

These changes didn't happen in a vacuum. In the past 20 years, voters have made it clear that they love get-tough-on-crime politicians. A campaign promise to toss drug dealers in prison will trump concerns about fair trials or individual rights every time.

Congress, the Justice Department, the electorate and the courts have combined to give this nation's most aggressive law enforcement agents and prosecutors far more power than they've ever had before and few reasons to worry about the consequences of abusing that power.

Add political ambition to the mix, and the results are predictable and frightening, Merkle said.

A federal prosecutor "is a political animal," he said. "His boss is politically ambitious. He is being pressured for budgetary purposes to get statistics, and that causes them to prosecute absolutely [bogus] cases to get those statistics."

Other former federal prosecutors agree.

"I like to think that most prosecutors are honest and most agents are honest, but there are unfortunately enough examples of dishonesty cropping up that it is troubling to anybody in this business," said Plato Cacheris, who was born and raised in Oakland and worked eight years as a federal prosecutor before becoming one of Washington, D.C.'s, top criminal defense lawyers. He currently represents Monica Lewinsky.

Thomas Dillard, who spent 14 years as an assistant U.S. attorney in Knoxville, Tenn., then four years as U.S. attorney for the Northern District of Florida, said a lack of real world experience among prosecutors also has hurt. "You've seen an increase in career prosecutors that you didn't have 15 years ago, people who never practiced in the private sector," he said. "They sit in this lofty tower with a rather skewed vision of the world. They are on a divine mission, and everything that gets in their way is evil. The ends justify the means."

Huge budgets exacerbate the problem. "The war on crime has gotten to the point that all these [prosecutors'] offices are stuffed to the gills with resources," Dillard said. "They have to justify their existence. They go out and make things crimes that weren't even crimes 10 years ago.

"For it to get to the point where prosecutors honestly believe they are immune from state ethical standards, they honestly believe purchasing witness testimony at any cost is OK, and they honestly believe a grand jury is their own little forum, all of that is . . . bizarre."

Media attention on crime — federal crime in particular — has become huge. A stream of cable television talk shows has put federal crimefighters in the limelight every night on prime

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time.

Playing to the camera becomes another pressure on law enforcement officers to win at any cost. "The media is always looking for the big crime story, and society in general is always looking for someone to one-up its array of crime," Merkle said.

The person seldom heard in all of this is the victim, Merkle said. "People don't know how they're being suckered."

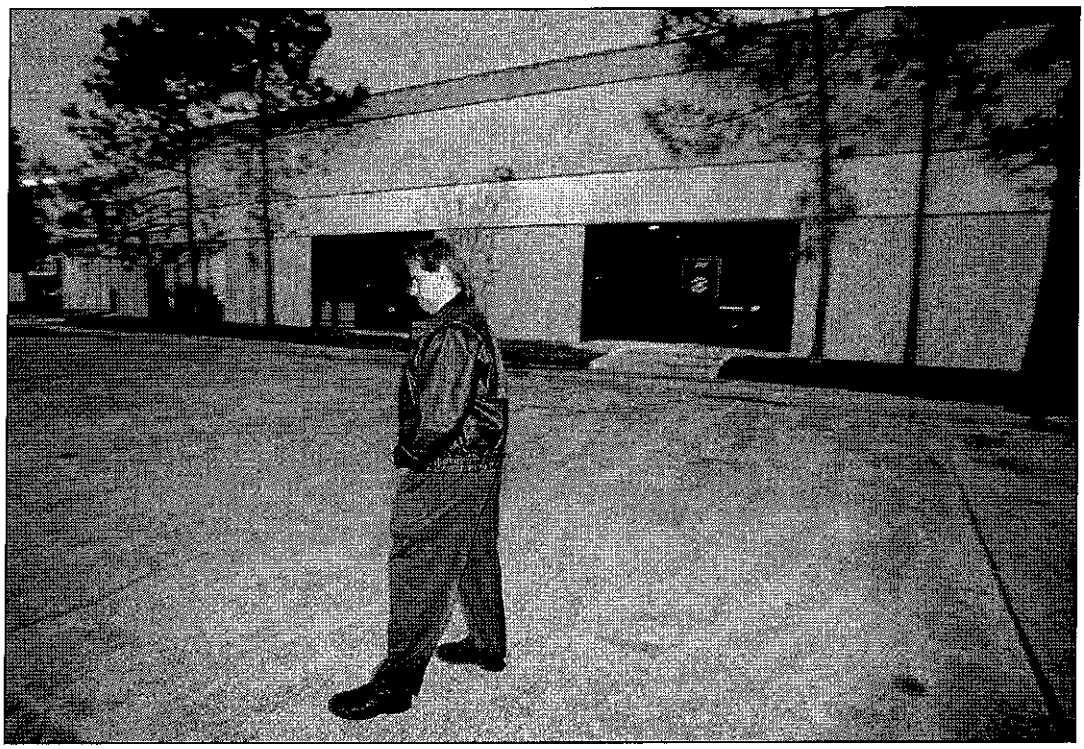
Nor do federal courts help to prevent misconduct as much as they once did. "The courts used to more consistently monitor both prosecutorial and law enforcement power in general, [but] over the past 10-15 years, the courts have contracted that power to the point of a total nullity," said Bennett Gershman, a former New York State prosecutor who teaches law at Pace University of New York. His law textbook, "Prosecutorial Misconduct," was published last year.

"The courts used to be a buffer between prosecutors and the rights of defendants," he said. "They are now simply a rubber stamp."

Federal law enforcement officers know that in the pursuit of convictions, they have a key advantage: Their actions will do them no harm. No matter what the misconduct, it is almost impossible for a criminal defendant to sue a federal officer or prosecutor for damages. No matter what the misconduct, the Justice Department rarely disciplines agents or prosecutors who cross the line into unethical or illegal behavior.

Government stings

Pogue and Brown were the victims of a government sting operation, a crime-fighting tool that Congress approved in 1974. The law allows federal agents to set up an illegal enterprise with the goal of luring in criminals and then arresting them.



Darrell Sapp/Post-Gazette

Dale Brown walks outside a Houston warehouse where he was interrogated by federal agents. Brown was caught in a sting designed to catch criminal activity around the U.S. space program. Charges against him were eventually dismissed. But he lost everything.

Used properly, it can be effective, but there have been dozens of cases over the past decade in which government stings trapped the innocent or exaggerated the misconduct of suspects. Time after time, former criminals, con artists, dope smugglers, perjurers and killers were employed to help catch suspects in exchange for reduced sentences or even six-figure payoffs. With straight faces, prosecutors insist in court that none of these witnesses have an incentive to lie.

In 1990, Mitchell Henderson was a disgraced former police officer deeply in debt because of alcohol, marijuana and other drug abuse. Even so, the Drug Enforcement Administration promised him as much as $250,000 to set up a sting operation to try to snare Latin American drug dealers.

Henderson mostly failed — he helped the DEA trap one low-level Colombian drug smuggler after more than six months of work. That's when he set his sights on Pogue, whom he'd once worked for in Costa Rica, where Pogue lived and operated a real estate development business.

Henderson told Pogue he'd found businessmen who wanted to buy a piece of property in Costa Rica. Pogue agreed to close the land deal. For a little more than two hours, he listened as federal agents, disguised as Colombian drug smugglers, talked about the illegal drugs they would ship through the landing strip they would build on the land they were about to buy.

Pogue admits he should have left the room when the conversation turned to drugs. Instead, on May 30, 1990, he was arrested.

At Pogue's trial, Henderson told two key lies: first, that a Colombian drug dealer had approved the purchase of the land Pogue would close on, and second, that Pogue had been aware of a drug connection to the land sale from the start.

There never was a deal for any drug smuggler to buy the land, according to DEA and court documents that Pogue obtained after his conviction. Henderson made that up. The documents confirm that Henderson, at another trial, testified that Pogue knew nothing of the drug connection to the land until he arrived to close the deal.

Pogue's attorneys say this evidence would have destroyed the prosecution's key argument: that Pogue had been a willing participant in the drug conspiracy long before he walked into a motel room to close the deal. Despite this clear evidence to the contrary, feder-

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al prosecutors to this day insist that everything Henderson said was true.

The grand jury

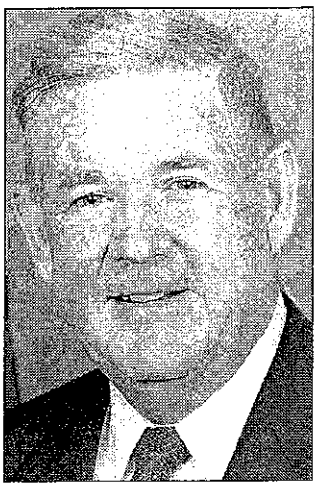
The framers of the Constitution included grand juries as a safeguard in the Bill of Rights, providing that no person should stand trial for "a capital or otherwise infamous crime" without grand jurors first determining that sufficient evidence existed to press charges.

William B. Moore Jr. laughs at that one. A federal grand jury indicted him on criminal charges that he tried to win a contract for his Texas company by using a lobbyist to bribe the U.S. Postal Service.

At his trial in 1989, the government produced 50,000 pages of evidence and 84 witnesses. Then the judge asked the federal prosecutor: When are you going to link Moore to the crime? The prosecutor never did. The judge dismissed the charges before the defense even presented its case.

Moore and his company spent almost four years and $9 million defending themselves. After the trial, he filed complaints with the Justice Department and sued the government, saying the prosecutor manipulated the grand jury process to indict him.

The suit describes a particularly telling incident: Prosecutors promised a witness leniency if he would testify about the bribery scheme. Outside of the grand jury's presence, a prosecutor questioned the witness about Moore's knowledge of the scheme. Nineteen times during that intimidating session, the witness told the prosecutor that he had no idea if Moore knew about the bribery. The witness said he would not lie to satisfy the prosecutor's demands. The prosecutor tore up the government's non-prosecution agreement in his face.



U.S. Rep. John Murtha, D-Johnstown, helped draft legislation designed to protect citizens from federal prosecutors' misconduct by creating an independent board to monitor their work.

The witness softened. His lawyer begged for another chance. So under careful questioning by the prosecutor before the grand jurors, the witness hedged enough to hint that Moore might be implicated in the scheme. Grand jurors never learned about the witness's 19 emphatic denials.

The Justice Department's Office of Professional Responsibility found no problem with the prosecutor's conduct. The report of its investigation, kept secret, exonerated him of wrongdoing in 1991.

If the government office that oversees federal officers finds no problem with such conduct, what recourse is there against a federal prosecutor content to manipulate a grand jury to win an indictment? Almost none, the Post-Gazette found. The government enjoys almost absolute immunity from civil suits based on its conduct in criminal trials. Moore's efforts to sue prosecutors for framing him have meandered through the courts for the past eight years, meeting intense government opposition at every juncture.

U.S. Rep. Joseph McDade, R-Scranton, was cleared by a jury following an eight-year investigation into charges he accepted bribes from defense companies. McDade joined Murtha in drafting Citizens Protection Act, designed to curb abuses by federal prosecutors.

Discovery violations

Discovery is a cornerstone of American justice. It requires that federal prosecutors turn over to criminal defendants any evidence that might help prove the defendants' innocence or that might show the biases or lack of credibility of witnesses against them.

The reason is simple, the Supreme Court has ruled: Withholding this information could result in an unjust verdict. Yet in its investigation, the Post-Gazette found hundreds of cases where prosecutors intentionally withheld discovery information.

In May 1998, James R. Sterba went on trial in Tampa, Fla., on charges of soliciting a minor over the Internet for an unlawful sexual encounter, a charge he vehemently denied. The key witness against him was a government informant. Federal agents paid her $2,000 to visit Internet chat rooms to lure men to a hotel with the promise a girl would be waiting.

When Sterba's attorneys asked prosecutors for information that might reflect on the credibility of this witness, they were assured there was none. The trial was almost over when Sterba's lawyers learned:

- The witness was using a false name that hid her long criminal record.
- In exchange for her help in the Internet sting, federal agents dropped an investigation into the witness's connection with an international pornography ring.
- Her record included a guilty plea for making a false statement and filing false police reports that led to the arrest of an innocent man.

Prosecutors were duty-bound to turn over this information but did not. On Aug. 13, the judge dismissed the indictment against Sterba, who had been imprisoned for nine months awaiting trial. He finally went free.

This particular type of discovery violation is common. Frequently, defendants aren't told that witnesses against them have committed crimes, including murder; or that they have lied in previous trials; or that they have received money or reduced prison sentences in exchange for their testimony.

But a discovery violation doesn't guarantee a new trial. The Supreme Court has ruled that a verdict stands unless defense attorneys can show the information not made available at trial would have changed the outcome.

In Pogue's first appeal, judges peppered attorneys with questions about the irregularities in the government's conduct, but they let the verdict stand, without even issuing an opinion as to why.

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The net result is that the system encourages prosecutors to calculate just how much evidence they can withhold without risking a reversal. They substitute their judgment in determining what evidence is important rather than allowing a judge and jury to decide.

It has not always been that way.

Gary Richardson, whom Reagan appointed U.S. Attorney for the Eastern District of Oklahoma, had an "open file" discovery policy in his office during his tenure, which ended in 1984. Defense lawyers were permitted to come in and look at anything prosecutors had collected on a particular case.

Now, Richardson is a defense attorney and says that "open file" discovery simply doesn't happen any more, and he wonders why. "My attitude was that if you can't take the truth and win, then you weren't supposed to win," he said.

Telling lies in court

Federal prosecutors often face a quandary when they investigate criminals or put them on trial.

Fellow criminals usually don't want to snitch on their colleagues or testify against them, and they surely don't want to spend a lifetime in prison. So deals are made. Sometimes, witnesses with information about criminal activity get paid as informants. Sometimes, they get reduced prison time. In return, they must promise to tell truthfully everything they know.

This sounds good in theory, but Don Carlson knows better. In 1992, federal agents stormed his San Diego area home in search of thousands of pounds of cocaine. They didn't identify themselves. Carlson figured it was thieves trying to knock down his front door. He fired two shots into the door then was shot in the thigh as he dropped his gun and scrambled to a bedroom. There, as he lay defenseless on the floor, an officer shot him twice in the back.

There were no drugs. An informant whom the government was paying $2,000 a month had made up a story about the drugs because he thought Carlson's home was vacant and he needed to feed stories to agents to keep the money coming.

The informant's tendency to lie was well known. Federal agents in South Florida dumped him as an informant because of his repeated lies. But the lure of a major drug bust won out over common sense. Agents used his story to get a search warrant for Carlson's home.

In this case, their misconduct cost the government. Carlson received a multi-million dollar payout after agents almost shot him dead, but he got no apology. "All they said was that they were a victim of circumstances," said Carlson.

Maybe so, but perjury is among the most pervasive problems in the federal justice system — affecting investigations, grand jury testimony and trials.

The courts have hinted at some changes. In a startling decision in July, the 10th U.S. Circuit Court of Appeals ruled, 3-0, that promising leniency to witnesses in exchange for testimony amounted to buying that testimony, which violates federal law. Federal appeals courts in South Florida, Louisiana and Tennessee have issued similar, preliminary rulings in the past few months.

The Colorado court recently pulled back the decision so that all 12 of the court's judges may rehear arguments. If the ruling isn't changed, it will certainly be appealed to the U.S. Supreme Court.

Further appeals might become moot.

U.S. Senator Patrick Leahy, D-Vermont, has introduced an amendment in the Senate that would exempt federal prosecutors from the statutes cited in the ruling.

'Jumping on the bus'

"Jumping on the bus" has taken perjury in the federal justice system to new heights.

Inmates deal for confidential information from other inmates, government informants and snitches within the federal bureaucracy; they then memorize it and recruit others to do the same. Then, to win sentence reductions, they testify to facts only a real insider could know.

The detailed information that inmates deal might sell for $200,000 or more, but it can be traded for a sentence reduction of 10 or more years.

It's not a bad trade for inmates whose misadventures with the law might have left them with substantial assets but a future that included decades behind bars.

Federal authorities haven't responded to inquiries about the "jumping on the bus" phenomenon, but witnesses have told of being questioned in federal investigations of the problem.

Richard Diaz, a former Miami police officer and now a prominent Miami defense attorney, says that since the early 1990s, the practice that earned drug smuggler Goy-riena promises of cuts in his prison sentence has touched hundreds of cases in South Florida and other jurisdictions.

In Atlanta, a former prison inmate opened an office where federal prisoners could buy information they might use to testify against suspects they didn't know.

Diaz believes the phenomenon can be traced to mandatory sentencing guide-lines that Congress enacted in 1987, imposing stiff prison terms for most federal crimes and sharp reductions in the amount of time off for good behavior that inmates may earn.

"Jumping on the bus" is one of the few ways left for federal prisoners to cut their prison time.

Dangerous alliances

The close relationships that federal law enforcement officials sometimes develop with criminals are necessary and treacherous.

Mob bosses don't tend to share information about their criminal enterprises, and often the only way for federal agents to pierce their secretive shell is to develop ties with criminal colleagues.

That arrangement can prove slippery. This investigation found dozens of cases where agents became so close to their informers that they crossed the line — sometimes assisting them in their criminal activities or protecting them, or even joining them and sharing in the profits of their crimes.

Few safeguards are in place to prevent the practice or, in some cases, to even discipline the most flagrant abusers.

For decades, FBI Special Agent R. Lindley DeVecchio oversaw investigations involving New York City's Colombo Crime Family. He was also the FBI's lone contact with a key informant in that family, Gregory Scarpa Sr., who was a Colombo captain and a notorious killer.

DeVecchio's superiors and other street agents would be stunned when he was later accused of passing confidential information to Scarpa, helping Scarpa avoid arrest, helping Scarpa punish his enemies, and allowing Scarpa to continue a crime career that included several murders.

DeVecchio is even accused of helping fabricate evidence with Scarpa in or-

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der to win indictments, convictions and guilty pleas against Scarpa's enemies.

A strikingly similar case unfolded a few years ago in Boston. Associates of James "Whitey" Bulger, one of the city's most notorious mobsters, could only wonder why he escaped prosecution, even as they were indicted, convicted and imprisoned for the rest of their lives. The reason: The FBI took sides, making sure that Bulger's criminal enterprise flourished while his opponents were arrested and sent to prison.

Just before a federal grand jury was to indict Bulger in 1995, he disappeared and has not been heard from since, casting more suspicions on the FBI and its relationship with Boston's top mobster. No FBI agents were disciplined in that case nor the New York case. Top agents in charge retired with pensions.

DeVecchio has taken the Fifth Amendment in several trials exploring the FBI's complicity, and because of the FBI's conduct in Boston and New York, dozens of criminals convicted on the basis of evidence that these relationships tainted might go free.

Abuse at sentencing time

Federal judges used to determine the sentences of the guilty.

They don't any more. In an attempt to standardize prison time and stop the practice of judge-shopping, Congress adopted strict sentencing guidelines in 1987. The guidelines mandate exactly how much prison time will be served based on the severity of the crime: so many years for a certain amount of drugs sold, so many for a certain amount of money embezzled.

This change produced an unexpected outcome: Fed-

Government makes some questionable deals with questionable characters

eral prosecutors and agents now have the power to manipulate the charges a suspect will face and, as a result, the sentences that suspect will serve.

That power is broadly abused. For example, when a jury convicted Pogue of closing a land deal with federal agents he thought were drug smugglers, the judge didn't determine Pogue's sentence. Those agents did, when they discussed, in his presence, the quantity of drugs they would ship and the price they would pay for the land, making sure that both amounts met the criteria established for major drug and money laundering conspiracies under federal sentencing guidelines.

The same kind of strange machinations can be found at the other end of the sentencing pipeline. Judges may not arbitrarily reduce sentences — a prosecutor must request a reduction, usually for a suspect who has cooperated and implicated others.

For example, Mary Ann Rounsavall and her brother, James Rounsavall, were charged in 1994 in a multimillion dollar drug operation and money-laundering scheme that stretched from Southern California to Nebraska. The government's evidence was thin. Prosecutors pressed Mary Ann Rounsavall to testify against her brother. She refused. She was threatened and cajoled, she said. Then came the clincher. Prosecutors told her that her brother was dying. She wasn't allowed to talk to him, but she was promised a substantial reduction in sentence if she testified against him.

Her mother assured her that testifying would be the best course — after all, he would soon die anyway. Rounsavall agreed to the deal; her testimony put her brother away for life, and prosecutors seized millions of dollars in assets from him and his sister. Before sentencing Mary Ann Rounsavall, U.S. District Judge Richard Kopf peered down at the prosecutor, asking if he planned to request a sentence reduction based on Rounsavall's substantial assistance. Assistant U.S. Attorney Bruce Gillen did not offer the motion.

Under federal sentencing guidelines, Kopf had no choice but to order Mary Ann Rounsavall imprisoned for 20 years rather than the maximum of eight she'd have gotten with a prosecutor's recommendation for leniency. Long known as a hard-liner on drug offenses, Kopf described the incident as "horribly wrong."

Rounsavall has filed several motions trying to force the government to honor its promises. She said federal agents had given her some of the testimony that had ensured her brother's conviction.

And there's more: Her brother wasn't dying. She says federal prosecutors lied about that, too. He is healthy and now serving a life sentence.

Defense attorneys targets

Defense attorneys have become favorite criminal targets of federal prosecutors, even when they've done nothing wrong.

This investigation turned up dozens of cases where prosecutors filed questionable charges against attorneys who represented big-name criminal defendants, sometimes sacrificing certain convictions in the process.

In 1990, U.S. Attorney Anthony White charged Ciro Mancuso in one of the largest drug conspiracy cases ever brought in Reno, Nev. The evidence against Mancuso, who owned a half dozen homes and estates, was overwhelming.

Still, Mancuso's San Francisco attorney, Patrick Hallinan, filed dozens of motions, accusing White of illegal and unethical conduct in his investigation. White had never taken kindly to such tactics from opposition attorneys — often seeking to disqualify them in court.

Then, Mancuso offered a deal. He would implicate his lawyer and others in the drug conspiracy in exchange for a lenient sentence. White jumped at the deal.

Hallinan seemed an unlikely drug smuggler. An amateur archaeologist, he was a respected defense lawyer whose father was regarded as one of the finest attorneys San Francisco had produced. Hallinan's brother was head of the city's law department. But based on Mancuso's testimony, Hallinan was soon indicted for drug smuggling, money laundering and racketeering.

White wasn't done. In June 1994, federal agents raided Hallinan's San Francisco home, looking for evidence that Hallinan had ille-

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gally smuggled Peruvian artifacts and other ancient art.

Hallinan was acquitted on the drug, money laundering and racketeering charges. No charges were filed after the search of his home, though Hallinan has yet to recover hundreds of documents and valuable pieces of art that agents seized in the raid.

Mancuso was sentenced to only 10 years — despite his drug kingpin status and the perjury he committed, but he thought even that was too much. In November 1996, his lawyers appealed the sentence, claiming that White promised him "little or no jail time" for testifying against Hallinan. A 9th Circuit U.S. Court of Appeals panel disagreed, but Mancuso might still be out of prison in a year and a half.

Fixing the problem

Congressman John Murtha, D-Johnstown, says he watched as an out of control federal investigation nearly destroyed Joseph McDade, his colleague in the U.S. House of Representatives.

A Philadelphia federal jury acquitted McDade, R-Scranton, in 1996 on charges that he accepted gifts from defense companies in exchange for helping them win lucrative contracts.

During an eight-year investigation, McDade said prosecutors intimidated his friends, interrogated his relatives and staff and tried to damage his reputation through news leaks.

Murtha wondered how an average citizen with average resources could survive a similar assault. "When I sat beside Joe McDade for eight years and watched him go through the excruciating pain, . . . it made me recognize the tremendous power a [federal] prosecutor has. I could see that if they did this to a Joe McDade, an ordinary citizen has no chance," said Murtha.

Murtha and McDade decided to draft legislation called the Citizens Protection Act. Its most important provision would have established an independent oversight board to monitor federal prosecutors and require them to abide by the legal ethics laws of the states in which they operate. It also provided sanctions against prosecutors who knowingly committed misconduct.

Many of the bill's provisions touched on concerns raised by this investigation, which found that even when misconduct is clear, federal officials are loathe to acknowledge it or punish it or ensure that it doesn't happen again.

Murtha said the bill hit a nerve in the House of Representatives. More than 200 congressmen signed on as sponsors, many saying that constituents in their home districts had asked them to investigate complaints about federal law enforcement officers' misconduct. "It seemed like everyone had a story to tell," he said.

The House approved the legislation in August on a broadly bi-partisan vote, 345-to-82, despite the Justice Department's intense opposition. "I've never seen an effort [to kill a bill] — a focused effort — like I've seen in this particular case, from the Deputy Attorney General right on down the line," Murtha said.

The victory was short lived. The House bill became part of the federal appropriations package that Congress passed in October, and the Justice Department managed to have all but one provision killed in the conference committee that crafted the budget bill. That provision, requiring federal prosecutors to abide by the ethics laws in the states where they work, is important, but the appropriations bill delays its implementation by six months, giving the Justice Department time to try to eliminate it, Murtha said.

That puzzles Burns, the deputy attorney general under Reagan. He recalls drafting a memorandum requiring that all federal prosecutors adhere to the local ethics rules, the very rule his former department is now trying to kill.

"Look at it this way," he said. "[Pretend] there is a case, United States v. Burns. That means it's the whole FBI against Burns — its investigators and forensic accountants and everything else the government has. It's already one-sided.. . . Let's have an even playing field."

But the Justice Department doesn't want a level playing field, the Post-Gazette found. Any push by Congress for substantive change in protecting the rights of citizens is always met with the Justice Department's same dire warnings: Fiddling with the laws that empower federal law enforcement officers might hamstring efforts to fight drugs, child pornography and international terrorism.

In 1995, for instance, the U.S. Senate conducted hearings to demand answers for the disastrous confrontations by federal agents at the Branch Davidian complex in 1993 in Waco, Texas, and at the home of anti-government rebel Randy Weaver in Ruby Ridge, Idaho.

Officials with the FBI and Bureau of Alcohol, Tobacco and Firearms assured senators that changes in policies and procedures had been made to solve the problem, but some of the agents identified as ordering illegal actions eventually won promotions.

Shortly after that hearing, Attorney General Janet Reno announced that, because of its large backlog of cases, she was doubling the size of the Office of Professional Responsibility, which is charged with ensuring that federal officers don't abuse their authority.

The most recent General Accounting Office report on the Office of Professional Responsibility, in 1995, found that it substantiated only 9 percent of the 411 complaints it investigated between 1980 and 1990. The Post-Gazette found that the office still investigates very few cases; the office also has failed to correct the problem mentioned in the GAO report: "[The Office of Professional Responsibility] operated too informally, failing to document key aspects of its investigations, such as decisions not to interview certain people or conclusions that charges were false."

Last year, House Judiciary Chairman Henry Hyde, R-Illinois, introduced legislation that allowed victims wrongfully prosecuted by the federal government to recover attorney fees and other defense costs. Under Justice Department pressure, the bill was diluted — requiring that any such action be filed within 30 days of the completion of the federal action. Justice lobbying also eliminated the sanctions that individuals who commit abuses would have faced.

Still, Murtha believes that the lopsided margin by which the House approved the Citizens Protection Act is a strong base on which to build. "We think it was a step in the right direction, and I guarantee you that I'm going to push it further."

Others share Murtha's cautious optimism. "I think that while our system of justice and the administration of justice and criminal justice is the best in the history of the world, it requires a lot of reform and change and improvement, and I think it's wrong to say this is how it is and how it is going to be," said Burns.

From beginning of cases to end, rule changes led to misconduct

New laws and court rulings over the past two decades have made it easier for federal law enforcement officials to arrest, convict and imprison the guilty.

Critics say a lack of safeguards has also increased the chance that innocent people will be snared or have their rights violated.

Here is a summary of some of the most significant changes.

Investigations

Sting operations. In 1974, Congress authorized sting operations, which allow federal agents to set up an illegal enterprise with the goal of luring in real criminals and then arresting them. A lack of safeguards has led to abuses, such as the 1984 case in which federal agents talked automaker John DeLorean into a drug deal that might save his business. A jury acquitted him, saying federal agents entrapped an innocent man.

Thornburgh Rule. Former Pennsylvania Gov. Dick Thornburgh served as U.S. Attorney General from 1988 to 1991. In 1989, he issued a memo saying that ethics rules that bar associations established in the areas where federal prosecutors worked did not bind the prosecutors. Attorney General Janet Reno made the memo official policy in 1994. Opponents said it allowed federal prosecutors to engage in conduct — such as contacting a criminal suspect without his lawyer being present — that might cause private attorneys to face disbarment. But legislation attached to this year's federal budget bill, which U.S. Reps. Joseph McDade, R-Scranton, and John Murtha, D-Johnstown, sponsored, requires the department to end the practice, though the legislation delays implementation for six months. The Justice Department already has begun efforts to kill it.

Forfeiture. Like money laundering, federal forfeiture statutes passed in 1990 were aimed at getting at the assets of big-time criminals. Forfeiture allows federal prosecutors to file civil suits to seize property if it can be linked to a criminal activity — even if the owner of the property is never convicted of a crime. Because the standard of proof is lower in a civil suit, the statute was supposed to give federal officers a powerful tool against illegal drug trafficking, but in a series published in 1991, The Pittsburgh Press found that federal agents have broadly abused forfeiture laws and that the homes, cars and cash of ordinary people are most often the targets of forfeiture. An amendment to the law that sought to safeguard the innocent was passed last year, but the measure was watered down under Justice Department pressure. So, despite intense lobbying by opponents of these one-sided actions, little has changed.

Exclusionary rule. From 1914 to 1984, the Supreme Court had a simple rule for police who violated the Fourth Amendment of the U.S. Constitution in any search or seizure: Evidence obtained would be excluded from trial. But Congress, tired of criminals being released on "technicalities," approved a law in 1984 that provided for an exception to the exclusionary rule: Evidence would be allowed into a trial if officers believed in good faith that they had acted properly in a search or seizure. That has caused defense lawyers and constitutional scholars to lament that there are more good-faith exceptions than there are rules of exclusion.

Search warrants. Prior to 1987, police needed clear and convincing evidence that a crime had been committed before a judge would issue a search warrant. Under new laws and court rulings, officers can get a warrant based on the word of an informant who doesn't even have to be named. In 1984, the Supreme Court allowed evidence obtained through a search warrant not supported by probable cause to be used in court, so long as it was "issued by a detached and neutral magistrate." Congress then approved new laws adding more bite to the ruling. In his dissent, Justice John Paul Stevens wrote that the ruling meant the court's destruction of the Fourth Amendment's guarantee against unreasonable searches and seizures was now complete.

Anti-terrorism. The Anti-Terrorism and Effective Death Penalty Act of 1996 allows the death penalty for certain federal crimes and sharply curtails a defendant's rights in some federal proceedings and appeals. For example, the law allows the government, unilaterally, to designate "terrorist" organizations and makes it a felony to support even the lawful and humanitarian activities of such organizations. It also permits the president, using undisclosed and even illegally obtained evidence, to designate as terrorists aliens residing in the United States and to deport them, even if they have committed no crime. The law also explicitly prohibits the FBI from investigating people because of their views, affiliations or other First Amendment activity.

Wiretaps. The Anti-Terrorism and Effective Death Penalty Act of 1996 also expands the use of roving wiretaps for investigations and allows federal agents to tap any telephone calls of suspects for as long as 48 hours without a court order. This covers cellular telephones and situations where suspected criminal organizations use call-forwarding to hinder the government's ability to find them.

Grand juries. A federal grand jury, which usually is composed of 23 people, hears accusations that a federal prosecutor presents to determine if enough evidence exists to indict a suspect for a crime. Since the defense is not allowed rebuttal, this proceeding gives prosecutors tremendous power. The late U.S. Supreme Court Justice Learned Hand lamented that "a good prosecutor could indict a ham sandwich." While judges overseeing grand juries may hear motions on the conduct of prosecutors in the secret proceeding, such motions are seldom granted, and a recent Supreme Court ruling adds to a prosecutor's power: It said that federal courts do not "possess broad supervisory powers over grand jury proceedings."

Trials

Perjury. In 1935, the Supreme Court ruled in Mooney vs. Holohan that prosecutors may not admit testimony they know to be false. That ruling has been refined and ex-

Continued on next page

Documenting abuses

Changes in federal guidelines have led to misconduct in almost every facet of a federal investigation. Here is where the Post-Gazette has found problems, and when we will examine each concern.

Part 2

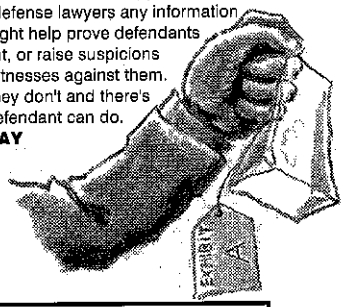
The sting

Federal agents have greater latitude than ever before in sting operations, but when the intended targets aren't caught, agents look to arrest anyone they can, so they can justify the cost of the investigation. It often means entrapping low-level criminals or even people who are innocent. **MONDAY**

Part 3

Discovery violations

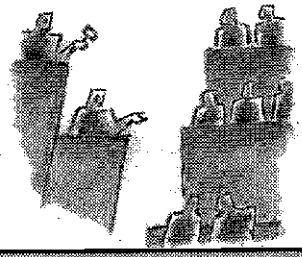
Prosecutors are supposed to turn over to defense lawyers any information that might help prove defendants innocent, or raise suspicions about witnesses against them. Often, they don't and there's little a defendant can do. **TUESDAY**



Part 4

Perjury

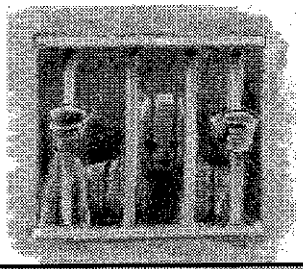
Federal agents and prosecutors may be quick to act on the words of lying informants or witnesses. The innocent people sometimes pay the price. **SUNDAY, NOV. 29**



Part 5

'Jumping on the bus'

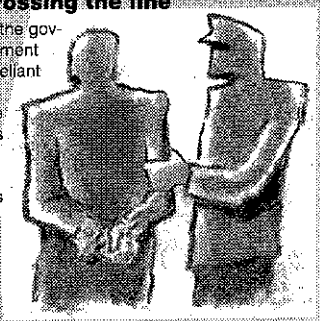
What's a convicted criminal to do to get out of a long jail term? How about testifying in exchange for a sentence reduction. The testimony often doesn't have to be close to the truth. **MONDAY, NOV. 30**



Part 6

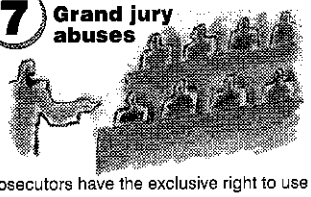
Crossing the line

As the government becomes more reliant on criminal informants, more and more agents are getting caught up in the criminal activities of those informants. **TUESDAY, DEC. 1**



Part 7

Grand jury abuses

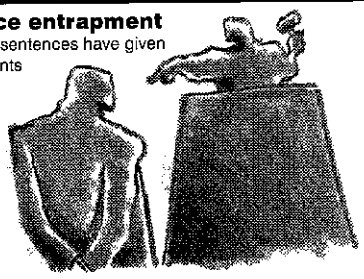


Prosecutors have the exclusive right to use this forum to its fullest advantage, but sometimes misrepresent evidence to gain an indictment, a process made easier by the fact that those accused can offer no defense. **SUNDAY, DEC. 6**

Part 8

Sentence entrapment

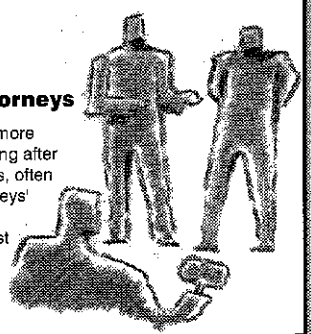
Mandatory sentences have given federal agents and prosecutors motivation to lure criminals into bigger crimes than even the criminals had imagined. **MONDAY, DEC. 7**



Part 9

Targeting defense attorneys

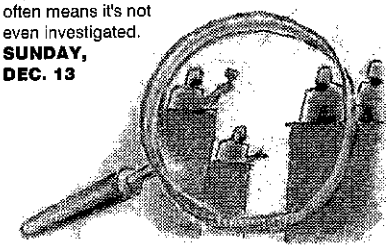
Prosecutors are more aggressive in going after defense attorneys, often turning the attorneys' own clients into informants against them. **TUESDAY, DEC. 8**



Part 10

Oversight

Misconduct by federal agents and prosecutors not only often goes unpunished, but diluted oversight rules often means it's not even investigated. **SUNDAY, DEC. 13**



James Hilston/Post-Gazette

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panded several times, but increasing reliance on the so-called "harmless error" rule of modern law has further diluted it. Under this doctrine, unless a defense lawyer can prove to a judge that perjured testimony would have changed the verdict — even if that perjured testimony was known to prosecutors — a criminal defendant gets no relief.

Brady Rule. A 1963 ruling set the standard for what prosecutors must do to help a defendant. Called "discovery," it requires prosecutors to turn over to defendants any evidence that might help prove them innocent or show the biases and criminal records of witnesses against them. The Supreme Court also has ruled that if a prosecutor improperly withholds discovery material, a conviction should be reversed only if the verdict would have been different had that material been known at the trial. To ensure against discovery violations, some federal prosecutors, as recently as 15 years ago, opened all of their files on a case to the defendant's attorney. Over the past decade, prosecutors have intentionally withheld discovery evidence in hundreds of cases, but only in extreme cases have verdicts been overturned.

Sentencing

New rules. In 1987, Congress passed legislation that effectively switched the authority for sentencing a criminal defendant from a judge to a prosecutor. The law establishes sentencing guidelines that must be followed when a defendant is found guilty, and those guidelines are based on the severity of the crime. For example, a defendant found in possession of a few ounces of drugs would get a more lenient sentence than a defendant who possessed a few pounds. Congress believed the guidelines would ensure fairness and stop defense attorneys from shopping for lenient judges. Howev-

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er, the guidelines have fostered a new form of misconduct called sentencing entrapment, where prosecutors seek to boost the charges against a defendant up front to ensure he will face a maximum sentence. In a drug conspiracy, for example, a person may be found guilty for simply discussing a drug deal. So informants trying to snare a suspect make sure the quantities discussed are huge, to ensure maximum sentences. This gives prosecutors more clout in negotiating a plea bargain.

Early release. In 1987, the U.S. Sentencing Commission dramatically cut the amount of time that was permitted to be cut from a prisoner's sentence for good behavior. Before this change, a prisoner who behaved in prison could reduce his sentence by at least one-third and sometimes by as much as one-half. Under the new rules, a convict may earn only 54 days of "good time" per year. When added to stiff mandatory sentencing laws that Congress adopted, the cut in good behavior time has swelled the population of federal prisons and produced another unintended result: a surge in federal prisoners willing to lie against defendants in court. The reason? A witness who helps win a conviction usually gets a sentence reduction at the request of the prosecutor, one of the few avenues left for prisoners seeking to cut their prison time.

Appeals

Appeal limits. The Antiterrorism and Effective Death Penalty Act of 1996 makes it much more difficult for a federal prisoner to file an appeal once a year has passed after his conviction. This has forced prisoners to rush their appeals and sometimes miss presenting the most compelling evidence for a new trial. One example: The Post-Gazette found that when the government withholds evidence that might help a defendant, it is often uncovered long after a conviction through a Freedom of Information Act request to federal law enforcement agencies. These agencies sometimes take years to respond to a FOIA request. The new appeal limits make it much more difficult for this new evidence to get before an appeals court.

Oversight

Office of Professional Responsibility. This office within the Justice Department is supposed to oversee the conduct of federal agents and prosecutors, but little oversight is happening. The office opened official investigations into only 9 percent of the 4,000 complaints filed against federal law enforcement officials during the past 20 years. The office found that only 4 percent of those complaints had merit. Since the office only discloses specifics of its investigations on rare occasions, it is not clear what punishment might have been meted out.

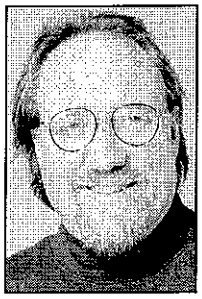
Congress. Last summer, the U.S. House approved the Citizens Protection Act, 345-82, a major legislative victory for Pennsylvania Reps. John Murtha, D-Johnstown, and Joseph McDade, R-Scranton. But only one provision survived as part of the federal appropriations bill that Congress approved last month: the repeal of the Justice Department's Thornburgh Rule, which had exempted federal prosecutors from abiding by the ethics rules in the states in which they operate.

Killed were provisions that would have established an independent oversight board to monitor federal prosecutors, and sanctions for prosecutors who committed misconduct. A section that would have included independent counsels such as Kenneth Starr under the bill's provisions also was included.

Last year, a bill that House Judiciary Chairman Henry Hyde, R-Illinois, introduced was signed into law, allowing victims wrongfully prosecuted by the federal government to recover attorney fees and other defense costs, but under Justice Department pressure, it was watered down to require that any such action be filed within 30 days of the completion of the federal action, and it provides for no sanctions against those who commit abuses.

What's next in the series:
— Tomorrow: Getting your money's worth from expensive government stings.

The 'Win at All Costs' team



Bill Moushey, 44, has been an investigative reporter for the Pittsburgh Post-Gazette since 1985. His stories have included a series revealing abuses within the federal witness protection program; uncovering corruption on the Supreme Court of Pennsylvania; and revealing dreadful health care conditions in the state prison system.

A native of Canton, Ohio, Moushey is a 1976 journalism graduate of Kent State University. Before joining the Post-Gazette, he was an investigative reporter at WPXI-TV and editor of Pittsburgher Magazine.

His Post-Gazette reports have won numerous national and local awards. His 1996 series "Protected Witness" was a finalist for the Pulitzer Prize. He was awarded the National Press Club's Freedom of Information Award. He also received honorable mention for The Newspaper Guild's Heywood Broun Award for reporting about society's underprivileged.

Moushey lives in Shaler with his wife and two children.

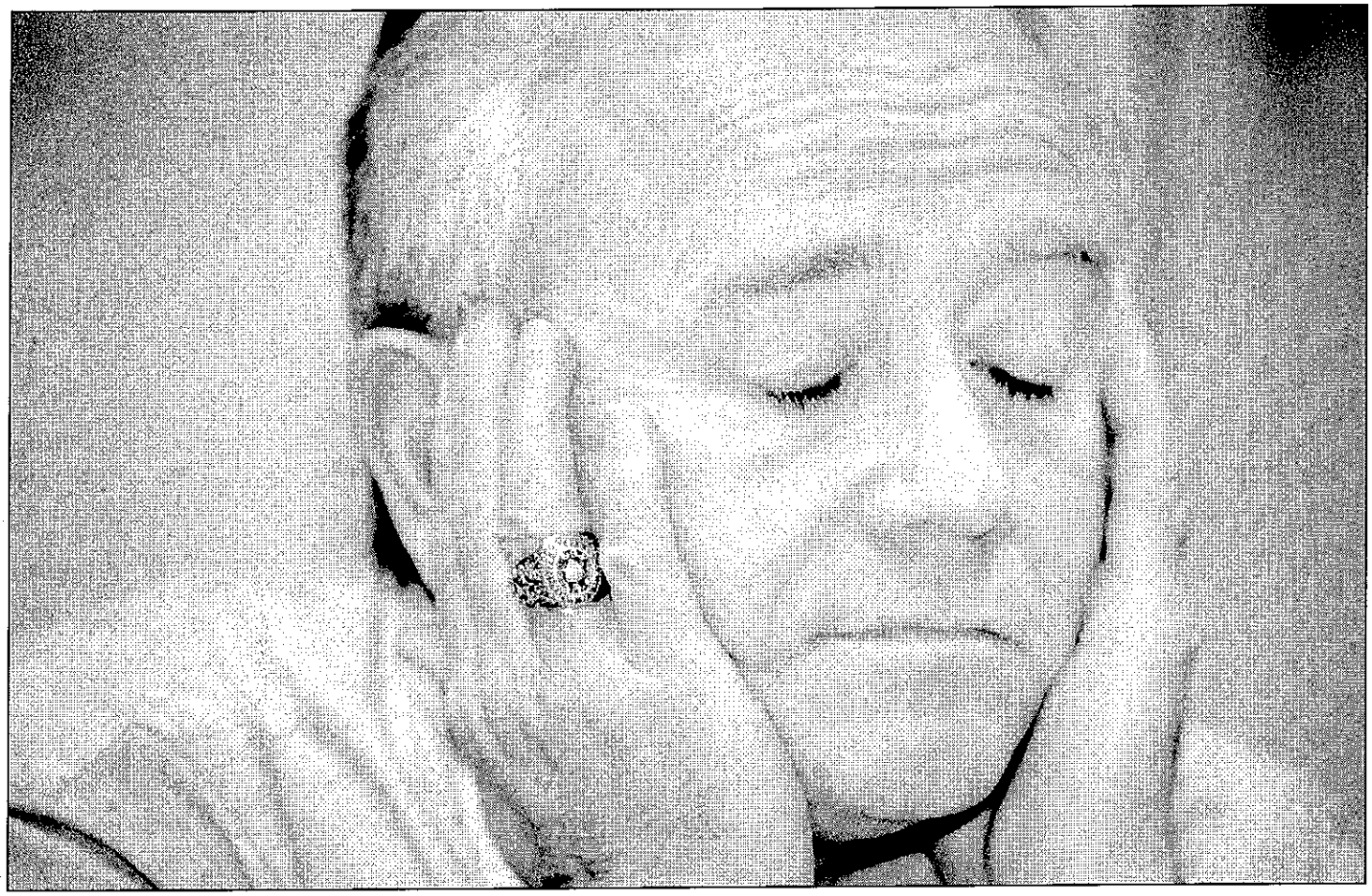
Bill can be reached by e-mail at **bmoushey@post-gazette.com**

Bob Martinson, 51, has been a local news editor at the Post-Gazette since 1993 and has worked with reporters covering Grant Street, higher education, religion and minority affairs. Before joining the Post-Gazette, he was a regional editor at The Pittsburgh Press. He also has worked at newspapers in California, Oregon, Washington and Tennessee and was a member of the Longview (Wash.) Daily News staff that received the Pulitzer Prize for its coverage of the 1980 eruption of Mount St. Helens. A native of Tacoma, Wash., he is a 1969 economics graduate of the University of Washington. He and his wife, Post-Gazette Food Editor Suzanne Martinson, live in Ross and have a daughter attending Michigan State University.

Win at all Costs

Part 2 of 10

Government misconduct in the name of expedient justice



Darrell Sapp/Post-Gazette

James Milton Verlander, Jr. of League City, Texas, worked as a research scientist when he was arrested on bribery charges in Operation Lightning Strike. He was threatened with up to 30 years in prison. For pleading guilty, he got probation. After suffering a nervous breakdown, he got a job as a medical technician. He is now exploring the possibility of trying to have his guilty plea rescinded so he can fight the charges in court on the basis of entrapment.

A sting gone awry

When a trap didn't net big game, government targeted the little guys

By Bill Moushey
Post-Gazette Staff Writer

Dale Brown was a poster boy for the American dream, an athletic Eagle Scout whose start-up company near the Johnson Space Center outside Houston hustled contracts with NASA.

Brown worked seven days a week, 18 hours a day getting his company started in the late 1980s, trying to pair

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clients and their promising technologies with niches in the billion-dollar needs of the U.S. space program.

Like most small companies, Brown's Terraspace Technologies Inc. sometimes struggled to make ends meet. A man who bragged about his Mississippi roots and his ability to make things happen promised to change that in 1992. John Clifford told Brown he had developed a product that NASA might use and he was prepared to spend big money to get it noticed.

It was called a miniature lithotripter, an ultrasound device whose technology might one day be used to improve the medical monitoring of astronauts in space.

Brown checked out Clifford and his companies with Dunn & Bradstreet, the Better Business Bureau and the banks that worked with him. All gave the Mississippi man a thumbs-up.

"I came to believe this guy was our savior, our knight in shining armor," Brown said.

Brown, though, was wrong.

John Clifford was actually Hal Francis, an agent for the FBI. His new device was phony, though legitimate companies had agreed to help the FBI by pretending to manufacture it. It was part of an FBI sting operation aimed at trapping Brown and several others who worked in the space program or on its periphery.

Francis and dozens of other federal agents and prosecutors had set their sights much higher: Key employees at NASA and a few of its contractors were suspected of giving and taking bribes, but the feds had failed to snare these high-placed managers.

Millions already had been spent on Operation Lightning Strike, including enormous bills for luxury hotel suites, gourmet meals, deep-sea fishing trips and booze-filled nights at Houston strip clubs. Federal agents needed something to show for their effort. So they went to work trying to lure minor space agency players into doing something illegal. Brown would be one of these consolation prizes.

It was a scenario similar to dozens of other failed government stings that the Pittsburgh Post-Gazette uncovered in a two-year investigation of federal law enforcement officers' misconduct.

Brown, now 38, eventually was charged with 21 counts of mail fraud and one count of bribery. After a jury deadlocked, all charges were dismissed, but the price of fighting for his inno-

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Feds sought bigger drug deal to ensure a stiffer prison sentence

Michael Staufer lost his minimum wage job at about the same time he was robbed and beaten in August 1992 on a Los Angeles street.

Times were so tough he lived in a garage.

So when a friend named Scott suddenly pressed Staufer to find him 10,000 hits of LSD, Staufer wondered if the guy might have been high on the drug himself.

Staufer was 21 years old, partied hard and used LSD when he could afford it. Once, he'd bought 20 or 25 hits of the drug that he resold to his friends, but he wasn't a dealer, and he certainly didn't have the money to finance 10,000 hits.

What Staufer didn't know was that federal agents had busted Scott on drug charges and promised him leniency if he would help the feds snare other drug dealers.

So Scott pressed Staufer, hoping to set him up in a drug deal that agents could then bust. So persistent was Scott that Staufer almost lost a part-time job he'd landed because of Scott's repeated phone calls.

Finally, Staufer gave in and was introduced to the supposed buyer, who was an agent of the U.S. Drug Enforcement Administration. The agent wanted 10,000 hits of LSD.

Staufer's LSD supplier, who barely knew Staufer, initially resisted the deal because he knew Staufer was not in a position to pay for it. Then, the dealer told Staufer he would sell him 5,000 doses of the drug.

That wasn't good enough for the undercover agent, who insisted on buying 10,000, knowing it would double Staufer's prison time. After several conversations, Staufer finally cajoled his supplier to provide the larger amount. He was arrested when he showed the LSD to the agent.

A judge sentenced Staufer to the mandatory 12-year sentence federal law required.

"[The judge] explained to Staufer that the court of appeals had just reversed him for giving a life sentence to a man who had killed his wife by throwing her off a ship where they were spending their honeymoon, and [the judge] expressed his disapproval of a system that compelled him to 'give Mr. Staufer for the transaction more time in prison than [he was] authorized to give a man who murdered his wife on their honeymoon,' " according to Staufer's appeal.

An appellate court eventually affirmed his conviction, but it was sent back to the lower court for re-sentencing. The court ruled his sentence should be reduced because of "sentencing entrapment" — the government forced Staufer into a bigger deal than he could really handle, just so the feds could double his prison term.

Staufer's sentence was reduced to just more than six years.

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cence proved costly. Brown lost his business, his savings, his fiancee, his health and his belief in the American dream.

Not an isolated case

Brown was in good company.

The other 14 targets in Operation Lightning Strike were also college graduates. Most had families. Only one had previously been the target of a criminal investigation.

In 1994, two years into the government sting, federal prosecutors charged each with violating federal laws. Several of the cases started with the lithotripter. The government contended that Brown knew the device was phony, and thus every act he performed in trying to win a NASA contract for it constituted a crime, but that argument eventually self-destructed in court.

Brown produced a picture of the prototype he took while visiting a firm that would supposedly manufacture the lithotripter. Francis showed Brown the device to assure him it was real, and he didn't know Brown had taken the picture.

Francis cajoled other sting targets into situations that would bring criminal charges, even though several said they couldn't imagine that what they were doing might be construed as a crime.

All but two of the 15 suspects were coerced into quickly pleading guilty. Federal agents assured them that fighting the charges in court would result in long prison terms, huge fines and prolonged humiliation for their families.

The physical and psychological toll of "Operation Lightning Strike" was great. Seven small companies employing more than 100 people went bust. Three of those arrested had nervous breakdowns. One attempted suicide. Others experienced health problems that ranged from heart attacks to strokes.

"The government agents intentionally and methodically drove our companies and personal bank accounts to zero and drove our reputation to ruin," Brown said.

Court documents show the misconduct in this case originated with the government, not the people the government had charged, nor was Operation Lightning Strike an isolated case of a sting gone bad.

Time and again, the Post-Gazette found poorly executed government stings that followed a similar pattern:

- Federal agents took aim at wrong-doing in high places and spent large sums of money pursuing it. When they failed to snare their high-ranking targets, they scrambled to charge minor characters, often people with financial problems, by enticing them into actions that might be construed as violations of the law.
- Federal agents often used former criminals to pursue their quarry, promising con artists, dope smugglers and perjurers money, freedom and reduced prison sentences to help nab the targets of a sting.
- Because the charges were often flimsy or based on lies, government agents worked hard to elicit guilty pleas. They would threaten defendants and their families with adverse publicity or long trials that would deplete their bank accounts.

Plea bargains had another advantage: Once a defendant pleaded guilty, federal agents weren't required to reveal their evidence or their tactics.

That's what almost happened in "Operation Lightning Strike." The 15 people charged were told they faced decades in prison and hundreds of thousands of dollars in fines for their crimes.

They were promised that guilty pleas would bring leniency. Of the 13 who pleaded guilty, 11 got only probation. One man served five months in prison; another served two months.

Brown was the first to plead innocent and fight the charge.

Ignoring the safeguards

Congress authorized government sting operations in 1974.

The law allows federal agents to set up an illegal enterprise with the goal of luring criminals and then arresting them. Federal agents promised it would be a powerful tool.

But wary drug smugglers and other criminals are pretty good at spotting a government sting. That might explain why sting targets so often end up being

Continued on next page

Trapped into trying to settle vendetta

Qubilah Shabazz, daughter of assassinated black leader Malcolm X, was arrested in June 1995 and charged with plotting to kill Nation of Islam leader Louis Farrakhan, the man she thought murdered her father 30 years before.

The story behind the headline was even more bizarre: Michael Fitzpatrick, the government informant from New York who tipped the feds to the plot, had a history of trying to persuade people to commit violent acts, dating to the 1980s. He also had a history as a paid informant for federal agents.

He told federal agents that, for a fee, he could deliver evidence about the supposed plot. They agreed to pay him $45,000 to nail Shabazz in the sting, court records show.

He sought out Shabazz, whom he'd known since high school, lured her from New York City to Minneapolis, convincing her his interests were romantic, then planted the idea of arranging to have Farrakhan killed, according to court records.

She never went to trial. Instead, she signed a statement accepting responsibility for her involvement in the plot and agreed to two years of psychiatric and drug and alcohol treatment. She received two years probation, which ended last year and all charges were dismissed.

Prosecutors said the paper she signed proved her guilt. Defense attorneys insisted it proved nothing but a government conspiracy that had entrapped an innocent person.

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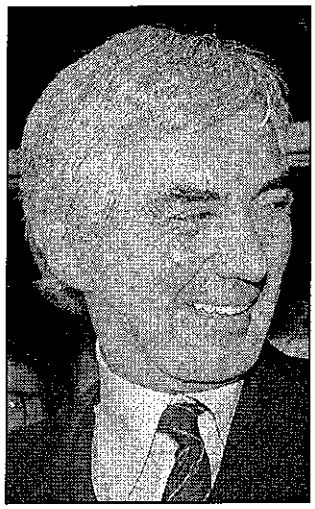

A jury determined automaker John DeLorean wouldn't have committed a crime had he not been enticed by federal agents — a violation of the guidelines set down for federal stings.

people who haven't previously been involved with crime.

In 1986, industrialist John DeLorean was tried on charges of cocaine trafficking after his arrest in a government sting. In a videotape shown at his trial, DeLorean said a suitcase full of cocaine that an undercover officer brought was "better than gold," but a jury determined that the government, not DeLorean, had crossed the line. DeLorean's company was on the brink of financial collapse, and undercover federal agents proposed a drug deal to him that would bring in millions to save his business.

Federal agents didn't go after a criminal, the jury decided. They persuaded a desperate man to commit an act he would not otherwise have considered.

The DeLorean verdict reaffirmed safeguards that supposedly were already part of the 1974 law:

• Sting targets must be predisposed toward committing a crime. Usually this means they already have done something criminal and the government wants to catch them doing it again.

• Sting targets must be willing to commit a crime. Talking innocent people into doing something wrong through bribes or other means is not supposed to be tolerated.

• Not only must the targets of a sting want to commit the crime, they must have the ability to do so. This might mean having the money or the connections to pull it off.

The Post-Gazette's investigation found these safeguards frequently are ignored, especially when a sting fails to nail its original target.

No guarantees

Many judges are willing to chastise government agents and prosecutors for overstepping their authority in running a government sting, but there's no constitutional guarantee that an injustice will be discovered or, if it is, that it will be corrected quickly.

Several South Carolina legislators can vouch for that. In 1990, federal agents announced their open-and-shut case: They would indict 28 legislators, lobbyists and other officials caught red-handed swapping votes for money in a sting operation called Operation Lost Trust. But as often happens in sting operations, the key government witness, Ron Cobb, was a criminal and drug addict.

Agents had arrested this former state legislator on drug charges in 1989, while he was working as a lobbyist, then promised him money and immunity if he'd become the key figure in their sting operation. Federal agents paid him as much as $4,000 a month to operate a phony lobbying firm and promised him a $150,000 bonus if he helped win convictions against legislators.

Lou Krasky/Associated Press

Former lobbyist Ron Cobb was the government's star witness in a bribery sting that led to the arrest of five South Carolina legislators. Cobb later admitted he lied about the crimes, something a judge said prosecutors knew before the cases came to trial.

Over the next few years, legislators and lobbyists pleaded guilty and went to trial, with Cobb serving as the key witness against them.

Then, the truth came out. Cobb had lied to a grand jury about the activities of the people he had nailed. Prosecutors knew of the lies yet withheld the information from defense attorneys, a violation of the law. Cobb's actions made it impossible to determine whether individuals snared in the sting had really committed crimes. In addition, prosecutors withheld hundreds of other pieces of evidence that would have allowed the defendants to craft their defenses.

Last year, an outraged U.S. District Court Judge Falcon Hawkins dismissed every outstanding charge involving the sting. Some defendants who pleaded guilty or were found guilty before the case unraveled have started the process of seeking to withdraw their

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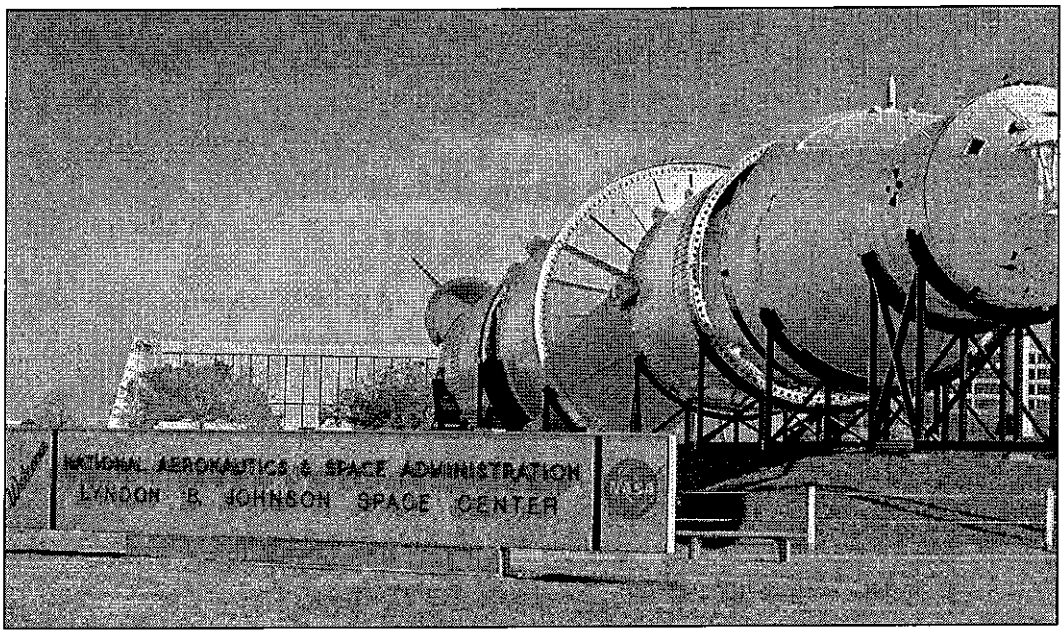
Phony device at center of Houston man's nightmare



Darrell Sapp/Post-Gazette

The entrance to the Johnson Space Center in Houston, where a multi-million dollar federal sting netted 15 low-level arrests.

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pleas or have their convictions reversed.

"The breadth and scope of the government's misconduct . . . [and] the involvement of the FBI during this entire incident was and is shocking to this court," Hawkins said. He said FBI agents hid information about Cobb's past, including his drug arrest.

"Most offensive to this court, however, is that the government sat silent when it knew that its silence would not only fail the efforts of the defendants to fully develop defenses to which they were entitled but would misrepresent facts to both the grand jury and the trial jury and mislead . . . the court to such an extent as to affect its rulings. . . . As reluctant as this court is to call it such . . . this silence in several instances was subornation of perjury."

A citizen who suborned perjury might face criminal charges, such as those included in the articles of impeachment being considered against President Clinton over his conversations with Monica Lewinsky prior to her appearance before a federal grand jury. But the Post-Gazette found no evidence that any federal agents or prosecutors in Operation Lost Trust were disciplined for their conduct. Nor was Cobb charged with perjury, despite his repeated lies.

The judge made clear prosecutors failed in their most important role: to make sure defendants receive a fair trial. "While lawyers representing private parties may — indeed, must — do everything ethically permissible to advance their clients' interests, lawyers representing the government in criminal cases serve truth and justice first," Hawkins wrote. "The prosecutor's job isn't just to win but to win fairly, staying well within the rules."

The Justice Department has appealed the judge's dismissals in Operation Lost Trust.

Sting operations and other new crime-fighting tools that Congress authorized come with few protections against overzealous federal agents and prosecutors, said Bennett L. Gershman, a former New York state prosecutor and a law professor at Pace University of New York. "There's really no significant restraint on federal law enforcement power," said Gershman, whose 1997 law book "Prosecutorial Misconduct" is in its second printing. "It's a green light to federal officials to do virtually anything they want to do."

Drug charge beaten, but at high price

Samuel Gardner was a 33-year-old Pittsburgh postal employee when he was arrested on drug charges in 1989.

Gardner had worked for seven years at the post office distribution facility in Warrendale and had won awards for his exemplary service.

He was charged after a government informant with an expensive drug habit talked him into buying drugs to help feed the informant's drug habit. It was all part of a government sting.

Two years later, a federal judge dismissed the charges, saying the government had "acted outrageously in inducing the defendant to engage in conduct that led to his prosecution."

By that time, Gardner had lost his job and most of his assets fighting the case. No federal agents or prosecutors were punished.

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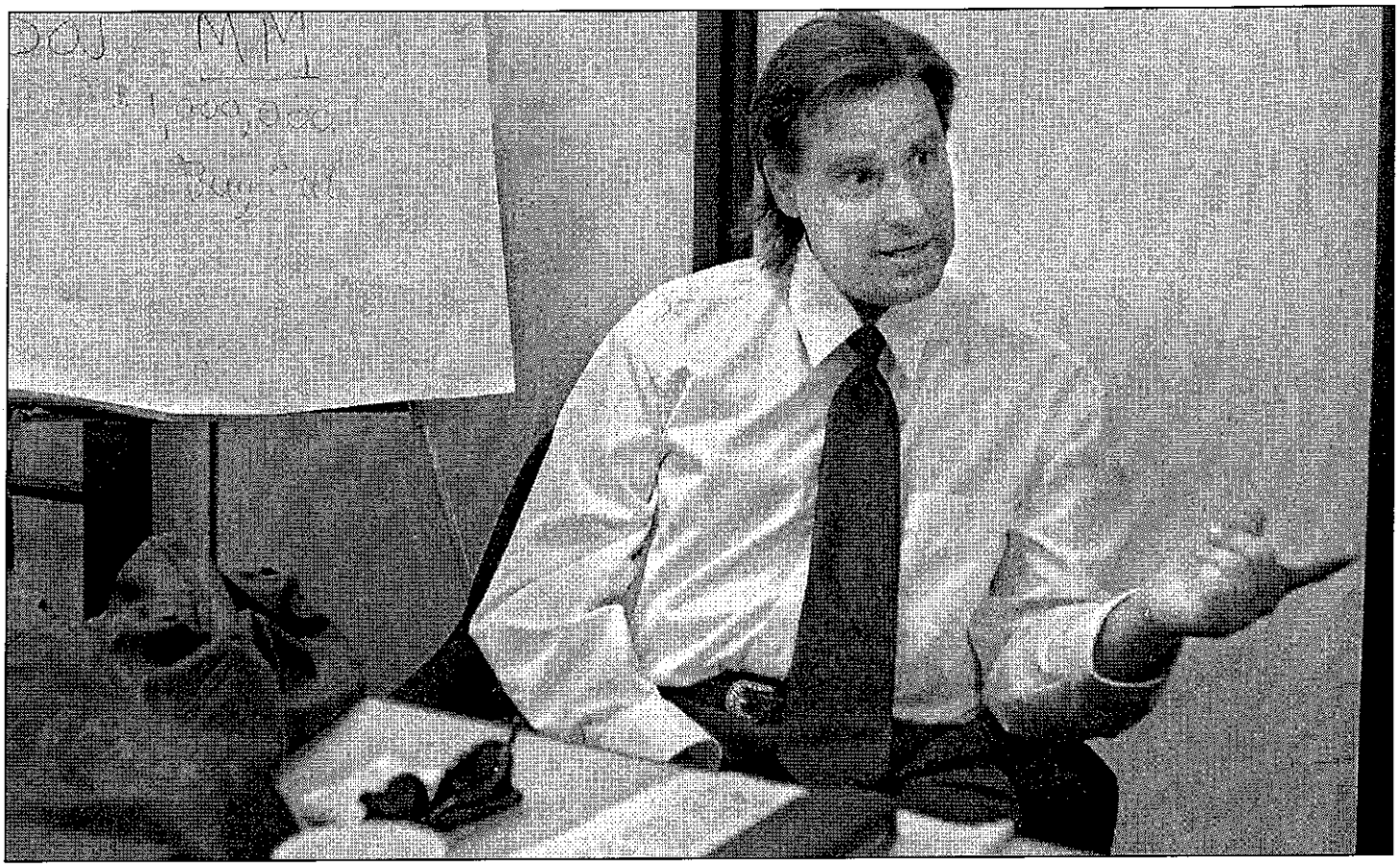

Darrell Sapp/Post-gazette

Dale Brown discusses his interrogation by federal agents. Brown said he was not allowed to call his lawyer during the questioning, which was done in a Houston, Texas, warehouse. He fought a bribery charge leveled against him and won, but he lost his business in the process.

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'Lightning' strikes

Dale Brown learned he was a target of Operation Lightning Strike on a sweltering summer's day — Aug. 4, 1993 — at a Houston warehouse, about a year after he met John Clifford.

A videotape showing him talking to an undercover agent was playing on a videocassette recorder. Audio tapes with his name on them were stacked on the floor. Photographs of Brown, surreptitiously shot, were enlarged and tacked to the walls.

He'd come to the warehouse to meet Clifford, the man with the invention that Brown was trying to peddle to NASA. Brown hadn't seen his so-called partner for months and Clifford owed him $30,000, a sum Brown was eager to collect.

Clifford was there but he identified himself as FBI Agent Hal Francis. Several other FBI agents were with him. Francis told Brown the felony counts he faced might mean 30 years in prison and more than $1 million in fines.

For four hours, agents questioned Brown. He repeatedly asked if he was under arrest and was told he was not. He asked to leave. Twice, agents physically restrained him, he said. He asked for a lawyer. They refused his request.

Federal law says that once a suspect requests a lawyer, all questioning must stop until he gets one. In Operation Lightning Strike, agents simply ignored the law, said Brown and other suspects who were taken to the warehouse.

Other Operation Lightning Strike suspects independently described their warehouse experience as almost identical to Brown's, yet the government has denied in court that it took anyone there. "They did the same thing to everyone that went [to the warehouse]," said Charlie Portz, a Houston lawyer who would eventually represent other targets of the sting. "Every story was identical."

Brown said the government has thousands of documents describing various aspects of the sting but not one interview log for the day Brown spent in the warehouse or for the warehouse visits of any other person charged in the operation.

At the warehouse, Brown said, the agents told him he could help himself by helping them. The officers took him to a 10th-floor suite at Houston's Astrodome Hilton Hotel. Behind the mirrored walls, more agents sat with recording equipment and cameras.

Gone were Francis and the heavy-handed threats. Now, agents told Brown that Francis had made a lot of mistakes and that they knew Brown was a good guy. If Brown would testify against others who were targets in the sting, including a businessman named Scott Sadaway and an astronaut Brown knew named David Wolf, they promised leniency.

Brown balked at the offer. "I told them Sadaway was one of the nicest businessmen I'd ever met, and for

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them to want me to help them go after David Wolf, I decided right on the spot that I was going to fight these people as hard as I could," Brown said.

But Brown hedged his bets. He provided the agents information about a former business partner whom Brown said once claimed to be involved in contract corruption, but no charges were ever filed against the man.

Burdens on the psyche

Besides Brown, only Sharon Hogge of Houston pleaded innocent in Operation Lightning Strike.

A judge dismissed all charges against her after the prosecution concluded its four-week case, ruling there was no evidence to find her guilty.

Had other targets of the sting not succumbed to the government's tactics, they, too, would have been exonerated, Brown believes.

Anthony Verrengia, a retired Air Force reserve general, was indicted for accepting a kickback in Operation Lightning Strike. He said the money was payment for legitimate work. The indictment cost him his job as the manager of advanced programs for the Space and Aeronautics Division of Martin Marietta Services Group.

He said he pleaded guilty because fighting the charge seemed an insurmountable task.

The ordeal destroyed him mentally.

"It was a culmination of knowing you're trapped, knowing you're not guilty, but there is no way for you to escape this situation," he said.

He ingested 200 sleeping pills in a suicide attempt a few months after his indictment.

Other targets of the sting also plunged into depression.

Verrengia has asked a federal court judge to allow him to withdraw the guilty plea he says was coerced.

The other targets of Operation Lightning Strike are considering similar actions.

Charges' costly legacy

Brown knew there was no way he could win.

Even if he were exonerated, his business was destroyed. The indictment ensured that Brown would never win another contract in the space community.

At the time of his arrest, Brown had little money to pay an attorney. His uncle hired Dick DeGuerin, a well-known criminal lawyer, to take the case.

The government almost immediately reduced the 21 felonies against Brown to one bribery charge. DeGuerin's defense was that Brown would never have committed a crime — if prosecutors could even prove his action constituted a crime — had the government not entrapped him.

FBI Agent Francis assured jurors that Brown knew the lithotripter, the device he was trying to sell, was phony and was part of the effort to defraud NASA by trying to win contracts for a bogus product. Francis said Brown had never seen a prototype of the device because none existed.

That's when Brown produced the picture of the prototype.

Francis also testified about the "bribe" Brown had offered a lobbyist to help get the lithotripter noticed. Brown said Francis gave him the $500 and called it "entertainment money." Brown said he thought that's exactly what it was — spending money to give to the lobbyist while he was in Houston.

The FBI recorded the March 1993 conversation that followed the "bribe":

Francis: "How did that feel?"

Brown: "I didn't mind doing it. We gave the guy five hundred bucks. You're making it sound bad."

Francis: "You bribed that guy."

Brown: "I did?"

Brown said that conversation exemplified the government's approach in Operation Lightning Strike: convoluted actions aimed at trapping someone into saying or doing something that might be construed as incriminating.

The jury deadlocked in Brown's case. Rather than retry him, prosecutors asked the judge to dismiss the charges.

Brown was elated, broke and outraged. He spent the next two years investigating the government's sting. He said he found 200 occasions where government agents and prosecutors had lied or destroyed evidence.

He battled health problems. While he was under investigation, the then-33-year-old Brown had a massive heart attack that led to open-heart surgery. That caused a viral infection that forced another operation; he was on life support in a Texas hospital on the day he was indicted.

A few days after he turned over the information he'd gathered about government misconduct to his attorneys to prepare a lawsuit, he had a massive stroke that left the right side of his body partially paralyzed. "I lost my [fiancee], my health, my cars, my house, was forced into bankruptcy and underwent two open-heart surgeries, intestinal surgery and brain surgery because of a massive stroke due to the stress," he said.

During a recent walk down a Houston street, Brown lamented the disastrous turn in his life. He had been an athletic entrepreneur who enjoyed skydiving, deep-sea diving and fast living. Now he is almost destitute and physically broken. Brown refuses to use crutches, braces or a wheelchair, despite having problems walking. He swears he will again go deep-sea diving but also admits that doctors believe his health problems have shortened his life.

His lawsuit charging misconduct against the government and others involved in the sting was dismissed, though he has appealed. His chances are slim. The Supreme Court has long ruled that federal law enforcement officers are immune from most civil lawsuits related to their job-related actions.

"No one wants to listen, but I won't stop until someone does," he said.

Agent Francis left the FBI. He is a private investigator in Houston. He has not responded to written requests for an interview.

Brown remembers the last time he heard from Francis outside a courtroom. On Oct. 20, 1993, his voice was on Brown's answering machine, though Francis didn't realize it. An associate of Francis had made the call then forgot to hit the end button on her cellular phone. Brown's answering machine picked up her subsequent conversation with Francis.

Francis talked about Operation Lightning Strike. He described himself as a "study in aberrant behavior" who could get anyone to do anything.

Brown thought at first Francis might be talking in jest, then he decided he wasn't. "He sure got me to do what he wanted." Brown said those few minutes of conversation scared him more than anything else he'd heard in Operation Lightning Strike.

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Fighting to prove innocence led 3 to stiffer sentences

By Bill Moushey
Post-Gazette Staff Writer

The three men were all about 60 years old, successful in their careers, active in their communities.

They were snared in three government stings. Two are serving long prison terms. The third expects to begin serving his sentence soon.

Their lives are ruined, their assets gone. Two say they have little hope of leaving prison alive.

The government offered them deals if they would plead guilty to minor criminal offenses. They would have done little, if any, prison time, but all steadfastly maintained their innocence, and because they fought for that innocence, they are paying dearly.

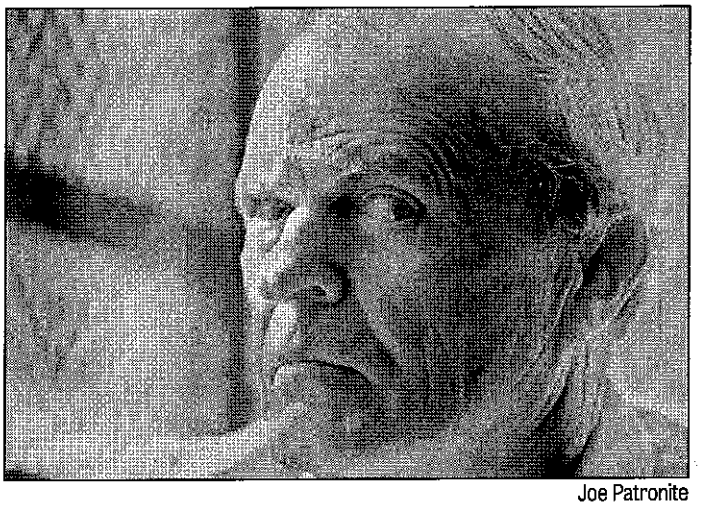
They say they cannot understand how their government could have lured them into situations that federal prosecutors would then describe as crimes.

They say they have learned one thing from the shadowy world of government sting operations: The line between guilt and innocence is a shifting one, and federal law enforcement officers control the strings.

Loren Pogue

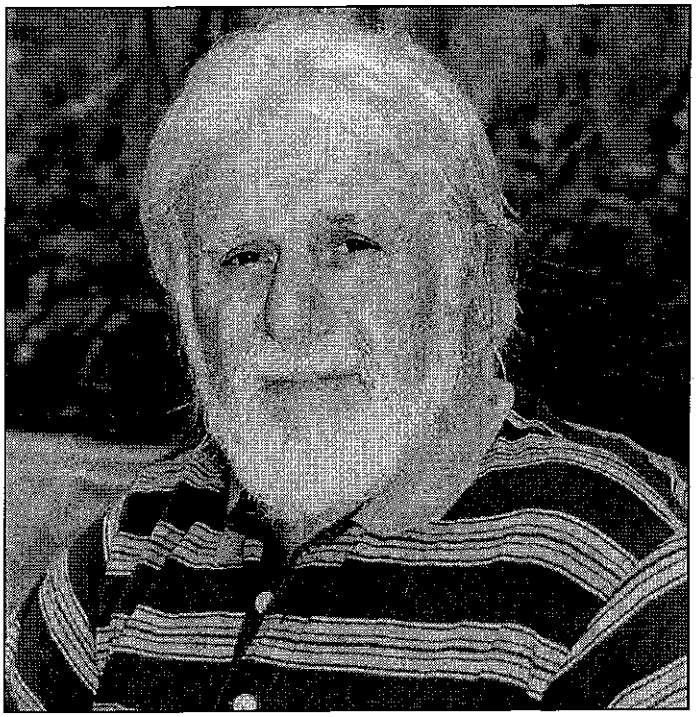
Loren Pogue, an Air Force veteran and co-founder of a home for orphans, is serving 22 years in prison on charges he conspired to smuggle drugs into the United States and launder drug money.

Pogue never bought drugs, never sold them, never held them, never used them, never smuggled them. But a government informant with an alcohol and drug habit, who would later lie at Pogue's trial, managed to snare Pogue in a 1990 government sting operation that had little else to show for the hundreds of thousands of dollars it cost.



Joe Patronite

For being in a hotel room when federal agents discussed drugs, Loren Pogue was arrested. He was found guilty of drug conspiracy charges and sentenced to 22 years in a federal prison.



Dr. George Pararas-Carayannis was caught in a government sting aimed at drug dealers who were laundering money. Federal agents settled for Carayannis, who had no involvement in drugs, charging him with laundering $4,000, netting $35 for himself. He was sentenced to 41 months in prison.

A real estate agent and Missouri native who'd made a second home for himself and his family in Costa Rica, Pogue admits he'd had a previous scrape with the law. In the 1970s, he served 14 months for tax evasion related to an ill-fated business venture.

His life since had been free of trouble.

Pogue and his wife, Delores Jean, have 27 children, 15 of them adopted. Friends, neighbors and preachers have written letters to the federal government detailing his contributions to their communities and their outrage at his treatment.

Federal prosecutors said he set up and completed a deal to sell a parcel of land in Costa Rica to drug dealers who intended to use it as a stopover airstrip for illegal drug shipments to the United States. He denied the charges vehemently.

After his conviction, Pogue obtained government documents that showed the key witness in his case committed perjury at his trial, weaving a web of lies that convinced jurors of Pogue's guilt.

The witness, Mitchell Henderson, was a government informant, a disgraced ex-police officer, an abuser of alcohol and drugs whom the Drug Enforcement Administration had promised

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$250,000 to set up a sting operation to try to snare Latin American drug dealers.

Henderson testified that a high-ranking official of the Cali Cartel in Colombia had arranged to buy the land for the airstrip. However, DEA documents that Pogue obtained after his conviction show Henderson never met the cartel official, and the DEA knew it.

Henderson also testified that Pogue, from the start, knew that the land sale was connected to Colombian drug runners, a key point in proving conspiracy charges. But at a later trial, Henderson testified that Pogue knew nothing about the deal until the day he showed up to close the agreement on the land.

The DEA documents alsomake clear that government officials knew Henderson was lying at Pogue's trial. Neither Pogue nor the court was informed of that fact, despite discovery rules that require it.

DEA tapes show Pogue balked at the land deal when the subject was first raised in the Tampa hotel room where the deal was to be closed. Pogue admits he finally agreed to sell the land, partly out of fear of what the supposed drug dealers might do to him if he did not.

Pogue says he knew something else about the property they did not: No one could build an airstrip on the land. It was a rocky parcel on a steep hillside with a view of the Pacific Ocean. Building an airstrip there would be nearly impossible.

Because he listened for a little more than two hours to undercover agents talk about the thousands of pounds of cocaine that would go through this airstrip and the thousands of dollars in drug money they would use to pay for it, the federal charges he faced were major: drug and money laundering conspiracies. His lawyer says the jury believed the lies of the government's key witness because at one point, Pogue told the supposed drug smugglers he didn't care where the money came from.

The 11th United States Court of Appeals upheld Pogue's conviction, not even issuing an opinion after its judges had peppered attorneys in the case with questions.

George Pararas-Carayannis

The federal government needed an estimated $4 million and a sexy undercover police officer to snare Dr. George Pararas-Carayannis in a government sting operation aimed at drug dealers who were laundering money.

The only person to face charges was Carayannis. There was no evidence he was involved in drugs.

Carayannis was accused of laundering $4,000 and netting all of $35 for himself. He faces a 41-month sentence, though he has so many medical problems that doctors have postponed his trip to prison, fearing it might kill him.

It was the first time he was charged with a crime.

Carayannis is one of the world's foremost authorities on tsunami, tidal waves that earthquakes trigger and that have killed thousands in coastal communities around the globe. He was named director of the International Tsunami Information Center in Hawaii in 1974 and was responsible for assisting more than 28 nations with natural disaster preparedness. He was fired from the post after he was indicted in 1995 on money laundering charges.

His nightmare began after a friend who was an interior decorator introduced him to Lauri McEwen in 1992. Carayannis didn't know that the interior decorator was an illegal alien whom federal agents had arrested on drug charges. She agreed to help in the sting in exchange for the right to stay in the country.

McEwen told Carayannis she was a 26-year-old Canadian who had recently broken up with her boyfriend. Carayannis said she was beautiful, often dressing in tight, revealing clothing that highlighted a spectacular figure. Carayannis, then 56 and divorced, was amazed she found him interesting. Soon they were meeting for lunch and dinner. They held hands and kissed tenderly as he courted her, he said. They talked about life and trips they might take together.

What he didn't know was that McEwen's real name was Dana Kresich, an undercover Honolulu police officer assigned to the government's sting.

Kresich told Carayannis that she recently had started an escort service, a euphemism often implying a prostitution ring, but Carayannis said he never made that connection. In government tapes of conversations between him and Kresich, she is never heard to define escort service as being anything illegal.

He said the undercover agent assured him that the business was not only legal but that it was registered in the State of Hawaii. Kresich insisted in court that Carayannis knew it was an illegal operation.

Since her escort business was new, Kresich told Carayannis she had not yet established a credit card account. So several times she asked him if she could run credit card bills from her business through the machine at a small jewelry business that Carayannis owned as a sideline to his government job.

Carayannis gladly agreed. He reimbursed her for the $4,000 or so that the charges totaled. He earned $35 in fees on the charges, the government said. Because the credit card companies also charged him that amount as their fee for the service, the transaction was a wash. Government documents showed that Carayannis listed the $35 on his tax returns and paid taxes on it.

Because of his medical problems, the 41 months in prison he faces amounts to a death sentence

Federal prosecutors said his actions constituted money laundering because he ran transactions from a prostitution ring through his credit account. Carayannis couldn't believe it.

After his arrest, he next saw Kresich in court. Gone were the low-cut dresses, short-shorts and bedroom eyes. "She was dressed like a nun," he said.

Prosecutors quickly offered a deal. "They told my lawyer to pick any one of the charges [to plead guilty to] and this would end," he said. "But I wasn't guilty of anything, and I wasn't going to plead guilty to something I didn't do."

Now he's not sure he did the right thing. Fighting the government has cost him everything.

Carayannis emigrated to

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this country from Greece as a young man. He is the grandson of Lela Carayannis, who led that nation's largest anti-facist resistance organization during World War II. She and 71 of her followers were executed. Other members of Carayannis' family were tortured in concentration camps.

"I had faith in this system," he said. "I thought with this kind of evidence and due process, I would be acquitted." But he wasn't. He was convicted and sentenced to 41 months in prison.

Hundreds of supporters have sent testimonials to the offices of federal judges and congressmen on Carayannis's behalf along with questions about the government's tactics. They have accomplished nothing.

Carayannis is in a legal limbo because doctors have said he is not healthy enough to travel to prison because of the effects of three heart attacks. So his seven-year odyssey continues.

He says he's sure of only one thing: Because of his medical problems, the 41 months in prison he faces amounts to a death sentence.

Beryle L. Johnston

Beryle L. Johnston was a Papillion, Neb., gentleman farmer, contractor and finance company owner who thought he was getting a good deal on refinancing a farm, but his 1993 trip to Florida to seal the deal ended in a 78-month federal sentence for money laundering.

As often occurs in government stings, Johnston wouldn't learn until after his conviction that the key witness against him had lied to him, to the government and to the court in the sting that would cost him his freedom, his farm and most of his assets.

Based on the evidence, the government violated its rules when it snared Johnston in the sting, but because appeals take so long to resolve, vindication might come after his sentence is completed sometime next year at the Federal Correctional Institution at Yankton, S.D.

It all started in June 1993 when Jerry Woody, a man Johnston had tossed out of his office years earlier, met two U.S. Drug Enforcement Administration agents who were posing as agents for the Cali Drug Cartel. The agents told Woody and an acquaintance that they needed to launder $10 million from cocaine proceeds.

People who operate on the fringes of the law usually know that Cali Cartel members don't share their affiliation with new acquaintances unless they plan to kill them, but these agents had no trouble hooking Woody, who had once been a banker but was as financially unstable in 1993 as he had been most of his life.

Although he'd never laundered anything more than a load of clothes, Woody told the smugglers he owned a bank on the Island of Palau, a U.S. Territory off the coast of the Philippines. He said he'd laundered "billions of dollars" over the past decade through connections in Lichtenstein.

He didn't mention that he couldn't pay his phone bill, had recently run out on several hotel bills and that his foreign bank was simply a piece of paper. His bank charter in Palau had been revoked years earlier because Woody didn't pay the $50 renewal fee.

Virtually everything he told the agents was a lie.

The clincher came when Woody said he could arrange to launder money already in the United States through a Nebraska farmer who would be willing to put up his farm as collateral.

The undercover police officers said they wanted to meet the farmer — they had $2 million in small bills ready to launder. That complicated things a bit. The farmer was Johnston, and Woody hadn't spoken to him in years. Johnston simply happened to own a 25 percent interest in a $6 million Nebraska farm and Woody had added his name to the growing list of lies he was feeding the feds.

Woody called an old friend, John Velder, in Kansas City, Mo. — a man who knew Johnston through business dealings. Velder, who'd helped Johnston with a loan in 1991, listened as Woody told him that friends he knew had recently inherited $20 million — another lie — and wanted to invest it. Woody thought that Johnston, a partner in Fleetwood Farms, might be a candidate for a low-interest loan.

He also asked Velder not to tell Johnston that Woody was behind the deal, since Johnston had refused to deal with him on financial matters because of Woody's tendency to skirt the law. Velder agreed and called Johnston, who jumped at the offer of a 6 percent loan. The deal would get worked out on July 7, 1993, in Orlando, Fla.

Johnston was outraged when Woody showed up with Velder, but the good interest rate kept him talking. At a motel room, the undercover agents joined them. That's when Johnston says he first learned of the money laundering scheme.

"They told me they were going to give me the loan, but you're going to launder our money," he said in a recent phone interview from prison.

Velder left the room before they discussed specif-ics and was acquitted of charges filed against him.

Johnston's apprehension with the agents is evident in several conversations the government recorded, but in the end he agreed to the money-laundering deal.

Why would he do something so stupid? Fear, Johnston says. Woody took him aside during the talks, informed him the men were members of the Cali Cartel and pointed out guards stationed in the hall — to make sure no one tried to sneak away. They were actually FBI agents in disguise.

After his arrest, the government offered Johnston a deal if he would plead to a lesser charge. He refused. "I told [my attorney to tell prosecutors], 'You know there's a law against perjury, and if I admit doing this, I've committed perjury.' "

But based mostly on the videotaped conversations from the room, he was convicted. After the trial, he began to discover evidence that the government should have given to his attorneys.

Woody wasn't interested in laundering money. He was trying to rip off $25,000 in front money from the supposed Colombian money men, and because he was broke, there was no way Woody could launder money. In court, the FBI presented him as an accomplished money launderer of some wealth. Sting operations aren't supposed to target people who don't have the means to pull off the crime in question.

Johnston's attorney asked DEA Agent Russell Permaul, "Do you have any evidence that Woody handled billions of dollars?"

"No, not short of him owning a bank," replied Permaul.

There was no bank. Woody had been living on his girlfriend's credit cards.

Johnston maintained at the trial that he'd known nothing about the money laundering deal until the day he walked into the motel room, which the government disputed.

Johnston's daughter would later learn that DEA documents showed no record of Johnston until the day before the Orlando meeting. Further, Woody was prepared to verify Johnston's story on the witness stand, if prosecutors granted him immunity for those

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statements, since otherwise he might face still more charges.

Federal prosecutors refused, Johnston said. So the witness who had lied to set him up was denied the opportunity to set him free. Woody was sentenced to 80 months for his role in the deal.

Finally, Johnston wasn't satisfied with the videotaped conversations from the sting that prosecutors had played in court. The tape abruptly ended the moment they announced his arrest. After he was convicted, the jury foreman told his attorney that he couldn't understand why Johnston didn't simply flee the room.

Had the foreman seen the agents throw him to the ground and handcuff him, he might have appreciated the fear Johnston says he experienced.

"I was scared; what else can I say," Johnston said. "I'd like to see the jury foreman in my shoes when they grabbed me."

Johnston's repeated requests that the government turn over the original tape have been denied. Johnston figures the DEA's real interest in him stemmed from one thing: his substantial interest in a Nebraska farm that could be seized under federal forfeiture laws.

He was right. The DEA seized Johnston's $1 million interest in the farm then sold it for $360,000 to his former partners.

Previously, in this series:
— Sunday, Nov. 22: How a federal case is composed, and how the rules governing have led to abuses by federal agents and prosecutors.

What's next in the series:
— Tomorrow: Discovery has become a shell game.

Federal stings often put more drugs on the streets

By Bill Moushey
Post-Gazette Staff Writer

Rodney Matthews noticed lawmen waiting as he veered his airplane loaded with 700 kilograms of cocaine toward a remote Houston airstrip on New Year's Eve in 1988. He landed anyway.

Police sirens blared, and officers drew their guns, thinking they had made a major bust

Matthews didn't flinch. He handed over the high-quality Colombian cocaine with a street value of more than $50 million, and before the new year was even a few hours old, Matthews — who could have been imprisoned for life based on the weight of his load — was at home in Texas with his family, with the blessing of the U.S. Customs Service.

All it took, Matthews said, was a phone call to a key federal agent. For not only did he have the government's blessing to bring in the drug; he had permission to sell it, too.

That might seem like a strange way to fight the war on drugs, but it's a common tactic used in government sting operations, the Post-Gazette found. The object is to snare key leaders in drug smuggling operations. In this case, it succeeded only in putting more drugs onto America's streets.

When feds deal in drugs

It is against the law for federal agents to distribute illegal drugs, just as it is for ordinary citizens, but there are exceptions.

Under "extraordinary" circumstances — to nab big-time dealers or smugglers, for example — top Drug Enforcement Administration, FBI or Custom's officials may issue an order to allow it.

It is that kind of order that Matthews said he was given, but two years after his close encounter near Houston, Matthews was arrested and eventually sentenced to three life terms in prison. He insisted that he was double-crossed, that he was busted for an operation that the government had approved.

Two U.S. Customs agents corroborated his story in court, but top officials at the U.S. Justice Department denied that. They even brought perjury charges against the two agents who vouched for Matthews, saying they wouldn't go along with what Matthews calls a "high-level coverup." A jury acquitted the agents.

The only certainty in this mess is that Matthews is doing life in prison at the U.S. Penitentiary at Leavenworth, one of the toughest in the country.

From his cell, he has staged a one-man assault against the government, which, he says, tried to cover up its deals with him by asking him to perjure himself and then condemned him to life in prison because he refused.

A criminal's initiative

Often, it's the criminals who suggest this country's drug stings — even when those suggestions seem far-fetched.

Mustaq Malik knew the only way he'd be freed early from his 24-year sentence at the federal prison in Petersburg, Va., for drug trafficking was to help federal agents set up a sting that would snare other big-time drug dealers.

The native of Pakistan would do anything to ensure the sting's success, even lie in court, he later told a defense attorney.

Malik testified in 1993 that he had lied in court before and that he was willing to testify against people he didn't even know, so long as prosecutors agreed to shave years off his prison sentence.

Defense Attorney: "What you would do is . . . use the government in any way that you possibly could [in] . . . getting your sentence reduced from 24 years and five months to something lesser, wouldn't you?"

Malik: "Well, that's the system."

The deal that Malik offered federal agents in 1990 seemed especially odd. The guy he set up, 63-year-old New Yorker Raphael Santana, was already serving a life sentence in prison. As part of the sting, Malik persuaded Santana to arrange from prison for the distrib-

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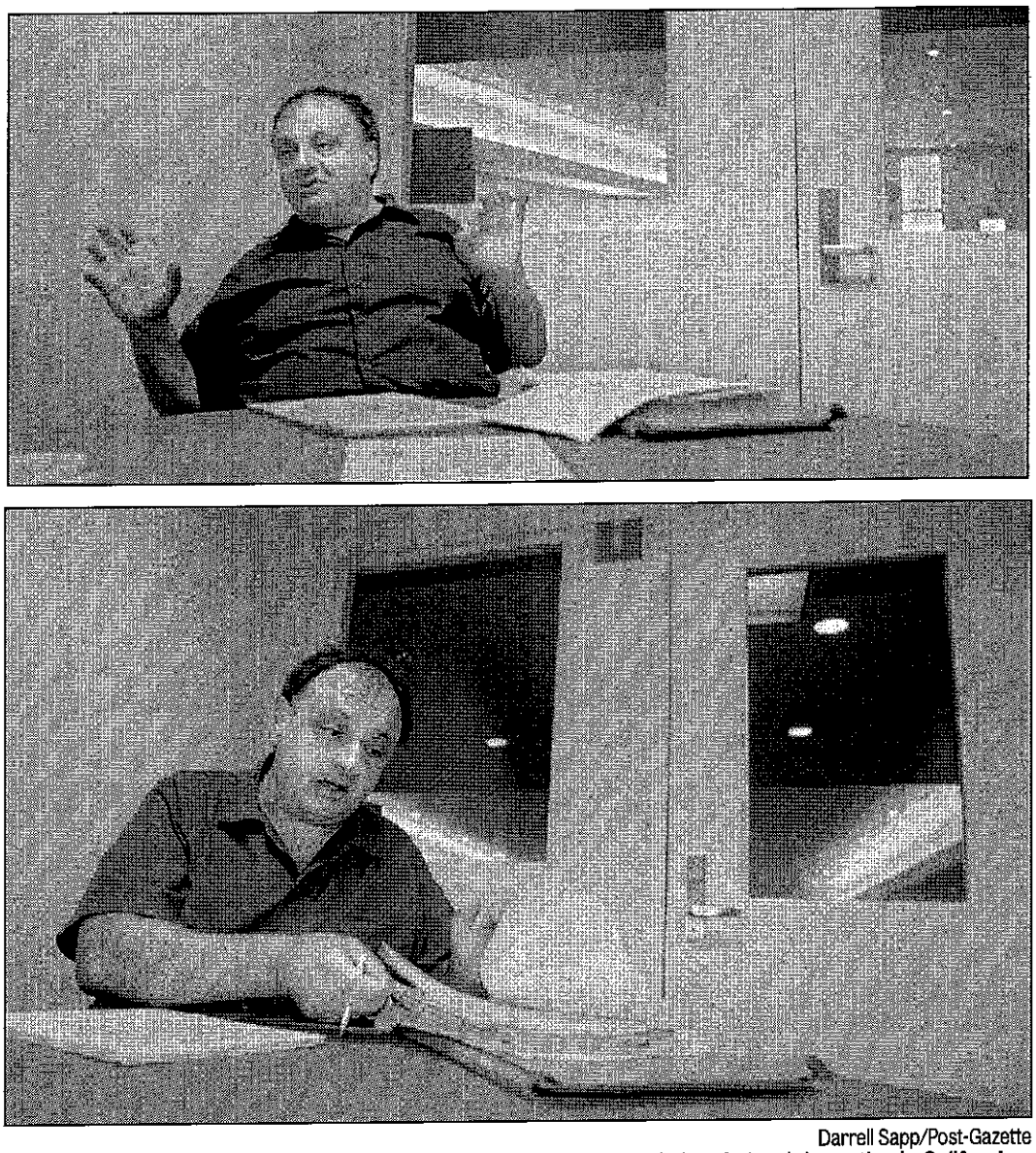
Not only did he have the government's blessing to bring in the drug; he had their permission to sell it, too.



Darrell Sapp/Post-Gazette

Michael Riconosciuto goes through his notes while explaining his role in a federal drug sting in California. On orders of federal agents, Riconosciuto obtained chemicals needed to make methamphetamine and distributed it on the streets.

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ution of a shipment of heroin that Malik would bring into the country. Then the federal government would bust everyone involved.

But in its zeal to grab a few small-time colleagues of this lifer, the federal government turned over a package of almost pure heroin from its own drug lockers to Frank Fuentes, a small-time criminal with a bad drug habit.

Agents could have arrested Fuentes, Santana and the other conspirators before Fuentes took possession of the heroin. For reasons not clear, they did not. So Fuentes promptly got the heroin into the hands of street dealers in New York City.

Experts testified that it would have been cut into 8,500 individual packets and sold on the street for $170,000.

Federal agents arrested Santana; Fuentes, a down-on-his-luck former dealer who was so broke that he once missed a meeting with federal agents because he didn't have money to get his car out of a tow pound; Santana's wife, who was dying of cancer; and four street-level dealers.

A Senior U.S. District Judge eventually ordered that the conspiracy charges against the defendants be dropped, saying the amount of heroin given to Fuentes "boggles the mind" and constituted outrageous govern-

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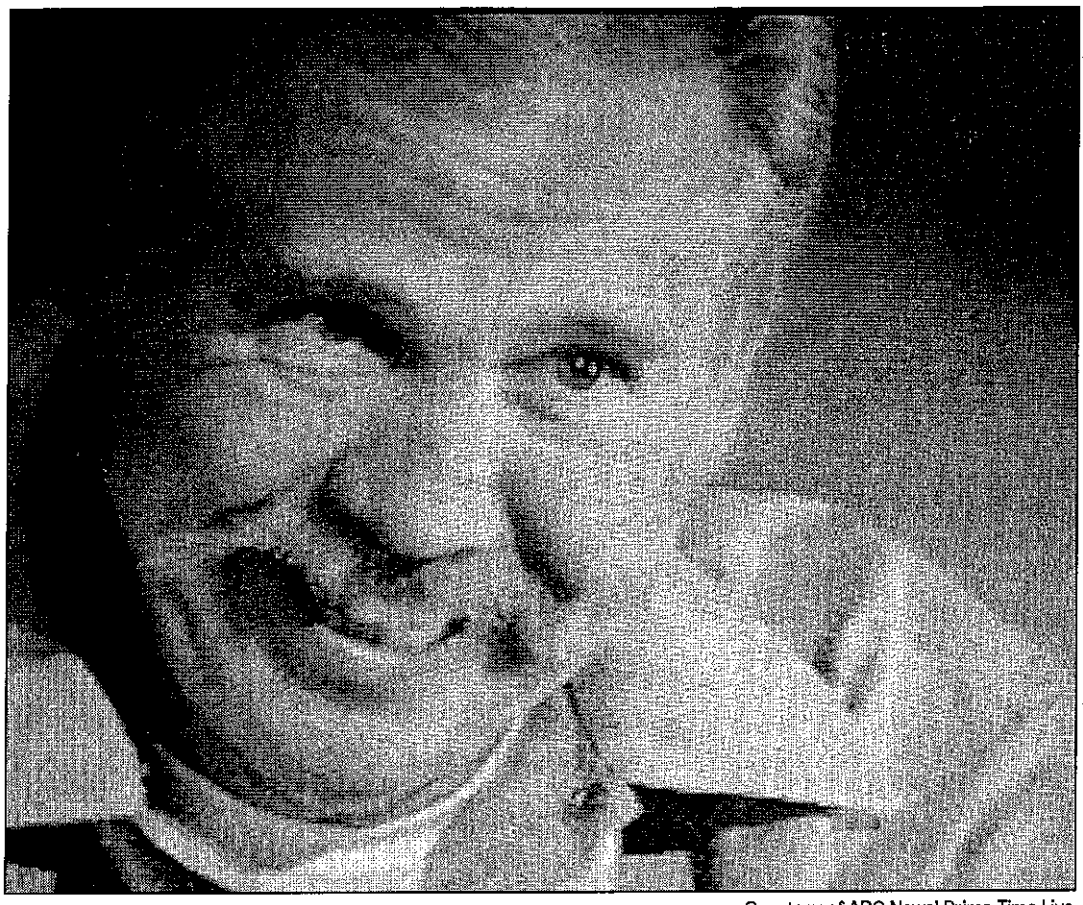

Courtesy of ABC News' Prime Time Live

Rodney Matthews talked about some of his government-endorsed drug-smuggling in an interview on ABC News' 'PrimeTime Live' in July. 'The Texas highway patrolman pulled me over and asked me what was on the truck," Matthews said. 'I told him 700 kilos of cocaine. He got a little excited.'

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ment misconduct.

His ruling was overturned on appeal, and Fuentes is again appealing his life sentence.

Most of Malik's court records are sealed, so his fate isn't clear, but the Post-Gazette found a few records that show he continued to buy down his prison term as an informant in New York and Chicago. One court paper also shows the government paid him $50,000 for his efforts. At last report, he was in the federal witness protection program.

A little help from his friends

There's another problem with government drug stings: They sometimes create a drug problem where none existed.

Ben Kalka had been a bit player in the San Francisco drug world off and on for most of his life — mostly scoring small hits of cocaine — but at the time of his arrest in 1982, he'd become a major supplier of methamphetamine on those same San Francisco streets.

Cheaper than cocaine and heroin, it induced many of the same sensations, including quick addiction.

Federal agents had set Kalka up in a sting. But by the time Kalka began manufacturing the drug, the Drug Enforcement Administration insists the sting had ended, an argument Kalka finds bizarre.

By the time the government caught up with him, Kalka figures he'd produced 8,000 pounds of drugs worth $10 million, using ingredients federal agents had arranged for him to buy.

Kalka should have been suspicious of his good fortune in 1980.

A chemist friend had asked him to find a barrel of phenyl acetic acid, a key precursor for the manufacture of methamphetamine. Kalka had a contact at a chemical company who said there was no way he could get him the chemical. While it wasn't illegal, the government scrutinized who bought and sold the chemical.

A week later, this contact called to say he could get Kalka a semi-truck load of the chemical precursor weighing 25,000 pounds. All Kalka needed was the money — $250,000.

What Kalka didn't know was that in the interim, the contact, Paul Palmer, had become an informant for the government after being busted for selling the very precursors Kalka had bought.

By now, Kalka was hooked. He set up a partnership with another drug dealer, Paul Morasco, to get the money, then began his search for the last ingredient he'd need for the speed — monomethylamine. Palmer put him in touch with Michael Ricono-sciuto, whose past included shadowy connections with various U.S. intelligence agencies, unbeknownst to Kalka.

Riconosciuto greeted Kal-ka like a long, lost brother. He claimed Kalka had once talked him out of suicide when they were imprisoned in the 1970s at Lompoc federal prison. Kalka vaguely remembered Riconosciuto.

Riconosciuto said in a recent interview that he was working for the FBI when he connected with Kalka and the agency told him to find the monomethylamine for Kalka as part of the sting operation. When the chemical was delivered, the FBI planned to bust Kalka and various subordinates.

The plan failed miserably, an array of court documents show. Kalka, naturally mistrustful of almost everyone, managed to divert the tractor-trailer truck carrying the chemicals away from federal agents who were tailing it.

Even so, Kalka wonders today why the FBI didn't track him down once the methamphetamine began hitting the streets. The agency maintains it eventually stumbled across Kalka's drug enterprise during another undercover operation.

Soon, he had produced what might have been the largest batch of metham-

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phetamine produced in this country.

And it was all with chemicals supplied with the help of federal agents.

When he was finally arrested, Kalka gave the government $1 million and 1,000 pounds of methamphetamine, all that remained of the 8,000 pounds of the drug he'd produced, in exchange for a promise that he would serve no more than 10 years in prison.

A judge ignored the prosecutor's request and slapped Kalka with a 20-year sentence. In the meantime, Riconosciuto was arrested and convicted on a methamphetamine manufacturing charge. From his prison cell in Coleman, Fla., he described the role of federal agents and their authorization for him to sell Kalka the final ingredient needed to make the methamphetamine.

Kalka says the government's complicity in supplying the drugs might yet win him release from prison if he can convince a court to hear him.

In the meantime, he has been moved from one prison to another because of his repeated attempt to sue the government over his case and the conditions of his incarceration.

A drug-related millionaire

Charles Hill also earned a fortune in illegal drugs, but he did it legally.

He opened Triple Neck Scientific Co. in 1985 near San Diego. Four years later, he had amassed more than $9 million in profit from the specialty chemical business, selling the precursors needed to manufacture methamphetamine, which was becoming popular in Southern California.

Hill didn't need to hide his operation from the government. He was working

Stings put drugs on the streets

for the U.S. Drug Enforcement Administration, which tracked down more than 100 of his customers, arresting them for using the precursors in illegal drug-manufacturing operations.

The only problem was that the government didn't recover all the chemicals that Hill had sold. Federal officials admit that the precursors they didn't recover were likely transformed into thousands of pounds of methamphetamine that was eventually sold on American streets.

Most of those caught in the government's web quickly pleaded guilty and went off to prison.

Those who appealed based on the government's tactics were rebuffed. The appeals court said convictions could be overturned only if "government misconduct has been so outrageous that it results in a violation of due process," or was "so grossly shocking and so outrageous as to violate the universal sense of justice."

The court ruled it was not. "Unsavory conduct alone will not cause the dismissal of an indictment."

Turning the tables

Rodney Matthews was the centerpiece in the government sting called "Operation Shanghai," an example of just how little control the U.S. sometimes has in its drug interdiction efforts.

Matthews agreed to smuggle drugs with the government's blessing in 1984 to avoid a three-year prison term for smuggling marijuana.

It wasn't a bad trade. Government agents said he could keep anything he earned from the smuggling operations, and he earned millions.

The government sting had two objectives, Matthews said in several letters responding to questions the Post-Gazette posed:

- Snare a South Texan named Vic Stadter, an outspoken government critic who made his opinions known through his newspaper. Federal agents believed he was a longtime drug smuggler. Stadter denied the charge and accused the government of harassment.
- Bust Pablo Escobar, the notorious leader of the once-feared Medellin Cartel in Colombia, which the government said was responsible for 80 percent of the cocaine that came into this country during the 1980s.

Matthews said he got nowhere with Stadter, managing only to take one of his secretaries on a few dates.

His pursuit of Escobar was more complicated and ultimately unsuccessful. Escobar died of multiple gunshot wounds after a shootout with Colombian police in December 1993, before U.S. agents ever laid a hand on him.

During the years in between, Matthews smuggled more than 50 loads of cocaine for the U.S. Customs Service. At the direction of federal agents, he delivered his loads to illegal drug syndicates in the United States, which then distributed them across the nation.

Matthews said he invested most of his profits in property and aircraft and made sure the operation never cost the government a cent.

He said the government wasn't interested in pursuing the people who bought his drugs. By not busting them, agents hoped to enhance Matthews' reputation with Escobar and Stadter, creating an image of a super trafficker who could avoid the government's web.

That he never got close to Escobar wasn't for lack of imaginative schemes.

At one point, Matthews tried to sell the cartel leader the coastal schedules of U.S. AWACS surveillance planes, used to detect smugglers in boats and planes, for $6 million. It was all a scam, he said. He was hoping the ploy would get him closer to the Colombian.

He said his encounter with scores of federal agents in 1989 at the airport near Houston was a wake-up call. His contacts for the smuggling sting were two Customs Service agents and two Texas Department of Public Safety narcotics agents, and he no longer believed they had enough support for the operation to protect him.

"It was glaringly apparent that the people who had given me authorization had over-reached their authority, so from that point on I made sure that no cocaine hit the street," he said.

Soon, he was accepting only contract assignments from federal law enforcement agencies, for a fee of $50,000 a flight. He brought in the drugs and let the federal agents take it from there.

These flights often included overnight stops at U.S. military bases in the Caribbean, including Guan-

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tanamo Naval Base in Cuba, "where I would fly in loaded with Colombian cocaine, using prearranged code names like 'Dark Cloud' and 'Hot Rod' for tower clearance."

The final irony: The government still owes him $180,000 for those flights, which agents corroborated during his trial.

Matthews' last operation was in 1992 in Fort Lauderdale, Fla. An old friend set him up to be busted.

Jimmy Norjay Ellard was an ex-police officer from Texas, a pilot and a longtime associate of Escobar, and he had served as liaison for Matthews with the cartel leader.

Ellard's resume was bloody. He had instructed Escobar in how to attach a bomb to an Avianca Airlines plane, which the drug leader did in the early 1980s to eliminate two informers. More than 100 innocent people died in the mid-air blast.

Federal agents busted Ellard in 1985 for cocaine smuggling, and he was sentenced to life in prison. He had been in jail for four years when he cut a deal with an assistant U.S. attorney in Fort Lauderdale, based on his promise to deliver Mat-thews.

From prison, he arranged an illegal drug shipment that Matthews would pick up.

Federal agents had told Ellard that Matthews not only worked for the government but had been responsible for setting Ellard up in his 1985 arrest, Matthews said.

Federal prosecutors and agents in South Florida told Matthews they didn't believe his story about working for the federal government, despite the drug agents' corroboration. During pre-trial meetings, when Matthews' lawyer named the agents he was working with, prosecutors suggested they had conspired in his crime.

So prosecutors offered Matthews a deal: Implicate the agents in some of his crimes, and he'd be recommended for a reduced sentence.

Matthews refused; they were honest officers, he said.

Matthews was convicted of drug conspiracy and sentenced to three life terms in prison, based on the amount of drugs he'd smuggled. Ellard, because of his help in nailing Matthews, got only five years, but his luck didn't last. In September, he and his son were arrested in Fort Lauderdale and charged with conspiring to import marijuana. He is back in jail.

The agents were charged with conspiracy based on facts that came out of Mat-thews case. Both were acquitted.

Matthews thought he would find some relief, because he believed the government would surely come to its senses — the government's agents, after all, had corroborated his story and been found innocent of trumped up perjury charges. He sent a package of information to 140 Members of Congress.

He got five responses, most of them "offering good wishes," he said. Last summer, he did an extensive interview with the ABC show "Prime Time Live" in which he explained his story.

Shortly before that story aired, he was put into an isolation cell at Leavenworth, where he is only allowed out for a short walk each day.

Informant lures him into costly deal

It was the kind of part-time job that never makes the classified pages. Albert Barruetta needed money. The U.S. Customs Department needed to nab drug dealers. So Barruetta told agents he had a line on a major methamphetamine dealer in Pasadena, Calif.

Barruetta knew no major drug dealers, but he did know Cristobal Crosthwaite-Villa, a Mexican citizen whose car U.S. Custom's officials had seized in September 1992 at Tijuana, Mexico, as he was trying to cross the border illegally.

Barruetta tried to fleece Crosthwaite, telling him that for $1,000 he would not only get his car back but would get him permanent residency status in the United States. Then he learned Crosthwaite sometimes used drugs, so he told Customs agents that Crosthwaite was a major drug dealer.

The agency, without checking Crosthwaite's background, agreed to hire Barruetta as a confidential informant and pay him, on a contingency basis, cash for each drug dealer he could lure into a sting operation.

Barruetta began cajoling Crosthwaite to find him a source who might buy methamphetamine. Crosthwaite had no luck until he encountered Bobby Thomas, who had used drugs with Crosthwaite in the past and, on one or two occasions, had sold Crosthwaite a few $20 doses of the drug.

Barruetta offered to sell Thomas drugs, saying the deal would also get Crosthwaite's car returned. Thomas told him he couldn't help. Barruetta kept pressing him with offers to sell him cocaine, marijuana, methamphetamine.

Thomas finally relented, agreeing to buy three pounds of methamphetamine in the hopes of helping Crosthwaite get his car.

Thomas, who had no prior criminal record, was arrested, found guilty and sentenced to more than 12 years in prison. The amount of drugs Barruetta had pressed Thomas to buy determined the sentence length.

In January, the 9th U.S. Circuit Court of Appeals reversed Thomas's conviction, in part because he'd been cajoled and entrapped into committing the crime. He is awaiting a new trial.

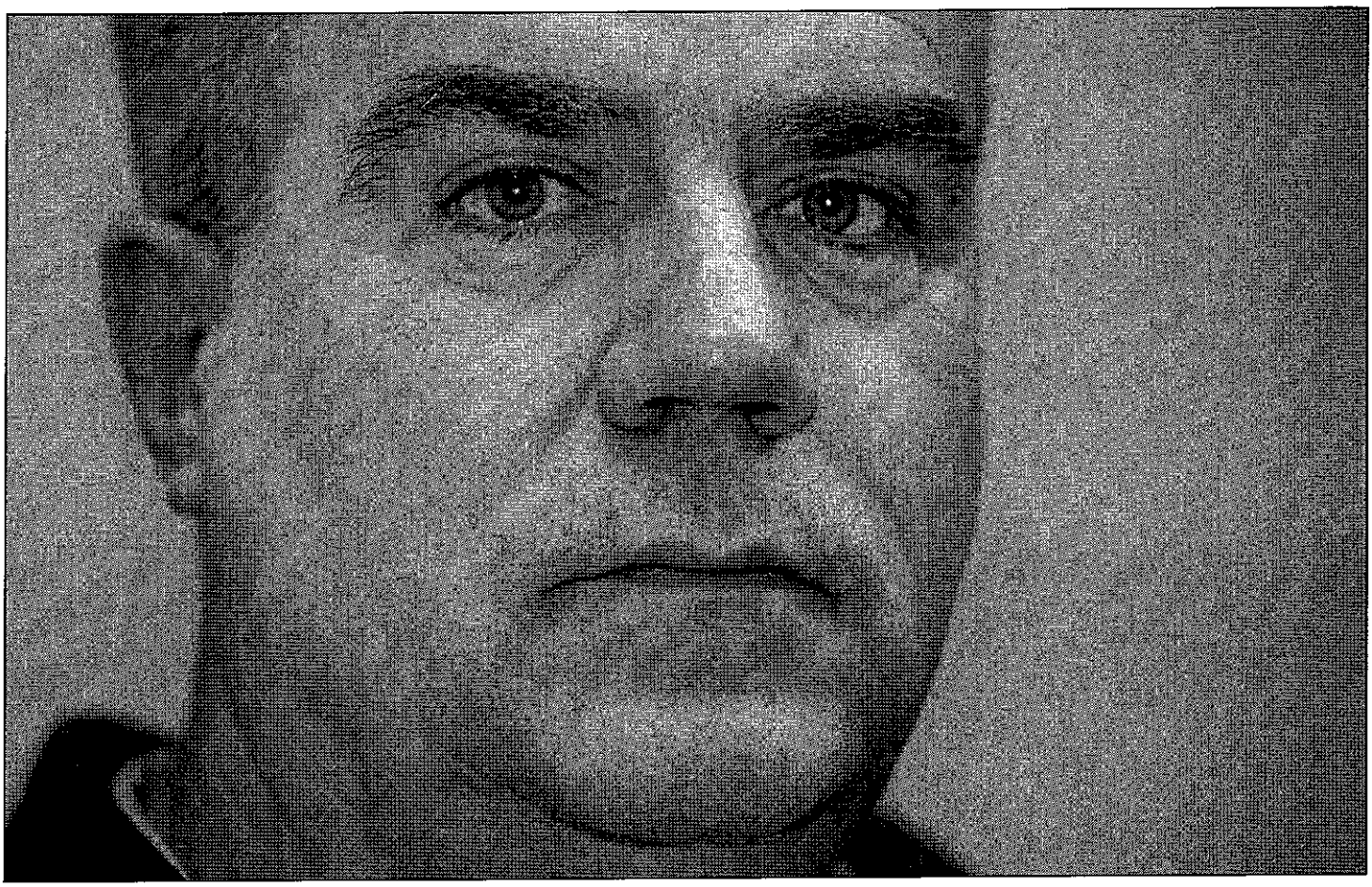
Pittsburgh Post-Gazette Reprint ■ Tuesday, November 24, 1998

Win at all Costs

Part 3 of 10

Government misconduct in the name of expedient justice

Hiding the facts



Darrell Sapp/Post-Gazette

Israel Abel says the United States violated his rights when it secured his extradition from Costa Rica, and Costa Rican officials agree. They have filed formal charges against a high-ranking Justice Department employee, saying he lied to circumvent Costa Rican law. For Abel's story, **see Page A-14.**

Discovery violations have made evidence-gathering a shell game

About this series

Hundreds of times over the past 10 years, federal law enforcement officers and prosecutors have pursued justice by breaking the law.

Today, in the third of a 10-part series, the Post-Gazette continues its examination of this culture in which the pursuit of justice has too often been replaced by the pursuit of a conviction. Sometimes, at any price.

By Bill Moushey
Post-Gazette Staff Writer

Galen Kelly's job had more risks than most. Parents hired him to rescue their children from religious cults.

In 1992, Kelly, thinking he had found the daughter of a couple who had hired him, grabbed a young woman off a Washington, D.C., street and returned her to the family. But he had grabbed the wrong woman.

Federal agents charged the New York-based Kelly with kidnapping, and he went on trial in Virginia.

He routinely faced risks in his job — attacks by cult members who felt threatened were not uncommon. But they were nothing compared to those he would face trying to get a fair trial in federal court.

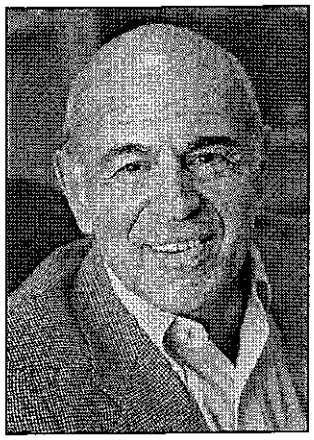
Throughout the proceeding, Kelly's lawyers requested that Assistant U.S. Attorney Lawrence Leiser of the Eastern District of Virginia turn over discovery material.

Discovery material includes any evidence that might help prove a defendant innocent. It also includes anything that might show the biases of a witness against a defendant or background information that might lead jurors to question a witness's credibility.

Under federal law, defense attorneys are entitled to ask for discovery information, and prosecutors must provide it.

Kelly and his attorney believed the woman Kelly was accused of kidnapping, Debra Dobkowski, was a cult member who had set Kelly up by pretending to be the woman she knew he was after.

Dobkowski testified she was not a member of the cult and that she'd had no brushes with the law. Based largely on her statements, Kelly was convicted and sentenced to seven years in prison.



Bennett L. Gershman, a former New York state prosecutor, wrote a legal textbook focusing on the methods and motivations of prosecutorial misconduct. The prime motivator: "Prosecutors want to win."

Dobkowski, however, had lied.

She was one of the cult's leaders, and when she testified, she was being investigated for criminal mail fraud and money laundering.

Leiser knew about her lies, yet said nothing.

It was three years before an appeals court overturned Kelly's conviction. Dobkowski's credibility was key to the government's case, the court stated, but her testimony was "false in numerous respects and the government at least should have known it was false."

Leiser, the respected former head of the National Association of Assistant U.S. Attorneys, was suspended from his job, though that action was later overturned following an internal Justice Department appeal.

Even the short-lived suspension of Leiser, then 49, was unusual. What Leiser did "was a bad judgment call, but one that was not indigenous to Larry Leiser," Kelly's attorney, Robert Stanley Powell, told reporters. "A lot of federal prosecutors do what he did."

A two-year investigation by the Post-Gazette found Powell to be exactly right.

Its review of 1,500 allegations of prosecutorial misconduct over the past 10 years found hundreds of examples of discovery violations in which prosecutors intentionally concealed evidence that might have helped prove a defendant innocent or a witness against him suspect.

But most cases reviewed by the Post-Gazette shared a key difference from the Leiser case: Prosecutors who violated discovery rules were seldom punished. Many violated discovery rules over and over again.

An issue of fairness

The discovery process is central to the American concept of a fair trial.

"Society wins not only when the guilty are convicted but when criminal trials are fair," wrote U.S. Supreme Court Justice William O. Douglas in 1963.

"Our system of the administration of justice suffers when any accused is treated unfairly."

His words were at the core of the Supreme Court's Brady vs. Maryland opinion, which set the standard for discovery rules in this country.

John L. Brady and an accomplice were convicted of murdering a man during a robbery. Both were sentenced to death.

But during Brady's trial, prosecutors withheld a police report that had been requested by defense attorneys, in which Brady's accomplice confessed to pulling the trigger.

The court ruled that by withholding the evidence, the prosecutor violated Brady's rights under the equal protection clause of the 14th Amendment to the Constitution.

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Even if such information is withheld unintentionally, the court said, a defendant might still be entitled to a new trial or a new hearing on his sentence.

Brady's case was remanded for re-sentencing and he was spared the death penalty and given life in prison.

But as with many Supreme Court rulings, a clear statement of principles can become fuzzy in its application. To rectify discovery violations, the Supreme Court adopted a test that begins and ends with one basic premise: A conviction should be reversed only if the verdict would have been different had the discovery information withheld by prosecutors been known at the trial. Otherwise, the discovery violation is "harmless error" — and the original court verdict should stand.

In its investigation, the Post-Gazette found that the test has evolved into a devious calculation by many federal prosecutors: How much favorable evidence can be withheld without risking a reversal on appeal?

Rather than abide by the Supreme Court's admonition that their goal should be to ensure a fair trial, many prosecutors try to figure just how much they can cheat. Ignoring discovery rules improves the chances of a prosecutor winning a conviction with little risk of penalty.

"Brady violations account for more miscarriages of justice than any other violation," said Bennett L. Gershman, a former New York state prosecutor and now a Pace University of New York law professor.

Gershman wrote "Prosecutorial Misconduct" in 1997 and has explored discovery violations and the motives behind them.

"Prosecutors want to win," he said. "Some believe the defendant is so guilty that any information that contradicts the guilt can't be trustworthy, so they believe they don't have any obligation to turn over untrustworthy material while telling themselves they are being honest."

The double whammy for defendants, of course, is that there's no guarantee that favorable evidence, once hidden by prosecutors, will ever be revealed.

"People have been sent to prison for many, many years before they find that [prosecutors knew of] exculpatory evidence, but that's the built-in contradiction," Gershman said.

"If the information is hidden, how do you find it?" Gershman asked. "How do you get it to make a claim? Much of this information will never see the light of day, even if it may be critical in proving the defendant's innocence."

That hasn't always been the way federal prosecutors operated.

Gary Richardson was appointed U.S. attorney for the eastern district of Oklahoma by President Reagan, serving until 1984.

During his tenure, Richardson said, his office had an "open file" discovery policy, which meant defense lawyers could come in and look at anything prosecutors had collected on a particular case.

"My attitude was that if you can't take the truth and win, then you weren't supposed to win," he said.

Now Richardson is a criminal defense attorney and says he regularly complains about federal prosecutors hiding evidence favorable to his clients.

The open-door policy he advocated is no more.

Indeed, the Post-Gazette interviewed more than 100 defense attorneys for this series and none had been given open access to a prosecutor's files during discovery.

Ramsey Clark, U.S. attorney general under President Johnson, is now a de-

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Associated Press

Ramsey Clark, U.S. attorney general under President Johnson, is now a defense attorney and has witnessed the rise in discovery violations firsthand. The true victims, he says, are the poor, who can't afford sophisticated representation that can fight through prosecutors' attempts to withhold evidence.

'The numerous instances of individually egregious conduct of important officials of the U.S. government shocks the conscience of this court,' the judge wrote.

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fense attorney and bemoans the trend — especially because of its impact on defendants who are poor and can't pay for lawyers who can uncover attempts to withhold evidence.

"It is really tragic," he said, "how we grind up poor people in these situations."

Discovery violations are rampant, in part because the Justice Department has few rules penalizing a prosecutor who violates the discovery process.

When he served as attorney general, Clark would seek to overturn convictions if he discovered misconduct by federal law enforcement officers.

"What we were trying for [was] sort of an open-file type of process," he said, where prosecutors would take defense lawyers into a room and give them the entire file on an individual charged with a crime.

"We used to confess error when we thought we were wrong." He said he rarely sees that happen anymore.

Facing no consequences

Indeed, the Post-Gazette found no federal prosecutors eager to apologize for their conduct.

The only public reprimands tended to come from judges who overturned convictions on appeal. And by that point in the judicial process, a defendant often had already served months or years in prison.

Chake Kojayan, a middle-aged Lebanese woman, flew into Los Angeles in June 1991 with $100,000 worth of heroin sewn into her bag.

Within a day of her arrival, an acquaintance sold the drugs to two undercover Drug Enforcement Administration agents. Kojayan and three others were arrested.

She and the other defendants insisted they never knew the drugs were in the bag. The other defendants maintained that another man, Krikor Nourian, was behind the smuggling venture.

In fact, Nourian had been involved, and federal agents promised him leniency in exchange for information he provided about Kojayan and the other defendants. But defense attorneys were never told he'd become an informant, even though they repeatedly asked prosecutors to turn over information that would detail his role in the case.

No fewer than 11 times during the trial, Assistant U.S. Attorney Jeffrey Sinek insisted that Nourian had no role.

Kojayan and her co-defendants were convicted and received sentences ranging from six to 20 years in prison. Two years later, defense lawyers learned that Nourian had been a government informer and that Sinek knew it.

Had defense attorneys known that during the trial, they could have presented a credible defense that Nourian was snitching on innocent people to save himself — which is exactly what Kojayan maintained.

The 9th U.S. Circuit Court of Appeals issued an opinion on Kojayan's appeal in 1993 that could as easily apply to hundreds of other discovery violations found by the Post-Gazette:

"What we find most troubling about this case is not the [assistant U.S. attorney's] initial transgression, but that he seemed to be totally unaware he'd done anything at all wrong, and that there was no one in the United States attorney's office to set him straight.

"Nor does the government's considered response, filed after we pointed out the problem, inspire our confidence that this kind of thing won't happen again.

"How can it be that a serious claim of prosecutorial misconduct remains unresolved — even unaddressed — until oral argument in the [9th U.S.] Court of Appeals? Surely, when such a claim is raised, we can expect that someone in the United States attorney's office will take an independent, objective look at the issue.

"Yet the United States attorney allowed the filing of a brief in our court that did not own up to the problem, a brief that itself skated perilously close to misrepresentation."

The court ordered Kojayan released from prison.

He didn't play along

Prosecutors frequently argue that their discovery violations are inadvertent. That would be a tough argument to make in the drug-smuggling case against Miami attorney Frank Quintero Jr.

For years, Quintero had represented drug smugglers. Federal prosecutors in 1994 charged that he had gone from being a counsel for drug smugglers to becoming one himself.

In preparing their case, they interviewed Constantine Roca, the manager of a Florida marina. An informant had told federal agents that Roca had handled the purchase of drug boats for Quintero and his Colombian cartel clients.

But when questioned, Roca insisted that simply wasn't true. In fact, he didn't even know Quintero. Roca's statement carried weight — he had no criminal record.

Roca's statement clearly should have been given to defense attorneys under the court's discovery order. But it wasn't, and the case went to trial without the defense knowing of Roca's existence.

Had a defense attorney ignored a similar court order, he might have been disbarred, or at least subjected to sanctions from an ethics tribunal.

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Assistant U.S. Attorney Paul Pelletier's deceit brought no sanctions.

Quintero's first trial ended in a mistrial — and his attorneys learned of Roca's statement from Roca's attorney as they prepared for Quintero's second trial.

So they promptly put Roca's name on their own witness list — which proved to be bad news for Roca.

In September 1996, just a few days after learning Roca might be a witness for Quintero, Pelletier and Deputy U.S. Marshal Joe Godsk obtained a search warrant for Roca's business.

They would not reveal the basis for the warrant — the agents refused Roca's lawyer's request for a copy of an affidavit of probable cause, and that information was nowhere on the public record.

Armed agents found nothing in the search that would result in charges against Roca. Nor did they find evidence in the Quintero case.

But Roca's landlord had seen enough. He evicted Roca, which effectively destroyed his business. And for good measure, the government didn't return his business records until after Roca had gone bankrupt.

Pumping up the charges

Hiding evidence favorable to a defendant can clearly help a prosecutor win a conviction.

And sometimes, the Post-Gazette found, it can help a prosecutor bring far more serious charges than the facts would warrant.

Consider the case of Norberto Guerra and Ramon Jimenez.

They went to trial in January 1995 on charges of conspiring to bring more than 7,480 pounds of cocaine into this country.

Witness after witness testified in Miami that they were the kingpins in the drug-smuggling enterprise.

But they weren't.

Guerra and Jimenez had worked on a boat that smuggled drugs and they admitted that. They knew little else about the operation. They didn't know many of the witnesses who testified about their lofty status as drug lords.

They also didn't know that most of these witnesses were paid government informants who'd played key roles in the drug-smuggling venture. It was in the interest of these witnesses to pin the rap on someone else so that their own roles wouldn't face scrutiny.

Time after time, attorneys for Guerra and Jimenez requested that prosecutors turn over background information on the witnesses, because their clients insisted the testimony was laced with lies.

Prosecutors insisted there was nothing to turn over.

It wasn't until June 1995, after Guerra and Jimenez were convicted and sentenced to 20 years in prison apiece, that they learned the depths of the government's deceit.

A hearing revealed that federal agents and prosecutors had hidden or destroyed hundreds of pages of interviews with their key witness, Raul Sanchez, a long-time drug smuggler who insisted Guerra and Jimenez were among his top lieutenants.

Prosecutors also hid the fact that this key witness had confessed to being involved in at least two murders.

This same witness had assured defense attorneys during the trial that he'd received no offers of leniency in exchange for his testimony. Yet in the evidentiary hearing on the charges of misconduct, the judge learned prosecutors had indeed promised Sanchez leniency for his help.

That leniency offer was rescinded after Sanchez lied to agents to protect another person who was a target in the same drug probe.

Yet defense lawyers never saw his failed polygraph test, which should have been turned over as discovery material.

As the judge pointedly made clear: A star prosecution witness who lies to the prosecution might be eyed with some suspicion by jurors.

There were dozens of other discovery violations: Plea bargains and payments between the government and witnesses weren't mentioned to defense attorneys. Criminal records were not turned over.

In one instance, prosecutors gave defense attorneys the criminal background sheet on witness Leonardo Alvarez, as required by law.

They missed one small detail, however: a murder conviction.

U.S. Magistrate Linnea Johnson grilled Assistant U.S. Attorney David Cora.

"I have no explanation for why it was done that way," Cora testified. "Sometimes we hand over rap sheets. Sometimes the rap sheets are indecipherable so we don't hand them over that way. I have no explanation for that, your honor."

Guerra and Jimenez were clearly guilty of something, but Johnson agreed with their attorneys that the case against them should be dismissed.

To allow a prosecution to proceed where the government itself has failed would be "wrong," Johnson ruled.

So Guerra and Jimenez went free. The witnesses against them received much lighter sentences than they'd have faced had the trial not been marred by multiple discovery violations.

Cora and the agents who helped him set up the case went back to their jobs. No one in the U.S. attorney's office was disciplined for the debacle.

Bowing to pressure

The pressure to win convictions also played a role in many of the discovery violations found by the Post-Gazette. The bigger the case, the more the pressure.

Xioa Leung was arrested in China in 1988 for his part in a drug smuggling operation to the United States. American lawmen lauded his arrest as one of the first efforts to cooperate with the People's Republic of China in stopping drug trafficking.

Another Chinese national, Wang Zong, was prepared to identify key players in the drug smuggling operation — a perfect witness for the prosecution. And no wonder.

To ensure his testimony would suit prosecutors, Chinese police officers in 1988 tortured Zong for a month.

They kicked him, dragged him through the streets, blindfolded him, and shocked him with an electric cattle prod. He received little to eat or drink. They denied him sleep. They beat him over and over again and threatened him with death.

Obviously, U.S. law prohibits the use of torture in eliciting a witness's testimony.

Yet when Zong testified at the trial of Leung in San Francisco, federal prosecutors insisted they knew nothing about his background that might help defense attorneys discredit his testimony.

They lied.

Assistant U.S. Attorney Eric Swenson and U.S. Drug Enforcement Administration Special Agent Tommy Aiu had both seen a confidential memo from a U.S prosecutor stationed in Hong Kong. He warned that police in China had threatened Zong with the death penalty if he did not cooperate.

That prosecutor, Robert

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McNair, also said he believed police had mistreated Zong during their interrogation.

It wasn't until Zong was nearly through testifying that the truth leaked out on Jan. 30, 1990.

"I request that the court in America safeguard me," Zong said in open court. U.S. District Judge William Orrick ordered the jury removed, then listened as Zong continued.

"I am already in a position that I have been treated unfairly. The American government and the American judge, I don't know if they're aware of that."

As Zong recounted his torture in China, the judge thought that Swenson and Aiu had been duped by Chinese officials along with everyone else. He appointed a former federal prosecutor, Cedric Chao, to investigate, then declared a mistrial. In late 1990 Orrick ordered a new trial after ruling that American lawmen had been "overwhelmed" by their collaboration with the Chinese.

But Chao would soon learn that it hadn't been U.S. lawmen who were duped. He won the release of more and more information from the U.S. attorney's office, and the long-hidden McNair memorandum from the Hong Kong prosecutor's office finally was turned over.

By the spring of 1993, Chao was able to show that Americans agents knew from their first trip to the Far East that Zong had been tortured.

Because of the prosecutorial misconduct, the judge gave key players in the drug smuggling operation light sentences. In October 1993, he permanently blocked Zong's return to China, calling the case a flagrant violation of the constitutional rights Zong was entitled to while on U.S. soil.

The judge accused Swenson of lying and covering up evidence in a "tunnel vision approach to winning the case."

"The numerous instances of invidiously egregious conduct of important officials of the U.S. government shocks the conscience of this court," Orrick wrote.

The judge ordered the Justice Department's Office of Professional Responsibility to investigate him for perjury and obstruction of justice.

Swenson was transferred shortly thereafter from the criminal division to the claims and judgments unit, where he is responsible for collecting on unpaid student loans.

The next installment of this series will appear on Sunday, Nov. 29.

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Few of case's twists, shady deals revealed in court

By Bill Moushey
Post-Gazette Staff Writer

Federal prosecutors say Peter Hidalgo was a master drug smuggler and deserved the four life sentences that resulted from his conviction in 1994.

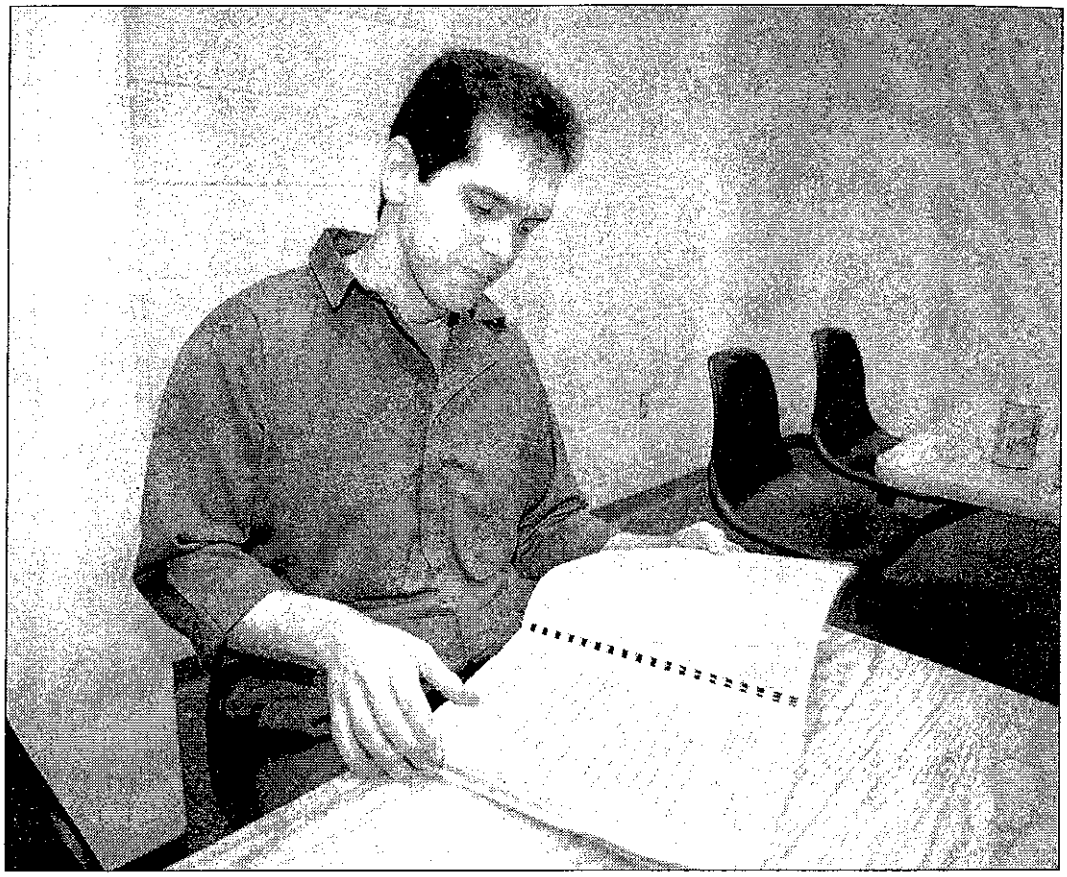
Hidalgo says his trial was a farce that conniving federal agents and prosecutors orchestrated.

The Post-Gazette's investigation found one certainty: Government misconduct at Hidalgo's trial was so rampant and calculated that nothing resembling the truth could have emerged.

Four years have passed since his trial, yet appeals courts have yet to rule on his challenge. Here's what the Post-Gazette found:

• Hidalgo was accused of leading a smuggling operation that brought 423 kilograms of cocaine into Miami in 1992. Although discovery rules require it, prosecutors failed to inform Hidalgo that 23 kilograms of cocaine were missing after the bust. Prosecutors had in their possession videotapes showing that individuals who had contact with the smugglers discussed the missing cocaine and suggested it had been split among informants and federal agents. Hidalgo believes these informants and agents conspired against him to hide their misconduct. Prosecutors violated discovery by not turning the tapes over to Hidalgo's attorneys.

• Prosecutors withheld other audiotapes and videotapes that included extensive conversations about the smuggling operation. The limited transcripts prosecutors provided were marked "inaudible" in many places, although Hidalgo later learned these inaudible conversations were perfectly clear on the tapes. Hidalgo believes the tapes were withheld and the transcripts abbreviated because his name came up in none of the conversations. Prosecutors hid them because they showed he had no part in the operation, he believes.



Darrell Sapp/Post-Gazette

Peter Hidalgo seemed like a minor player in a major drug deal. Called in by a friend to help defuse a tense situation, Hidalgo ended up being the main target after the key players in the drug deal testified against him. He is facing four life sentences for drug smuggling, even though he never even saw the drugs involved.

• Prosecutors failed to inform Hidalgo that a federal agent who played a key role in the drug bust committed suicide shortly after Hidalgo's arrest. The agent was mentioned 31 times at Hidalgo's trial and had told his sister just before his death that he feared he would be implicated criminally in one of his biggest cases.

• Prosecutors failed to inform Hidalgo that police reports raised enough questions about this agent's death that it could have been argued that he was murdered.

• Hidalgo did not learn until after his trial that some witnesses against him had perjured themselves in earlier trials, that some of these witnesses were convicted murderers and that the government paid some of them huge sums for their services. One man received $500,000.

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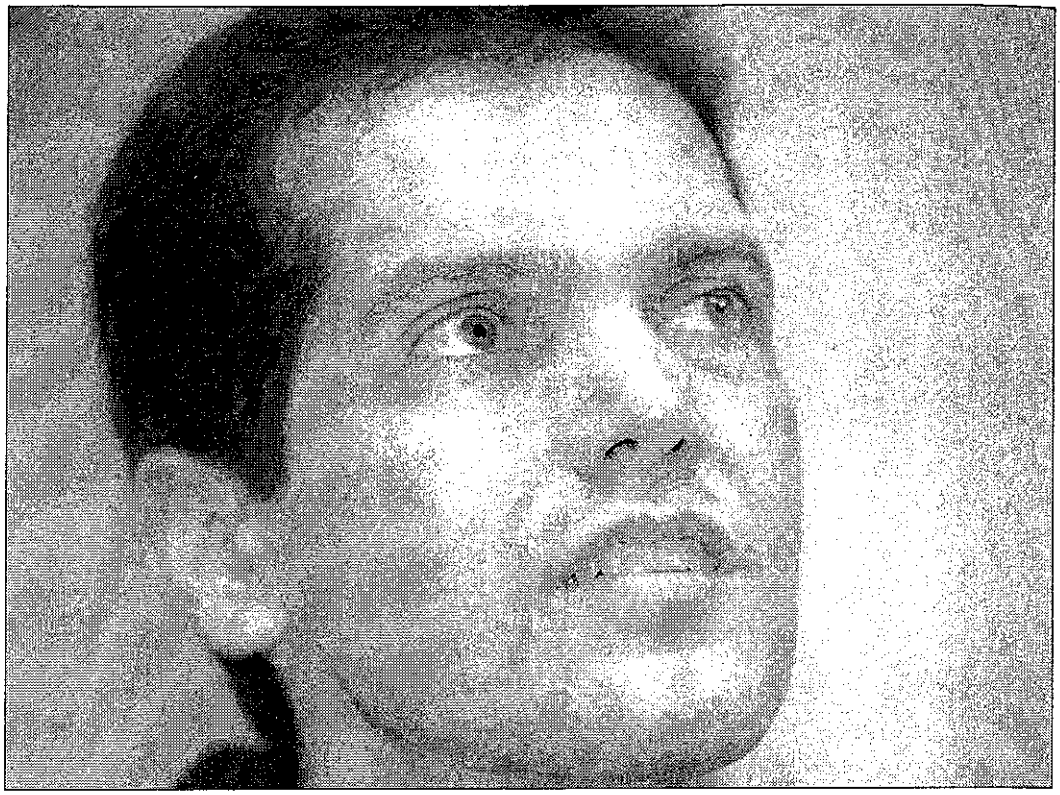
He realizes that if he'd simply joined forces with the government and lied about others, as they did about him, he might have walked free. He said his conscience would not allow him to do that.



Darrell Sapp/Post-Gazette

Peter Hidalgo has been frustrated by the many twists in his case, especially the implications surrounding the missing drugs from the deal that sent him to prison for four life sentences. He's also frustrated by the thought that his conviction will keep him from helping to raise his daughter.

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• Prosecutors failed to tell Hidalgo that a key witness against him had fabricated his testimony and bragged to his cellmates that he expected a substantial cut in his prison time for his lies.

• Prosecutors failed to turn over copies of grand jury transcripts that would have pointed out many of these discrepancies.

Man of modest means

Hidalgo, 38, made his living selling, racing and repairing boats in Miami Lakes, Fla.

His skill behind the wheel brought him fame and the attention of drug runners who needed equipment that could outrun law enforcers.

Hidalgo, his wife and 1-year-old daughter lived in a modest rental house that he hoped they someday might buy. He considered himself lucky. Hidalgo escaped from Cuba in 1968, and the life he enjoyed in the United States, while modest, seemed a paradise by comparison.

That changed on Sept. 8, 1992.

Federal agents arrested Hidalgo and charged him with being the kingpin behind the drug-smuggling operation that had brought more than 400 kilograms — 880 pounds — of cocaine to the United States from Colombia, via the Bahamas. The cocaine was worth about $6 million wholesale, far more when it hit the streets.

Agents were familiar with Hidalgo. He had been arrested in a 40,000-pound marijuana smuggling case, but all charges against him were dropped. He'd never been convicted of a felony.

The witnesses who would testify against him did not lead Hidalgo's modest lifestyle. They were cartel-level millionaire smugglers, armed robbers, killers and thieves.

The illegal drug trade had treated them well. They wore expensive clothes, drove expensive cars, lived in beautiful homes.

And while federal agents never captured Hidalgo's voice on tape, they recorded these men discussing the drug deal in telephone conversations. Agents had photographed and videotaped them in the days before the drug-laden boat arrived and after it reached U.S. soil.

None of the men who would be witnesses against Hidalgo had mentioned his name in their taped conversations, so Hidalgo figured federal agents and prosecu-

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tors would see through the ruse, that he was being made a scapegoat so that drug criminals could seek leniency by testifying against him.

Hidalgo was wrong. Federal agents and prosecutors not only ignored the lies and fabricated evidence that came from these witnesses, they made sure no one else in the case would know about them.

There was another difference between Hidalgo and the men who testified against him. Almost all were guilty and eager to cut deals in exchange for reduced sentences. Hidalgo got the same kind of offer.

If Hidalgo would plead guilty, he'd get a maximum sentence of 11 years in prison, prosecutors told him. He might be paroled after nine years or so, and if he would provide "substantial assistance" by testifying against others, he might qualify for the Justice Department's biggest prize: an even quicker release and a payment of tens of thousands of dollars, just like those who would eventually testify against him.

Hidalgo said he turned down the deal because he was innocent. Had he taken the government up on its offer, he would soon be a free man.

A strange alliance

The shaky foundation of the government's case against Hidalgo began two years before the drug smuggling sting.

In 1990, a Miami police officer named Ralph Rodriguez arrested two Cuban refugees for selling him 2 kilograms of cocaine in Miami.

After their arrest, the two refugees filed a complaint against Rodriguez. They said that twice in their presence he had sampled the cocaine they were selling, which, if true, would be cause for his dismissal. They also complained he had sex with a material witness in their case, also a violation of department rules.

Lie detector tests supported their charges.

This wouldn't be the first investigation of the agent's conduct. Defense attorneys and defendants had long complained that Rodriguez often broke the law in his efforts to enforce it.

But in August 1992, the two Cuban refugees withdrew their complaints. Instead, they signed a plea agreement that freed them from prison time if they would work undercover for Rodriguez, who by then had taken a job for the federal Bureau of Alcohol, Tobacco and Firearms.

The undercover work the informants performed paid well. For starters, each was given $20,000 to relocate their families.

Within a few years, both of the refugees would purchase ranches in South Florida worth hundreds of thousands of dollars, though they testified that they mowed lawns for a living.

Soon, Rodriguez and the two informants would work together again, this time helping to orchestrate the drug bust that would snare Hidalgo.

Infiltrating the deal

The two informants told Rodriguez they knew of a drug operation that another man named Rodriguez was planning. The other Rodriguez's first name was Luis, and his nickname, "Cejas," was Spanish for thick eyebrows. He also was a Cuban refugee.

So Agent Rodriguez and his partner in a drug task force, Special Agent Lee Lucas of the U.S. Drug Enforcement Administration, hooked the two informers up with Angel "Pepe" Vega, an undercover officer for the Florida Marine Patrol.

They would soon work their way into the drug deal. Here's how it worked.

Cejas and another Miami smuggler named Gilberto Morales arranged for the two government informants and a third man to pick up a boat from Manny's Marina in Fort Lauderdale, Fla.

Manny Sanchez, another long-time drug smuggler, who had struck a great deal with federal agents, owned the marina. In exchange for a cut in his prison time on one of his six convictions, the agents ran drug stings out of his business, which they had wired for sight and sound. In addition, agents paid Sanchez $500,000, although Sanchez would tell the jury at Hidalgo's trial that he only got $200,000. He admitted he paid no taxes on the payments.

When the boat reached the Bahamas, Fernando Fernandez and a crew of Bahamians were waiting. Fernandez was a middle man in smuggling operations between Colombia and the United States.

There were 11 bales of cocaine to pick up, each weighing 40 kilograms, or 88 pounds. Fernandez opened one of the bales and gave the Bahamian crew 17 kilograms of cocaine as payment for their work. Twice, he carefully counted the remaining 23 kilograms from the opened bale in front of everyone present.

That opened bale of cocaine — and just how much eventually arrived in the U.S. — would become a key factor in Hidalgo's case but one that would never reach the ears of jurors during his trial.

The deal goes bad

On Sept. 4, 1992, the boat left Freeport, the Bahamas, then made a rendezvous with a vessel that Agent Rodriguez, his partner Lucas, and Vega, the third task force agent, staffed about a mile off the coast of Florida.

Agents Rodriguez and Lucas would later testify that it was a stormy night and ocean swells made transferring the drugs from one vessel to the other difficult. They intimated that the opened bale of cocaine might have fallen into the water.

It wasn't until after his trial that a meteorologist researched conditions and told Hidalgo that the water that night was tranquil.

Agents Rodriguez and Lucas transported the cocaine to a government warehouse. No one else knew where the drugs were hidden.

The two Cuban informants then called Cejas and Morales on tapped phones to demand payment in cash, $600,000, before they would make final delivery of the drugs.

Morales and Cejas didn't have the money; they had earlier agreed to pay for the work in drugs. They offered 50 kilograms, but the federal informants turned them down. Then Morales and Cejas offered 100 kilograms. Still, no deal.

Morales and Cejas were getting desperate. The Colombians who had set up the shipment couldn't understand the delay in getting the drugs delivered. Morales made as many as 20 phone calls a day over four days to discuss the 423 kilograms of cocaine. While he later would testify that Hidalgo was his partner, he never mentioned Hidalgo in any of those calls, nor did he suggest that he had to check with anyone else before making new offers to get the drugs delivered.

After four days, the Colombians and their Bahamian confederates began to wonder if Morales and Cejas were stealing from them. They dispatched two contract killers to kidnap Cejas. He would be held hostage until the drugs were released, and if they weren't, Cejas would be killed. Morales knew if that happened, he would be next.

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A friend in need

That's where Hidalgo finally entered the picture.

He had known Morales for years. He said Morales asked him to call the Bahamians, since they had purchased boat equipment from Hidalgo's business and trusted his word. Morales asked Hidalgo to tell the Bahamians that Morales and Cejas could be trusted. Nothing more was asked of him, Hidalgo said.

The conversation was never captured on tape, at least prosecutors never produced it at the trial. While investigators had the entire process wired, they said the equipment was not turned on the entire time. Prosecutors also attributed their failure to catch Hidalgo on tape to his careful nature.

Morales would later testify that Hidalgo made the call in an effort to salvage the deal — and his profits.

Hidalgo admits he was stupid to make the call, adding he was simply trying to save the life of someone he knew. "I knew the Bahamians from the boat business," he said in an interview earlier this year at the Federal Detention Center in Miami. "They knew I was an honest businessman. If I don't do this, Cejas was dead. Morales was dead. I defused the entire situation."

Shuttled across country

Here is Hidalgo's definition of hell: knowing government witnesses lied; knowing prosecutors hid evidence favorable to him while allowing fabricated evidence that would convict him; learning about the deceit only after he was convicted and sentenced.

Then being shuttled from prison to prison to prison — diesel therapy, prisoners call it — because, he says, he so aggressively has pressed his contention that federal agents and prosecutors sandbagged him.

In April, he was transferred from Miami to Atlanta; then to Oklahoma City; then to Leavenworth, a maximum security prison in Kansas, where many convicts with life sentences begin serving their time. Government rules say he should be allowed to stay in the prison closest to the court where his appeal was filed, until that appeal is decided. Hidalgo filed his appeal in Miami. He is 1,460 miles away.

Hidalgo has little money but was able to hire, briefly, an investigator to take a closer look at the government's misconduct, but most of Hidalgo's research has been accomplished from his prison cells. Here are some of the additional things he learned:

Hidden witness: Federal prosecutors gave Fernandez, the man who handled the drugs in the Bahamas, leniency for his testimony, but they never put him on the stand after he insisted that 23 kilograms of cocaine was missing from the amount he had shipped — the cocaine remaining in the bale used to pay off the Bahamians. This contradicted the government's other witnesses and buttressed Hidalgo's contention that federal agents knew about the missing drugs.

Paid liars: Hidalgo learned the government's witnesses against him received cash or were not forced to forfeit drug related property that federal agents had a right to seize. Most of those deals, which totaled more than $3 million, were never revealed at his trial.

Great deals: Morales, the man whom Hidalgo saved, faced 24 years in prison for his role in the operation. Federal prosecutors offered to reduce that to 10 years if he'd identify leaders of the drug smuggling operation. Morales knew that fingering real drug kingpins would lead to an early death, so he said nothing that resulted in charges against his contacts in Colombia. He simply told prosecutors he was working for Hidalgo, even though the statement made little sense. If Hidalgo were a drug kingpin, why had he so little money and lived in a rental house? Morales admitted to making $5 million smuggling drugs during the previous 12 years.

Mystery man: One of the most mysterious witnesses was Jose Luis Goyriena, who testified he was a distributor for a major drug ring whose leaders included Hidalgo. Goyriena bragged to cellmates that he'd never heard of Hidalgo but had obtained information about Hidalgo's case and fabricated testimony against him so prosecutors would reduce Goy-riena's 27-year prison sentence. Even though prosecutors were told of Goyriena's scheme before and after Hidalgo's trial, they said nothing to Hidalgo's lawyers.

Suicide questions: Angel "Pepe" Vega, the agent whose suicide was hidden from Hidalgo, suffered from anxiety attacks and depression after the drug bust. Shortly after telling his sister that he feared he might be arrested in connection with one of his big cases, he was found dead in his car in the parking lot of his Fort Lauderdale, Fla., church. His death was ruled a suicide. He left a note of apology for his wife, but Hidalgo's investigator found discrepancies in Broward County police reports:

- Vega was left-handed, but he shot himself in the right side of the head.
- The downward path of the 9 mm slug that killed him was at an angle that would have been nearly impossible for someone to accomplish with his Glock pistol, with its 6-inch barrel.
- Vega's weapon was found pointing forward between his legs. The weapon's recoil should have sent the gun falling into a back seat.
- No blood from the wound was found on the hand Vega would have used to pull the trigger.

Despite those findings, police closed the Vega case as a suicide.

'It's a big price'

Hidalgo has been in Leavenworth since April. He hopes for a new trial, but the cost of fighting the government is great, he said.

He realizes that if he'd simply joined forces with the government and lied about others, as they did about him, he might have walked free. He said his conscience would not allow him to do that.

"I'm not saying I've had the best associations, but what they're saying I'm involved in, it's bull," he said. "It's a big price. I've lost my family. I have a daughter who I haven't been part of her upbringing since she was 10 months old.

"These people have broke me financially; they broke up my family. The only thing they won't be able to break is my dignity and my principles. [If] they get me a new trial, I'm gonna show what the government has done, that it's out of control."

Insurance claim made farmer a federal target

James Catton helped farm 20,000 acres of land in central Illinois. In 1989, he filed a $250,000 crop insurance claim after a drought destroyed his seed corn crop.

Federal agriculture officials said he lied about the drought damage and charged him with trying to defraud the government, which could have resulted in a 20-year prison sentence.

A crop-estimating expert provided key testimony in Catton's trial, saying a neighboring farm suffered no such drought damage.

It wasn't until after Catton was convicted that he discovered the expert had never contacted the neighboring farm; he simply used yield information that a Department of Agriculture inspector had provided. Worse, Catton learned that the Agriculture Department had approved a crop insurance claim based on drought for that neighboring farm.

Prosecutors knew these facts but didn't turn them over, as discovery rules require. "We thought this concealment [was] so material in a close case that, in conjunction with the prosecutor's having in closing arguments misrepresented a key part of Catton's testimony, it entitled Catton to a new trial," the court ruled.

So federal prosecutors tried Catton again. The jury deadlocked, 11-1, in favor of acquittal. Catton said that, in August, prosecutors pushed him to plead guilty to a lesser charge. He refused. Prosecutors say they will try him a third time.

In the meantime, he has lost his farm to bankruptcy.

Smuggler sells out his lawyer to strike a deal

Charles Goldman smuggled drugs — a lot of them — and he was facing serious prison time when federal agents proposed a deal.

They would offer leniency if Goldman would testify against his own lawyer and a South Florida police officer on charges that they had avoided paying taxes on illicit drug income.

Since the charges involved tax evasion, Goldman worked closely with an Internal Revenue Service agent, Synda Smith, 38.

Attorney David Arnold and Opa Locka Police Officer Armando Coto received 15-year prison terms in February 1993, based largely on Goldman's testimony. What they didn't know, and what they're citing in their request for new trials, is that Goldman and Smith had sex several times while they were conferring about his testimony.

The two conducted the affair in a prosecutor's lounge at the courthouse, which is known as "the Igloo" because of the frigid conditions that the air conditioning system creates there. "Evidently, these Arctic conditions were no impediment to Agent Smith and Mr. Goldman," said defense lawyer Michael Tarre in court papers. Smith later admitted the affair to federal investigators.

Arnold and Coto say Smith's liaison with Goldman tainted his testimony, that Goldman embellished his story in return for Smith's favors.

They also say prosecutors knew of the relationship but didn't tell defense attorneys, as discovery rules require. That knowledge might have seriously damaged Goldman's testimony, they said.

The 11th U.S. Circuit Court of Appeals agreed and ordered a new trial.

In the meantime, Goldman has been released from prison because of his help; his sentence was cut by more than half. Smith has left her job at the IRS.

Feds buy into deal with known drug trafficker

David Wheeler had smuggled drugs for almost 20 years when federal agents finally arrested the Phoenix man as he was carrying a kilogram of cocaine in 1989 in Oklahoma.

He faced the possibility of life in prison, so he offered federal agents a proposition. He said he would help the government set up a sting designed to capture key drug cartel members from Mexico to Colombia. He might snare some Americans as well, including politicians who were on the take.

Wheeler had always been a notorious con man, but federal agents knew his years in drug trafficking had left him well-connected. They accepted the deal and soon regretted it, even though information he provided led to the arrests of seven supposedly high level Mexican police officers and drug smugglers in the sting he orchestrated in 1990.

After their trial, the government released a memorandum that a Drug Enforcement Administration official had written. It showed that Wheeler not only had lied constantly about his actions in the sting but had committed at least as many crimes during the sting as those people he had set up. The memo said he was out of the control of agents throughout the sting.

The memo bolstered the statements of the defendants, who had argued in court that they were not drug dealers, only opportunistic individuals who were willing to accept the millions of dollars that Wheeler had offered them for protecting a drug enterprise.

The 9th U.S. Court of Appeals found in the government's case that "millions of dollars are talked about but not one speck of cocaine shows up at any time and not one sample is gathered by the government and nothing really is seen except, surprise, surprise, that which Mr. Wheeler says he saw . . . "

The court reversed every case in which Wheeler testified, saying the memorandum about his misconduct was "plainly material . . . and should have been turned over to defense attorneys."

It showed how Wheeler was "in a position to manipulate the [U.S. Bureau of] Customs, the DEA, the defendants and the evidence."

Wheeler was never charged.

Federal misconduct creates an incident in Costa Rica

Federal agents believed Israel Abel was a leader in a major cocaine smuggling ring in the 1980s that imported 3 tons of cocaine from Colombia to Miami. They wanted him so badly that they were willing to go to lengths that would lead another country to file criminal charges against U.S. officials.

In 1991, a federal grand jury indicted Abel and several others on drug-smuggling charges, but by then he had been living in Costa Rica for five years and, by most accounts, was no longer in the drug business.

But federal agents were so desperate to bring him to trial that they violated his most basic rights and then tried to cover up their actions, Abel's lawyers charge.

Because of the magnitude of the charges against him, it seems unlikely any court will intervene, even though the government of Costa Rica has issued criminal arrest warrants against the former deputy attorney general to Attorney General Janet Reno and a former U.S. Consular officer because of their conduct.

The U.S. government extradited Abel in 1992. The Justice Department sent Deputy Attorney General Richard Scruggs, a former Miami federal prosecutor, to Costa Rica. Costa Rican police then arrested Abel and turned him over to U.S. agents on an American jetliner. He was brought home, tried and sentenced to four life sentences in prison.

Scruggs said everything went off without a hitch. Abel said Costa Rican and American agents kidnapped him, hid him for two days then shipped him back to the United States without benefit of the due process that laws in Costa Rica and the United States guarantee.

In summer 1993, Costa Rican officials, after scouring the documentation provided when Scruggs requested extradition, filed the first of three protests with the American government related to Abel's case. They charged that Scruggs collaborated with over-zealous members of the Costa Rican National Migration board to "circumvent the country's extradition procedures."

Within months, Costa Rica filed criminal charges against Scruggs and Donna Hamilton, a U.S. Consular officer in San Jose. Hamilton was transferred out of the country before she could be tried. Neither she nor Scruggs will face those charges, as long as they don't return to Costa Rica.

Robert Scola, Abel's lawyer, has asked the 11th U.S. Court of Appeals in Atlanta to dismiss the case against Abel because of prosecutorial misconduct.

The appeal charged that the government's documents, obtained through Freedom of Information Act requests, "irrefutably demonstrate . . . the knowing use of both perjured testimony and affidavits by (Assistant United States Attorney Karen) Rochlin before and during evidentiary hearings."

Despite discovery requests, "None of these documents have ever been turned over to the defendant," Abel's appellate brief stated.

Win at all Costs

Part 4 of 10

Government misconduct in the name of expedient justice

The damage of lies

Zeal for convictions leads government to accept tainted tips, testimony

By Bill Moushey
Post-Gazette Staff Writer

The bullet that tore into Don Carlson's thigh sent him sprawling across the hallway floor.

After he fired two shots at his front door in a vain attempt to stop the intruders, he dropped the gun. Carlson made it to his bedroom, punching 9-1-1 into a portable telephone as the men stormed into his house. He fell into a corner. Twice more he was shot — in the back. One bullet splintered and collapsed a lung.

"Don't move, or I'll shoot you again," a man yelled.

Carlson didn't know it, but the man who shouted at him was a federal agent. The dozen or so other officers in his house represented the Drug Enforcement Administration, the U.S. Customs Service and the San Diego police department and sheriff's office.

Carlson is still not sure when they realized their mistake. For 30 minutes on that sultry August night in 1992, he lay bleeding, handcuffed and shackled, on his bedroom floor, barely able to breathe. "Why would they do this to me?" he recalled muttering.

Agents raided Carlson's home in the San Diego suburb of Poway in search of 2,500 pounds of cocaine. They based the search on information that an informant named Ronnie Edmond provided. Edmond was an ex-drug dealer whom the federal government paid $2,000 a month to inform on others in the drug trade.

This informant frequently lied, a fact the agents knew, but they nonetheless used his story to get a search warrant for Carlson's house.

Carlson was no drug dealer. There were no drugs in his house. He'd never been in trouble with the law.

The informant picked Carlson's home because he thought it was vacant and figured he could cook up another lie when the agents found no drugs.

Carlson had recently divorced, and his wife got the furniture. That's why the house looked empty. If the consequences of Edmond's lie weren't so serious, the episode might have been comical. Instead, it illustrates a problem in the federal justice system that receives little attention but has profound impact, a two-year Pittsburgh Post-Gazette investigation found.

Perjury has become the coin of the realm in federal law enforcement. People's homes are invaded because of lies. People are arrested because of lies. People go to prison because of lies. People stay in prison because of lies, and sometimes, bad guys go free because of lies.

Lying has become a significant problem in federal court cases because the rewards to federal law enforcement officers can be so great and the consequences so minimal. Perjurers are seldom punished; neither are the law enforcement officers who ignore or accept their lies.

Carlson believes some of the agents who stormed his house wanted to kill him to cover up the infor-

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About this series

Hundreds of times during the past 10 years, federal agents and prosecutors have pursued justice by breaking the law.

They lied, hid evidence, distorted facts, engaged in cover-ups, paid for perjury and set up innocent people in a relentless effort to win indictments, guilty pleas and convictions, a two-year Post-Gazette investigation found.

Rarely were these federal officials punished for their misconduct. Rarely did they admit their conduct was wrong.

New laws and court rulings encourage federal law enforcement officers to press the boundaries of their power while providing few safeguards against abuse.

Victims of this misconduct sometimes lost their jobs, assets and even families. Some remain in prison because prosecutors withheld favorable evidence or allowed fabricated testimony. Some criminals walk free as a reward for conspiring with the government in its effort to deny others their rights.

Today, in the fourth of a 10-part series, the Post-Gazette examines the government's growing reliance on informants and criminals to make its cases, which sometimes leads to cases built on lies, paid for with cash or reduced sentences.

Innocent are hurt when government buys lies

Continued from previous page

mant's lies but couldn't risk it because so many agents from different jurisdictions were there. "The only thing that saved me was that there were too many agencies involved."

Federal officials would not respond to requests for comment on the case.

Tolerated lies

The Post-Gazette found hundreds of cases over the past 10 years in which federal officers and prosecutors tolerated or encouraged perjury.

Experts in federal law enforcement aren't surprised. Bennett L. Gershman, a law professor at Pace University of New York, continually reviews cases involving perjured testimony to update his law book, "Prosecutorial Misconduct," published in 1997. "I see a handful of cases where the court is reversing cases because of perjured testimony . . . and coming down hard on the [federal] prosecutor," he said.

His reviews also make it clear that these rulings are the exception, not the rule. "In most cases where this is happening, the lies never see the light of day. Nobody knows this is happening."

Ironically, the system encourages a toleration of perjury, because appeals courts and the Justice Department seldom punish agents or prosecutors who condone it. When defense lawyers discover perjured testimony, prosecutors usually argue in appeals that it was "harmless error," which means that no matter what the witness said, it wouldn't have changed the jury's verdict.

"It happens with a frequency that makes me troubled, and once you see this in a number of cases where the courts are not reversing convictions, it seems to me a prosecutor can make a considered judgment on whether or not he can get away with this," Gershman said.

Perjury has always elicited intense debate. Plato and Aristotle discussed it in their writings in the fifth century B.C. This century, the Supreme Court has elaborated on the perils of perjury in dozens of rulings,

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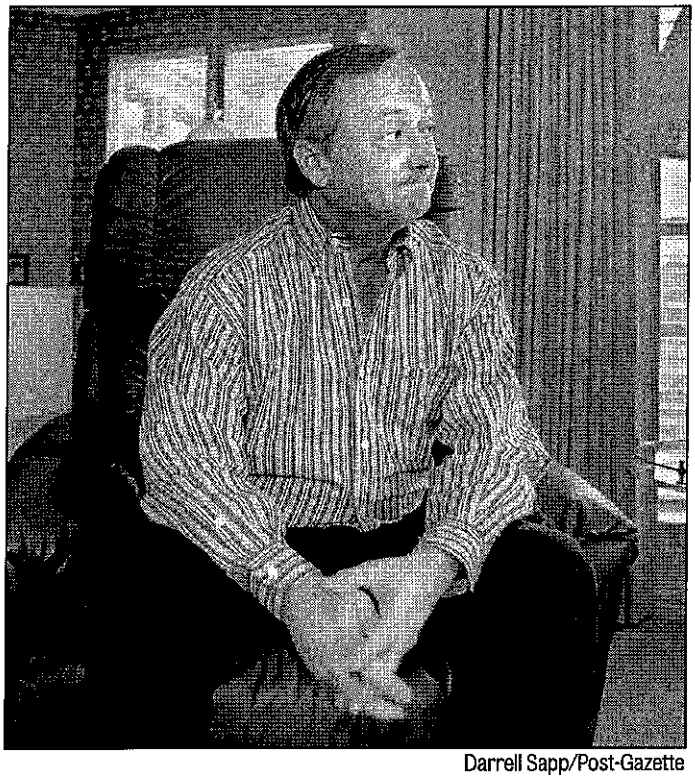

Darrell Sapp/Post-Gazette

When federal agents acting on bogus information stormed Don Carlson's house, they shot him three times, nearly killing him. They were operating with a warrant only to search his house. For eight weeks afterward, Carlson could breath only with the help of a machine.

Perjury has become a pervasive problem in part because prosecutors often must rely on witnesses who are given very good reasons to lie.

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usually underscoring the dangers it poses to the integrity of a trial. "The knowing use of perjured testimony involves prosecutorial misconduct and, more importantly, involves a corruption of the truth-seeking function of the trial process," the Supreme Court stated in the 1976 ruling United States vs. Agurs.

But perjury has become a pervasive problem in federal law enforcement, in part because prosecutors often must rely on witnesses who are given very good reasons to lie. These witnesses are criminals, and in exchange for their testimony, they receive leniency and sometimes even hefty payments as government informants.

Defense attorneys say and prosecutors disagree that such rewards encourage witnesses to tailor their statements to say exactly what their benefactors want to hear. "For it to get to the point where prosecutors honestly believe that purchasing witness testimony at any cost is OK is bizarre," said Thomas Dillard, who spent 14 years as an Assistant United States Attorney in Knoxville, Tenn., then four as United States Attorney for the Northern District of Florida. He is now a criminal defense lawyer in Knoxville.

In July, in a ruling that surprised attorneys on both sides of the issue, the 10th U.S. Circuit Court of Appeals in Denver agreed. The court's 3-0 decision, which applies to six western states, said that promising leniency to witnesses in exchange for testimony amounted to buying testimony, a violation of federal law. Judges in several other jurisdictions have already signed on to that premise.

The government has appealed, and most court observers don't expect the ruling to stand. In addition, Congress might consider a bill that would exempt federal courts from the federal bribery statute on which the ruling is based.

But the court's decision has served to legitimize an argument that prosecutors have long dismissed as defense attorney whining. There are supposed to be safeguards to help ensure that the testimony of witnesses who are promised leniency or other inducements is truthful. The Justice Department requires these witnesses to undergo polygraph tests and pledge to acknowledge to prosecutors information about any crime they might know about.

But the newspaper investigation found prosecutors often abandon polygraph tests or hide the results from defense lawyers so they won't risk losing key witnesses whose stories are suspect.

No one gave Carol Smith a polygraph after she told federal drug agents that her one-time boyfriend in New York City had turned her from a fun-loving flight attendant for TWA into a depraved heroin addict who got caught smuggling drugs for him on airplanes.

Prosecutors promised her leniency in exchange for her testimony, which helped ensure that Frank DeFeo would serve 30 years in prison. But after the 1992 trial, DeFeo's attorneys learned that Smith had lied on the stand. She had been an international drug courier for Israeli crime figures long before she met DeFeo.

She didn't serve even a day in prison for her drug trafficking or her perjury, and prosecutors successfully fought DeFeo's efforts for a new trial.

To ensure consistent testimony, prosecutors sometimes allow prisoners scheduled to testify at a trial to be housed together so they can rehearse their testimony and avoid contradictions on the stand. Their reward for this carefully crafted testimony is reduced prison time or even freedom.

James Carr said a federal prosecutor promised him a sentence reduction on drug charges in 1994 if he would testify in the Portsmouth, Va., drug trial of Rohan Keating. Carr said prosecutors told him to keep the deal to himself. To ensure consistent testimony, he was housed in the same cellblock as the two other key witnesses against Keating: Bernard Vick and Eddie Thurman.

Carr says prosecutors reneged on their deal with him, so he decided to tell the truth. He said Vick and Thurman lied about Keating's involvement in a drug ring to protect their leniency deals.

Carr's change of heart didn't help Keating; a judge last year discounted Carr's recanted testimony in turning down Keating's appeal. Keating, who had never previously been arrested on drug charges, is serving 30 years in prison.

By its handling of the witnesses, the government ensured one thing: No one can be sure of Keating's guilt or innocence.

Odd lessons

In a peculiar way, perjury demeans the justice system in the eyes of the people whom it punishes. David Hairabedian learned that lesson. In 1991, Hairabedian, then 24, was sentenced to prison for his role in attempting to steal airplanes in the United States at the behest of Colombian drug dealers.

There was no question that the Independence, Mo., man was involved. He pleaded guilty to that and other charges relating to the sale of cocaine. But the leader of the airplane theft ring, Christopher Bailey, told the court that Hairabedian had directed the operation and had pocketed most

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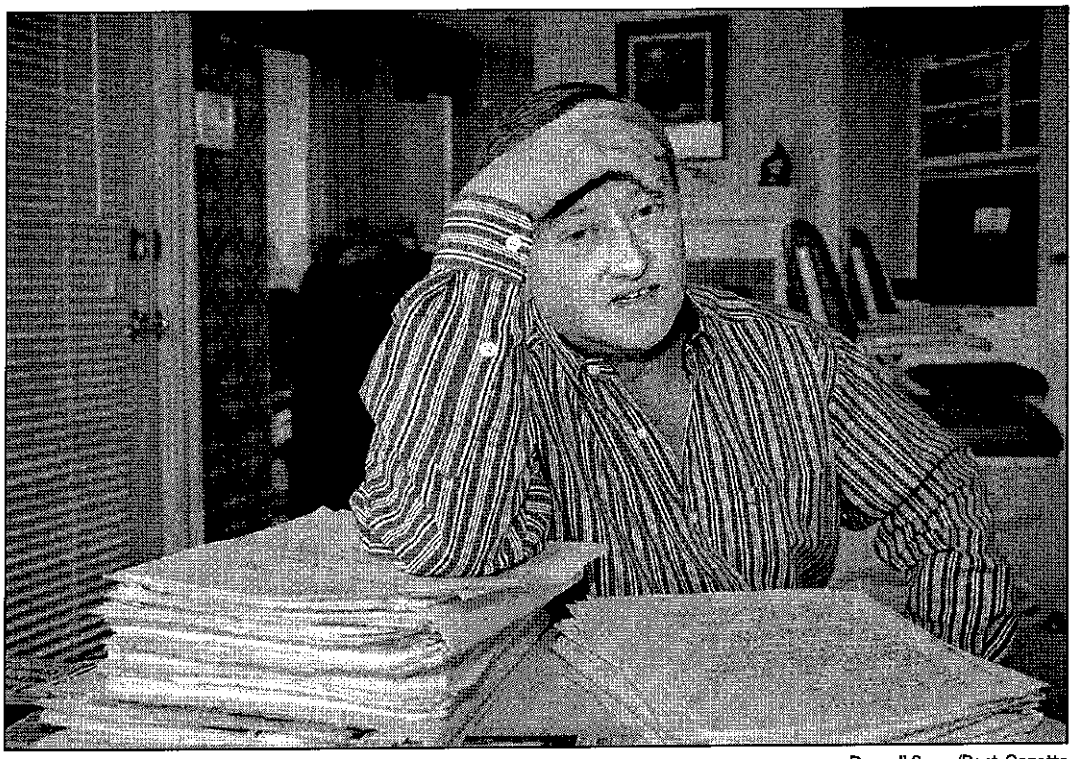

Darrell Sapp/Post-Gazette

The government finally gave Don Carlson $2.7 million to settle his lawsuit against them, but they would not give him what he really wanted: an apology. The government would say only that it was the victim of circumstances.

A question of whom to trust

Ronald Trautman of Hays received a 161/2-year sentence for drug smuggling in 1995, based largely on the testimony of his cousin, John Regis "Re Re" King of Homestead.

King was an unusual witness. He admitted to several people that he'd murdered two men, though he was never charged, and had a far more violent criminal history than any of the dozen men he would testify against.

But prosecutors told the judge that King's word could be trusted because he was honest about his failings, even though Trautman passed a lie detector test in which he swore that King lied about Trautman's role in the drug ring.

Trautman said the biggest lie came when King testified that while Trautman was involved mostly in nickel-and-dime deals, he had helped to bring a shipment of 8 kilograms of cocaine to Pittsburgh. Trafficking in that amount of drugs doubled Trautman's sentence.

King was sentenced to only five years because of his cooperation.

In the fall of 1997, Trautman, imprisoned at the Federal Correctional Institute at Allenwood, got a strange series of handwritten letters. One asked him for a transcript of his trial, promising help. Another said an internal U.S. Drug Enforcement Administration document was a big lie. Another said the government knew Trautman had not been involved in the cocaine deal nor in a marijuana deal that was brought out at Trautman's sentencing. Two other letters contained money orders to Trautman, each for $200.

A handwriting analyst told Trautman's family that King had written the letters. The return address belonged to one of King's relatives.

Trautman has gotten no more letters. He believes the information was King's clumsy attempt to set the record straight, and Trautman has asked for an evidentiary hearing.

Trautman admits he has committed crimes that deserve imprisonment, but he figures that more than half of the time he is serving is King's.

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of the money and drugs the thieves received in payment.

Bailey's testimony meant Hairabedian received 22 years in prison, about twice the sentence an underling in the operation would have received. For cooperating with prosecutors, Bailey went free.

From the start, Hairabedian had told federal agents that Bailey was the operation's ringleader. He told them the Colombians paid Bailey $200,000 in cash and cocaine, not the $5,000 he testified to in court.

Hairabedian said Bailey lied to federal prosecutors simply to save his skin. Federal prosecutors said Hairabedian's comments were the self-serving lies of a desperate man.

Almost nine years later, everything Hairabedian said turned out to be true. An FBI agent and an assistant U.S. attorney, who had known of the deception for years, corroborated Bailey's role as head of the theft ring and his perjury in Hairabedian's trial.

Federal prosecutors continue to fight Hairabedian's effort to get a new hearing on his sentence. Bailey finally went to prison, but it wasn't for being the ringleader of the theft ring. He served less than a year for his perjury. Not a bad tradeoff, Hairabedian said.

Hairabedian is serving a 22-year sentence. He manages a Christian ministry in prison and says he isn't interested in special treatment, just fair treatment.

That can sometimes be difficult to find in federal court.

Lying victories

The result of the tolerance for perjury is that the liar almost always wins.

In a Nebraska case earlier this year, a paid federal informant set up cocaine

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deals among workers in meat-packing plants near Lincoln then lied about his past in court. Federal Prosecutors didn't tell defense attorneys he had a criminal record, that he was an illegal alien or that the government was paying him.

The defendants didn't learn of the government's deceit until after they were sentenced to prison. The witness admitted his past at another trial before a different prosecutor.

The result: The illegal alien was given permanent status in the United States even as the individuals he testified against were convicted. They have filed appeals based on his perjured testimony, stating the government knew about the witness's lies but allowed him to testify anyway, with no fear of repercussions.

More promises

It's not always federal law enforcement officers whose promises might result in fabricated testimony.

Ricardo Bilonick had more than a million reasons to tell jurors exactly what prosecutors wanted to hear. He was the former head of the Panamanian air carrier called INAIR. In 1995, he faced charges of being a key player in the Medellin drug cartel with former Panamanian leader Manuel Noriega, but Bilonick worked out a plea agreement with prosecutors whereby he'd testify against Noriega in exchange for a light prison sentence and a ticket out of the country.

Noriega's attorneys knew that. What they didn't know was that the Cali cartel, the deadly rivals of the Medellin drug cartel, paid Bilonick $1.25 million for testifying against Noriega.

Prosecutors insisted they knew nothing of the deal during the trial, a notion defense attorneys found laughable. In an appeal, defense attorneys maintained that the government violated Noriega's due process rights when it failed to correct this false and highly misleading testimony.

"The conduct of the prosecutors in this case is so reprehensible, so lacking in moral compass, that it nearly defies rational analysis," defense attorneys Frank Rubino, Jon May and Olga Ruiz argued in one motion filed in 1995.

The 11th U.S. Court of Appeals sided with prosecutors, barely. "Although the government appears to have treaded close to the line of willful blindness, the crossing of which might establish constructive knowledge, we decline to charge the government with prior cognizance of the alleged payment."

In denying Noriega's appeal, the court also ruled that the disclosure about Bilonick would not have changed the result of Noriega's trial. Noriega has 14 years remaining in his sentence at the Federal Correctional Institution in Miami.

The lies just meant Noriega got what he deserved, some could argue.

But no one could say that about Don Carlson, who almost died in his Southern California home because federal agents shot him based on an informant's lie.

Rocky recovery

Carlson has recovered from his gunshot wounds, at least physically.

He spent a year in rehabilitation before moving from California to a gated community north of Dallas. He is still single. He doesn't have to worry about money; he sued the government for $20 million because of the botched drug bust and shooting spree at his home then settled for $2.7 million.

Carlson doesn't believe the amount of money he got was excessive. His life in California was destroyed, as was his faith in federal law enforcement. He will never understand how federal agents could rely on a known liar and criminal as the basis for a search warrant, enforced with blazing guns, of his home. "[Edmond, the government informant,] was a low-level street dealer, part-time criminal who created this thing to get money from them," said Carlson. "He was basically extorting the government."

Nor can Carlson believe the federal government's arrogance. Even after agents admitted he wasn't a drug dealer, they threatened to charge him with the attempted murder of a federal agent, a crime punishable by 10 years in prison,

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He committed the murder. Or did he?

Thomas Farese was no choir boy.

He was connected by marriage to New York's Colombo crime family and had been involved in his share of tangles with the law. But he was no contract killer, he insisted in federal court, even though federal prosecutors told a federal magistrate he had confessed about a murder for hire to a government informant, who told federal agents about the confession from prison.

Prosecutors read the informant's incriminating statement in court, and Farese was held for trial. In 1994, he was convicted.

It would be two years before his attorneys learned that the same informant had also given government agents an almost identical statement when implicating another man in the same murder. Prosecutors neglected to tell Farese or the judge about the contradiction.

Farese's attorney, Jon May, was outraged. "Increasingly in this circuit, agents and prosecutors have adopted the philosophy that whatever means are necessary to obtain a conviction are justified by the good that will result to society," he said in the 1996 appeal of Farese's conviction. "This has resulted in perjury by government agents and the suppression of favorable evidence and the making of false statements in closing arguments by prosecutors."

The 9th U.S. Circuit Court of Appeals agreed, saying it was "appalled by the moral blindness exhibited by the assistant supervisors and division chiefs at the U.S. Attorney's Office. Prosecutors are held to a higher standard for a reason. They are given awesome powers. If they cannot be trusted, we are all at risk."

Farese was released on bond in early 1996 as the government decided whether to refile charges. In early December 1997, the bond was rescinded, and he went back to prison. He was released again on bond in early 1998.

Finally, Farese agreed to a plea bargain: six years in prison on charges relating to a strip club he operated in Florida. He said he agreed to the deal because prosecutors threatened to indict his wife if he did not accept the plea bargain.

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despite the fact the bullets he fired didn't even pierce his front door.

Federal officials made it almost impossible to find out what actually happened that night. A federal judge sealed the search warrant for his home "because of an on-going investigation," Carlson said.

Carlson's lawyer finally filed suit in December 1992, while Carlson, a computer company executive, was still struggling through the intensive rehabilitation that began after his lungs started functioning on their own again. For about eight weeks, he had needed a machine to keep him alive.

The government promptly went into its "hibernation mode," failing to respond to any court papers until a judge ordered it to do so, Carlson said.

After two more years of contentious negotiations, Carlson agreed to a settlement in 1995. It did not include an apology. "They would not admit they made a mistake," he said. "All they said was that they were a victim of circumstances."

Carlson said he finally agreed to take money — about $1 million for each gunshot wound — because "that was the only way I could make a statement to them. The government wears you down. It was never about money; it was always about making them accountable, but that was never going to happen."

Edmond, the informant who lied about the drug stash in Carlson's house, was charged with a variety of false swearing and perjury charges and sentenced to a prison term, which he is still serving.

No one else was disciplined.

Carlson, now 46, retired from his company. After six years, he again can sleep soundly. The only remnants of his injuries are a damaged diaphragm and a problem with his leg due to the gunshot wound. He said doctors have told him the injuries almost certainly will shorten his life.

Carlson said he doesn't like to talk about the incident but does so because he fears the same thing might happen again. "I have continued to do this and will continue to do it because I have this hope that someday, somebody will do something to make something change," he said.

He shakes his head as he speaks and admits that he doubts his words.

Fish tale was one of many stretches

Drug-sniffing dogs had scoured the boat and found not a whiff of cocaine.

Coast Guard helicopters, airplanes and balloons had tracked the 37-foot "Nevada" after it left Colombia, but their surveillance tapes turned up no sighting of drugs, either, nor was there evidence any had been thrown overboard.

In court, Orlando Perez explained why. Dolphins got it, he said.

Dolphins?

"After the cocaine was thrown overboard into the water, dolphins showed up and they started playing with it, and they would sink it," Perez said.

"Dolphins like Flipper?" asked Assistant U.S. Attorney Bruce Pearson.

"Yes, just like Flipper. . . . Then there was a larger package or bag with several packages of cocaine inside. It was wrapped in a blanket, and, incredibly, a much larger dolphin came out, and it flipped and fell on top of that bag, and he also sank it in such a way that when the Navy helicopter began hovering around, they couldn't find the cocaine," Perez said.

Everyone in the Miami courtroom erupted in laughter, except for Ramon Roque Osorio, who was on trial for smuggling the cocaine.

Osorio had told federal agents that he'd signed on as a seaman and mechanic with Perez in August 1990 to help deliver the 37-foot vessel from Miami to its new owner in Puerto Rico.

Mechanical problems forced it off course several times. It was finally towed to a Colombian port after drifting without power for eight days in the Carib-bean, Osorio said. That's when the Coast Guard started watching it.

Osorio had invoices and receipts to confirm the mechanical problems and the repairs, and when the Coast Guard first questioned Perez on Jan. 11, 1990, he confirmed everything that Osorio had said. He insisted no drugs had been on board and no drugs had been thrown overboard.

When he changed his story, he first said there were 500 kilograms of cocaine on board, then 300, finally 94.

There was one very good reason why Perez changed his story and lied. Federal agents had implicated him in another cocaine trafficking case with a man named Julio Nunez, who had become a government witness. Agents told Perez he could earn a lenient sentence if he would finger other drug dealers.

Offering up Osorio reduced his sentence to six months. Nunez, who'd also been implicated in two murders, got the same.

Osorio's attorneys didn't learn of the deal until after Osorio was convicted and sentenced to 17 years in prison.

Perez was the only witness to implicate Osorio.

This is a clear case of the government fabricating testimony, coercing witnesses to cooperate against an innocent man and using confidential informants to set up a drug conspiracy, Osorio said.

"I don't mind doing time if I did something, but you're letting major drug dealers, people who have committed murders, go in exchange for me," he said.

"What kind of baloney is that?"

Changing his story to fit the case

By Bill Moushey
Post-Gazette Staff Writer

At his sentencing in 1993, Ronald Whitley told a federal judge he'd been a bit player in the major Kansas City cocaine ring that Anthony Salem Rashid operated. Whitley argued that he didn't deserve the minimum 20-year sentences other defendants faced.

He was illiterate and had done nothing more than help Rashid count money a few times and maintain Rashid's many homes, Whitley and his lawyer said.

The judge believed him. For pleading guilty, Whitley got a 10-year sentence.

Two years later, the trials of four other defendants charged in the same drug conspiracy got under way, and Whitley offered to testify in exchange for another cut in his sentence. Prosecutors agreed.

Whitley took the stand and told jurors he'd been a top lieutenant in the ring. He convincingly told a jury that he and others had transported large caches of drugs from Houston, Texas, and Los Angeles to Kansas City, Mo.

His testimony directly contradicted what he'd told a judge two years before, but prosecutors didn't mention that to defense attorneys, who wouldn't learn of Whitley's plea bargain statements until two years after their defendants were convicted. Nor did prosecutors reveal Whitley's extensive criminal record, which included an arrest for murder.

The other key witness in the trial was Rashid. When he was arrested in Los Angeles, he had 76 kilograms of cocaine in his possession, but prosecutors agreed to cut the 30-year sentence he faced to 10 years if he'd testify against dealers who worked for him. Based largely on the testimony of Whitley and Rashid, four men received sentences as long as life in prison.

One of them was Harold Jones, who seemed an unlikely drug runner. Jones worked two jobs, had few assets, was deeply in debt because of credit cards and insisted he was being made the fall guy so that Whitley and Rashid could win leniency.

Prosecutors did not reveal Whitley's extensive criminal record, which included an arrest for murder.

For his "truthful" testimony and substantial help in the trial, Whitley was set free. His 10-year sentence was reduced to time served.

Rashid did even better. His original charges would have put him in prison for 30 years to life. For testifying against Jones, whom he described as a man who purchased drugs from him over the years, the government shortened his sentence to 10 years.

Then, as if by magic, it was reduced to five. While testifying against Jones and the others, Rashid said he'd been promised a second reduction in his now 10-year sentence. Assistant U.S. Attorney Mark Miller assured the court and jurors that the government's deal with Rashid was fulfilled. He said if Rashid filed motions for a second sentence reduction, the government would argue vehemently against it. Despite his cooperation, Rashid still qualified as a kingpin of the drug network, Miller said.

After the defendants were convicted, Rashid filed a motion asking the judge to force the government to fulfill its promises of a second sentence reduction. Despite Miller's earlier protests in court, he didn't contest Rashid's motion. Rashid won and has since gone free.

Jones, on the other hand, is serving a 23-year prison sentence, based largely on the testimony of Whitley, who perjured himself, and Rashid, who bought 25 years off his sentence by telling prosecutors what they wanted to hear.

Jones and the other defendants didn't find out about Whitley's transformation from gopher to key lieutenant until defense lawyers were successful in getting a judge to unseal Whitley's sentencing hearing transcript.

In March, all of the defendants asked an appeals court to reverse their convictions based on Whitley's perjured statements and the government's failure to turn over evidence that would have allowed defense lawyers to impeach Whitley as a witness. They also said the government did not fulfill its obligation to correct false testimony after it occurred.

The district court judge had agreed that "some preposterous things have happened in this case" but turned down their appeals based on the "harmless error" doctrine, which means the judge decided that if the truth about Whitley were known, the verdict would not have been different.

The defendants' appeal to the 8th U.S. Court of Appeals argues the government knowingly presented false testimony to a jury and failed to disclose discovery materials to defendants prior to trial.

The court recently ruled against them on all substantive matters.

Thwarting attempts to check on witness

James R. Sterba vehemently denied the charges against him: soliciting a minor over the Internet for an unlawful sexual encounter.

He admitted exchanging messages with a woman in an adult Internet chat room and arranging for a meeting at his motel, but he said he'd never intended to meet with a minor, and he never did.

The government's key witness at the trial in May 1998 in Tampa said otherwise. Assistant U.S. Attorney Karen Cox for the Middle District of Florida questioned her:

"Are you Gracie Greggs?"

"Yes," the witness answered.

Greggs then testified that federal agents paid her more than $2,000 to go into chat rooms, lure unsuspecting individuals who might be willing to meet with a minor, then set up a hotel meeting where federal agents would swoop down and make the arrest.

Prosecutors had kept this witness under wraps before the trial, despite discovery requests by Sterba's lawyer.

As the trial was about to end, U.S. District Judge Steven D. Merryday asked Cox again about Greggs and issues related to his charge to the jury. Did Greggs have "some sort of history in law enforcement?" Cox responded, "Not that I'm aware of."

Meanwhile, Sterba's defense attorneys were puzzling over the fact they could find no mention of Greggs in a computer background check.

As the two-day trial was about to close, Sterba's lawyer again asked Cox about Greggs, and this time Cox told the judge, "Oh, that's not her real name; that's her confidential informant Customs name."

Sterba's lawyers asked a judge to delay the charging of his jury and soon learned that "Gracie Greggs" of Tampa was actually Adria Jackson of Decatur, Ga. Jackson had a long criminal record. In exchange for her cooperation in the chat room operation, federal agents had dropped an investigation into her connection with an international pornography ring involving minors.

She had pleaded guilty to making a false statement and filing false police reports that led to the arrest of an innocent man, her former boyfriend, for armed robbery. Jackson also admitted she was on anti-depressants and had been found in contempt of court in a family court dispute.

Jackson had revealed none of this when defense attorneys asked about her background.

On Aug. 13, Merryday dismissed the indictment against Sterba and barred the government from retrying him. "Cox either manufactured or accepted a plan to employ a fictitious name for Jackson and deploy that name in the service of the prosecution both before and during trial to further the prosecutorial goal of a conviction," the judge said. "The expectation was to proceed with the plan without the knowledge of the defense and without the knowledge or consent of the court. Cox abrogated to herself the legal and moral authority to decide what truth became public and, thereby, what fate awaited Sterba."

The judge referred to a 1978 book titled, "Lying: Moral Choice in Public and Private Life" by Sissela Bok, who wrote extensively about the dynamics of personal dishonesty undertaken for the presumed benefit of the public good.

The judge said "the court is entitled to the simple truth on all occasions . . . [and] a duty of truthfulness is owed to the court by all citizens, especially by its officers."

Cox was removed from the case and the Justice Department's Office of Professional Responsibility is conducting an inquiry.

Sterba, imprisoned for nine months awaiting trial, finally went free. During his confinement, he lost his job as a bus driver. He has considered trying to sue the government for ruining his life but has learned he has little chance of success.

Win at all Costs

Part 5 of 10

Government misconduct in the name of expedient justice

Selling lies

By 'jumping on the bus,' prisoners earn time off sentences at others' expense

By Bill Moushey
Post-Gazette Staff Writer

The business served a small but eager clientele.

From an office in Atlanta, Kevin Pappas, a former drug smuggler, sold prisoners confidential information gleaned from the files of federal law enforcement officers or, in some instances, from the case files of other convicts.

By memorizing confidential data from those files, the prisoners could testify to events that only an insider might know and help prosecutors win an indictment or a conviction.

Well-heeled prisoners paid Pappas as much as $225,000 for the confidential files, and in exchange for their testimony, prosecutors would ask judges to reduce the prison terms of these new-found witnesses.

Pappas and Robert Fierer, an Atlanta lawyer, called their company Conviction Consultants Inc., but a group of defense lawyers in Georgia had another name for it: "Rent-a-rat."

Federal agents shut down the operation last year. Pappas and Fierer pleaded guilty to obstruction of justice and income tax evasion in connection with the scheme. Pappas struck a deal and became a witness for the government against his former partner. He has not been sentenced, but Fierer was given a 21/2-year term in prison. So far, federal authorities haven't explained how Pappas gained access to confidential government files.

Pappas and Fierer aren't alone. A two-year Pittsburgh Post-Gazette investigation found that inmates in federal prisons routinely buy, sell, steal and concoct testimony then share their perjury with federal authorities in exchange for a reduction in their sentences.

Often, these inmates testify against people they've never met. They corroborate crimes they've never witnessed. Prosecutors win cases. Convicts win early freedom. The accused loses.

Federal agents and prosecutors have been accused of helping move the scheme along by providing convicts some of the information.

For years, inmates have warned federal authorities about the practice. One inmate, Ramon Castellanos, offered to go undercover to trap those who buy and sell testimony.

Continued on next page

About this series

Hundreds of times during the past 10 years, federal agents and prosecutors have pursued justice by breaking the law.

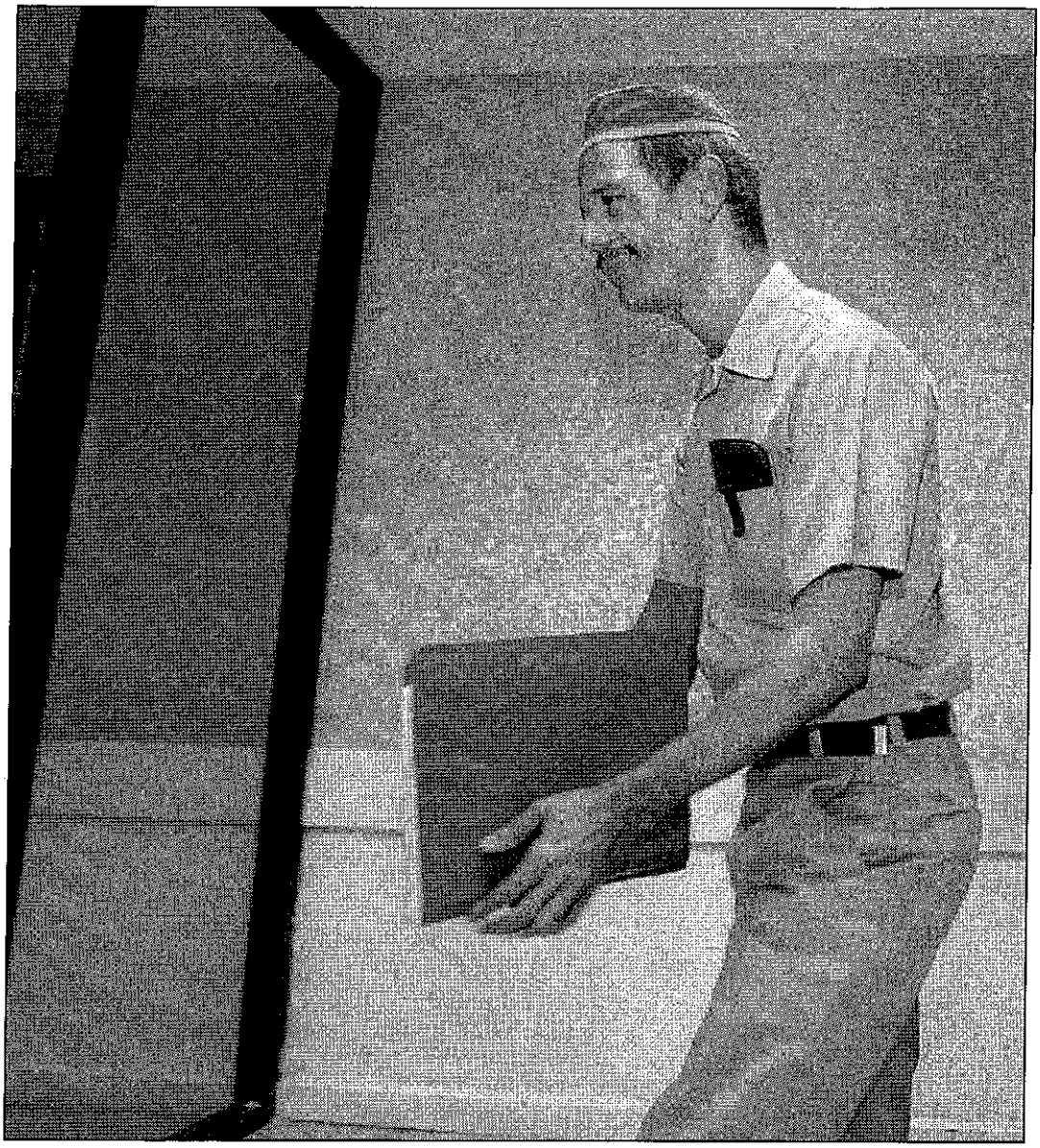
They lied, hid evidence, distorted facts, engaged in cover-ups, paid for perjury and set up innocent people in a relentless effort to win indictments, guilty pleas and convictions, a two-year Post-Gazette investigation found.

Rarely were these federal officials punished for their misconduct. Rarely did they admit their conduct was wrong.

New laws and court rulings encourage federal law enforcement officers to press the boundaries of their power while providing few safeguards against abuse.

Today, in the fifth of a 10-part series, the Post-Gazette examines the government's growing reliance on informants and criminals to make its cases, which sometimes leads to cases built on lies, paid for with cash or reduced sentences.

(Molina) later decided if he wanted to get out of jail, he had no choice but to go along with the scheme.



Darrell Sapp/Post-Gazette

Inmate Ramon Castellanos warned the U.S. Attorney General's office of another inmate's tales of buying information from someone with access to federal case files. After federal agents showed initial interest in his story, they haven't contacted Castellanos in months.

Continued from previous page

Another, Ramiro Molina, wrote the FBI, the Drug Enforcement Administration, Attorney General Janet Reno and even President Clinton. "What's become of innocent until proven guilty?" Molina wondered in one of those letters. "What has happened to the truth in justice? What are we doing with the law, bending it to be convenient and to whatever advantage necessary?"

In the meantime, testimony continues to be bought, sold, stolen. In South Florida, the scam has become so prevalent that prisoners there have crafted a name for it: "Montate en la guagua."

"Get on the bus," or, as inmates call it, "jump on the bus."

Getting nowhere

When Molina was arrested for his role in a major drug-smuggling operation between Colombia and South Florida, he figured he had one way out: cooperate with the U.S. government.

Long before anyone on the outside knew he had been arrested, he asked to speak with federal agents and prosecutors. Authorities put him in touch with Special Agent Henry Cuervo of the DEA, and Molina implicated others in the

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drug-smuggling ring. For his cooperation, Molina's sentence was dramatically reduced; even though he faced a life term, he ended up being sentenced to about eight years.

His statements were true, and prosecutors embraced them as such, Molina said.

But while in prison, Molina saw firsthand how some convicts make a living off perjured testimony, and he became the first inmate to expose the scheme in open court.

Neither the U.S. Attorney General nor federal prosecutors answered written questions about the "jump on the bus" scheme for this story.

Molina described how individuals had paid for information so they could "jump on the bus" and testify in the drug case against Panamanian dictator Manuel Noriega and against two other accused cocaine smugglers, Salvatore Magluta and Willy Falcon.

Molina passed, but he later decided if he wanted to get out of jail, he had no choice but to go along with the scheme in another case, he said. That case involved the Mayas drug-smuggling clan of Colombia, one of the largest such organizations ever. This time, an inmate named Hector Lopez was the middle man, Molina said.

"Lopez provided me with vital inside information that came from agent [Henry] Cuervo from DEA files for me to go to the grand jury on the Mayas case," Molina told a judge and others in sworn statements obtained by the Post-Gazette.

"Lopez wrote me a month before in a letter that told me exactly what to say," Molina told federal authorities. He said Lopez also provided the information to an inmate named Francisco Mesa, who eventually testified before the grand jury with the same perjured testimony.

"In July 1994, Francisco Mesa told me that he never knew the Mayas," Molina said. "I can no longer cover up this wrongdoing. . . . It is in my best interest to cooperate in the war against drugs, but two wrongs can't make a right."

Inmate Pedro Diaz Yera corroborated Molina's account. Yera also implicated Lopez and Cuervo, the DEA agent, in letters he wrote to politicians and judges.

As a result of Molina's information, he and Yera met

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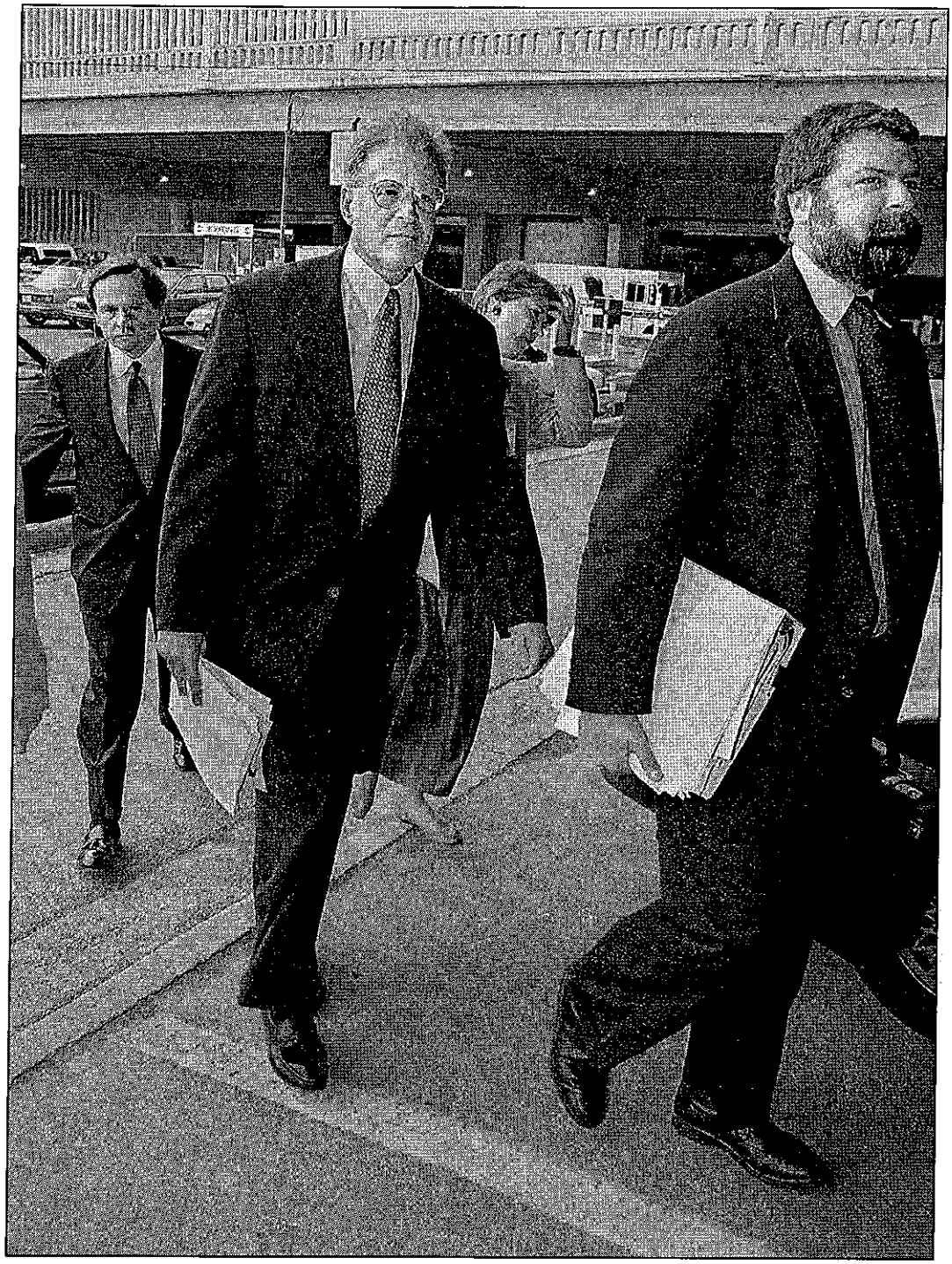

Kimberly Smith/Atlanta Journal and Constitution

Robert Fierer, center, is led into federal court in Atlanta to be sentenced for his role in a scheme to sell information to prison inmates so they could use that information to testify against others – most of whom they didn't know. Fierer was sentenced to 2 1/2 years in prison.

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with Nelson Barbosa, a special agent with the FBI. They told Barbosa about what they say was Lopez's and Cuervo's role in "jump on the bus" schemes. Both men said Barbosa never contacted them again.

On March 25, 1995, they spoke to another FBI agent, Steven Kling, of Miami. "We told him the same things we had relayed to Agent Barbosa," Molina said. "He told me he would get back in touch with us within two to three days."

That was more than three years ago. The two are still waiting.

Buying time

Luis Orlando Lopez was a player.

When federal agents broke up a major cocaine ring in 1991, Lopez, who is no relation to Hector Lopez, was carrying 114 kilograms of cocaine and a small cache of weapons in his car.

Lopez pleaded guilty and was sentenced to about 27 years in the Federal Correctional Institution at Miami.

Then, he stumbled upon his ticket to freedom. In exchange for his cooperation, he discovered that his prison term could be reduced dramatically. Lopez turned to Reuben Oliva, a Miami attorney whose law practice specializes in negotiating deals for those who provide substantial assistance to prosecutors in exchange for sentence reductions.

During a court hearing, Oliva pointed out that Lopez provided critical information to four federal agencies, helping them win guilty pleas against arms dealers, fugitives, hit men and drug traffickers. "His cooperation has resulted in the arrest of 13 persons, and he has provided information regarding two others," Oliva said. "He has provided information regarding state and federal fugitives, arms dealers, narcotics traffickers, violent organized crime members, and he has done so at great risk to himself and his family."

Because of the help Lopez provided, a Florida federal judge, in December 1996, reduced his sentence by 12 years. Lopez will be eligible for parole next year.

Case closed. But there was a problem. The crimes committed by eight of the men whom he testified against took place while Lopez was in prison.

How, then, could he have helped prosecutors? The answer is simple, said Oliva. Federal prosecutors allowed Lopez's brother to gather evidence outside the walls of prison. The prosecutors then credited Luis Lopez with providing them with substantial assistance that helped him win his sentence reduction.

That part of the story was never put on the court record, even when the judge asked a prosecutor how an imprisoned man such as Lopez could know so much.

In a letter to the U.S. Attorney General and to Lopez's judge, inmate Ramon Castellanos wrote that Lopez told him he'd paid $60,000 to another inmate, a government informant with a pipeline inside the federal bureaucracy, for confidential information gleaned from federal agents who needed additional witnesses to buttress their cases.

Castellanos said that Lopez then gave the information to his brother, who gathered corroboration on the outside, but Castellanos said he has a government memo that proves at least some of the information Lopez provided was bogus. The memo in support of yet another sentence reduction states that another man, Orlando Marrero, provided information about a federal case that was identical to what Lopez provided.

Oliva said Castellanos' account concerning Lopez is generally accurate, but he said he does not believe Lopez paid money to anyone for information. "I do not believe Luis or his family have that kind of money," said Oliva.

Lopez did not respond to a written request for an interview. Neither the Justice Department nor the United States Attorney for the Southern District of Florida responded to written questions the newspaper posed about concerns raised in this series.

In his letters, Castellanos provided documents concerning nine other "jump on the bus" cases that he said he had firsthand knowledge about. In each of those cases, inmates gave prosecutors bogus information in exchange for reductions in their sentences, he said.

Castellanos, who is serving a 30-year sentence for cocaine distribution, said a sentence reduction is not the reason he has come forward. "Let there be no mistake about the motivation behind this complaint. I am not seeking a sentence reduction. I am seeking a balance of justice," he wrote. "I'm not an angel, only a human being who's made a mistake and is capable of paying the price.

"However, other similarly suited individuals with cartel connections and the aid of DEA and U.S. Customs are circumventing and manipulating the U.S. justice system. The big guys are still dealing their way out of prison while the little guy serves full-term sentences," Castellanos wrote.

In an interview earlier this year, Castellanos said he has provided specific instances of this scam to FBI agents from South Florida. He told them that he would go undercover to expose this process. He said he was interviewed twice about it in the past year.

The agents haven't contacted him in months, and Castellanos said he doubts they ever will.

Outside help

The federal government was also aware of the activities of Pappas and Fierer.

Pappas had been out of jail for only seven months when he established Conviction Consultants Inc. in the offices of Fierer's downtown Atlanta law office, and from October 1995 to February 1996, investigators were secretly recording some of their conversations about "jump on the bus" schemes after an imprisoned man in Kentucky tipped off the agents.

During its investigation, the government uncovered several instances involving perjured testimony before indicting Pappas and Fierer.

According to that indictment, Bruce Young, a convict from Nashville, Tenn., paid $25,000 to Fierer and Pappas in September 1995. After that, Fierer wrote a letter to a prosecutor in Tennessee saying he had an informant who "had some affection for Bruce Young and wanted to help." According to the indictment, in a recorded conversation a few months later, Pappas told Young: "You sat in jail and didn't do anything except pay money to buy freedom."

The government also recorded conversations between Pappas and inmate Peter Taylor, who was serving a 13-year sentence in Miami for smuggling marijuana. Pappas told Taylor that a facade had to be created to make prosecutors believe Taylor knew an informer whom he was going to join in testifying in a case against another.

According to the indictment, Pappas encouraged Taylor to tell a prosecutor he and the informer were "lifelong friends or something." In February 1996, Fierer told Taylor the entire deal would

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cost him $250,000: $150,000 for the consulting company, $75,000 for Fierer and $25,000 in expenses.

Rodney Gaddis also sought Pappas' help. Pappas contacted Gaddis, a convicted bank robber, and told him he had found an informant willing to provide exculpatory information about Gaddis. He told Gaddis to tell federal prosecutors that he had known the informant for nine years and that he looked like "Howdy Doody." Gaddis and the man, however, had never met.

Jumping lessons

Richard Diaz, a former Miami police officer turned defense lawyer, said he has seen firsthand how "jump on the bus" scams work.

As an example, he cited the case against Magluta and Falcone, two men who were charged in the largest cocaine smuggling case to be brought in South Florida. Diaz, who worked on a related case, said federal agents and prosecutors were offering deals throughout the South Florida penal system to anyone who would testify against Magluta and Falcone.

Jurors, however, acquitted the two men because the jurors said they didn't believe much of the testimony, even though the jury foreman has now been accused of accepting a $500,000 bribe to fix the case.

Diaz and others said the government offered the same types of inducements to anyone who could testify against Noriega. "It was common knowledge in the south Florida jails that anyone who had information to provide regarding General Noriega would be looked upon very favorably," said Frank Rubino, one of the cadre of lawyers who represented Noriega in his drug case, which ended with a conviction and 20-year prison term.

Abundant sources

To convicts, the information comes from a variety of sources.

With help, some secure evidence, transcripts, indictments and other materials from cases then memorize that information before approaching a prosecutor willing to make a deal.

Some get together with informants looking for others to corroborate their testimony.

Others simply make it up.

In many cases, prosecutors help the convicts along by telling potential witnesses precisely what they want to hear if the inmate expects to get a deal, Diaz said. Informers quickly pick up on the basic facts. "If I did something like that, I could lose my [law license]," Diaz said. "It's like putting the cheese in front of the rat."

One way to curtail "jump on the bus" schemes would be to administer polygraph tests to all witnesses. Justice Department rules require polygraph tests for witnesses who are promised leniency, but defense attorneys say they are seldom given.

Even though lawyers and inmates have alerted federal prosecutors and agents about schemes related to "jump on the bus," very little has been done. Diaz said that if the government acknowledged these abuses of the system, a large body of cases would end up being reversed.

"It is easy to take the position that they don't know anything about this," he said. "It is easy to turn the cheek and deliberately look away from it."

A crowd on this 'bus'

Federal prosecutors wanted to make sure Israel Abel didn't get off the hook.

Abel said that among the dozens of witnesses who testified against him at his 1992 Miami drug smuggling trial were several people he'd never laid eyes on. They were there to "jump on the bus," earning sentence reductions by testifying about things they'd never seen having to do with a person they'd never met, he said.

It wasn't until several years after Abel was sentenced to life in prison that he learned where the witnesses had come from. Abel's family found in a court record a copy of a letter that a government informant named Jorge Machado had written to his sentencing judge.

Abel knew Machado but not most of the others whom Machado lined up to testify. In his letter, Machado apologized to the judge for being a co-

It wasn't until several years after Abel was sentenced that he learned where the witnesses came from

caine smuggler, lamented that he'd spent 34 months in prison and told him he was actively pursuing cases that could help him win a sentence reduction.

In support of his plea, Machado provided a summary of his cooperation. "I have recruited [confidential informants] in four different cases," wrote Machado, even though, as he pointed out, he'd only been a gopher for drug barons and would know little about a smuggling ring's inner workings.

In the government's case against Abel, "I recruited the following people: Joaquin Guzman, Jorege Cardenas, Jose Ledo, Carlos De La Torre, Carlos Betancourt. Mr. Betancourt recruited Mr. Catano." The letter went on to list people Abel says he's never met.

During his trial, Abel's lawyers had no reason to believe Machado or any of the other witnesses were phony and so the lawyers never questioned them about how they came to testify. They wouldn't find out until much later.

Abel, who has been imprisoned for seven years, hopes one day to be able to point that out in an evidentiary hearing, if one is granted, to show that many of these witnesses were nothing more than liars trying to buy their way out of jail.

Win at all costs

Government misconduct in the name of expedient justice

Written by Bill Moushey Part 5 of 10

Inmate exploited prosecutors' need for witnesses

November 30, 1998
By Bill Moushey, Post-Gazette Staff Writer

Inmates inside the Federal Correctional Institution at Miami had written letters of warning to federal authorities.

Jose Goyriena, who was serving a 27-year prison sentence, had been bragging to them about "jumping on the bus."

He had obtained information from other convicts and government informants about crimes he knew nothing about. Then he memorized that information and offered it as testimony to federal prosecutors, the inmates said.

Despite the letters warning of Goyriena's scheme, prosecutors let him testify again and again. He even offered to provide the same information for a price to anyone interested in joining him.

With Goyriena's help, prosecutors sent four men to prison for life. They also won indictments against several others, who later pleaded guilty.

In return, prosecutors promised that Goyriena's sentence for cocaine-smuggling would be reduced by at least 10 years and that they would seize only a small portion of the millions of dollars in assets he'd acquired through smuggling.

Because of his capacity to lie, and the fact the government has used this bogus testimony in many cases, Goyriena's name has appeared elsewhere in the Post-Gazette series — including a story about government misconduct in the trial of Peter Hidalgo, which appeared Nov. 24.

In trials of Hidalgo, Andres Campillo and Joseph Olivera, lawyers for Hidalgo and Olivera protested that Goyriena did not know their clients. Campillo admitted that Goyriena had done some construction work for him, but he denied any involvement with drugs.

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Goyriena's lies didn't catch up with him until he was ready to testify in the one case that he hoped would finally spring him for good. Prosecutors planned to use Goyriena's testimony against drug baron Castor Gonzalez, but didn't need it when Gonzales pleaded guilty.

Richard Diaz, a former Miami police officer who later became a criminal defense lawyer, learned that Goyriena had been offering to sell information he obtained to other inmates. Even though he had nothing to do with the Gonzalez case, Diaz filed a motion to make sure the judge took a close look at Goyriena's actions before allowing him to testify or granting him further sentence reductions.

In that motion, Diaz included four sworn and notarized affidavits in which inmates at the Federal Detention Center at Miami and the Federal Correctional Institution at Miami said Goyriena offered to sell them information so that they, too, could testify against Gonzalez and have their sentences reduced.

Blas Duran, an inmate at FDC-Miami, said Goyriena, known in prison as "El Gorrion," told him in January or February 1997 that the only way Duran could get out of jail early was to "jump on the bus."

"I told him that I did not know what he meant by that," Duran wrote in a sworn affidavit. "Gorrion told me that what he meant was that I could buy information from him or anybody else offering information for sale and provide the information to the respective government prosecutor, demand, and most probably receive, a reduction in my sentence."

Another convict, Victor Gomez, said he heard an inmate offering Goyriena information. Goyriena then planned to give that information to prosecutors, even though he "had no direct, indirect or personal knowledge that [the defendant] had ever done anything illegal," Gomez said.

A fourth inmate, Rafael Martinez, swore to the same set of materials.

Diaz said shortly after he filed his motion about Goyriena, he learned that Goyriena had failed two polygraph tests administered by the government.

While Goyriena told inmates he was looking forward to freedom for his work, the government put on hold its motion for sentence reduction because of the fallout that began with Diaz's motion.

Appeals from others he helped convict are pending.

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Feds finally use safeguards but only to protect their own

There is a system in place to keep prisoners from trading lies for leniency. They are supposed to be given polygraph tests to determine if they are telling the truth.

But that safeguard is often ignored.

Gilberto Martinez proved the system can work – at least if the target of the lies is a federal agent.

In early 1995, Martinez was arrested, convicted and sentenced to a federal prison for drug-trafficking.

Like many other inmates, once he was in prison, Martinez found a way he could help the government and, in the process, make himself some extra money.

Authorities said it was a classic case of "jumping on the bus."

Usually, the scam involves inmates who fabricate testimony against suspected drug dealers or other common criminals, and some prosecutors, eager for witnesses who will corroborate a crime, ignore safeguards such as polygraph tests that help ensure a witness's credibility.

Martinez made a mistake. He tried to set up one of the government's agents.

The scheme behind bars began in October 1997, when Martinez contacted a U.S. Customs Service internal affairs officer to say a fellow inmate, Narcisco Rodriguez, had information about a corrupt agent. Rodriguez told internal affairs officers that he had paid $28,000 in bribes to the agent who was never identified in court papers.

In return, the agent had guaranteed that Rodriguez's brother, Luis Rodriguez, would have his sentence reduced for cooperating with the federal government, Narcisco Rodriguez said.

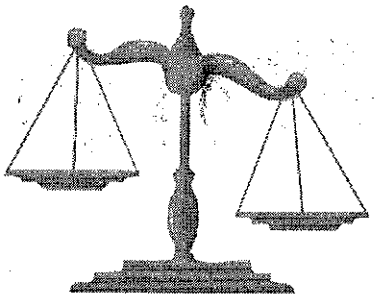
To test the veracity of their accounts, customs officials administered polygraph tests to Luis and Narcisco Rodriguez. "Both men showed strong deception," according to an affidavit.

There was no dirty agent, Martinez finally admitted. He planned to pocket the $28,000 himself. Martinez, a former boxing promoter, pleaded guilty in the scheme and had 11/2 years added to his prison sentence.

There were other repercussions. According to court documents, Martinez's admission has raised questions about his earlier testimony that helped federal prosecutors convict a former Miami Beach mayor of corruption and helped snare some Metro Dade County police officers who were charged with stealing drugs.

Both are appealing their convictions, basing their appeals on the prospect that Martinez might have lied.

If he hadn't tried to finger a federal agent, Martinez's veracity as a witness might never have been questioned.



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— Part 2, Nov. 23: Expensive government stings often end up snaring only small-time crooks, or even the innocent.

— Part 3, Nov. 24: How discovery has become a shell game for prosecutors.

— Part 4, Nov. 29: Perjury has become a profitable venture.

— **Part 5, TODAY:** Testifying to anything to get out of jail.

— Part 6, Dec. 1: When federal agents cross the line.

— Part 7, Dec. 6: The grand jury system is sometimes abused by prosecutors.

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Win at all Costs Part 6 of 10

Government misconduct in the name of expedient justice

Switching sides

Federal agents sometimes fall prey to the lurid lifestyles of their informants

By Bill Moushey
Post-Gazette Staff Writer

It was May 22, 1992. FBI agent Christopher Favo was briefing his boss, Special Agent R. Lindley DeVecchio, who headed the task force trying to end Brooklyn's Colombo crime family war.

Two men loyal to the Colombo faction led by Victor J. Orena had been gunned down on a Brooklyn Street the night before, Favo announced.

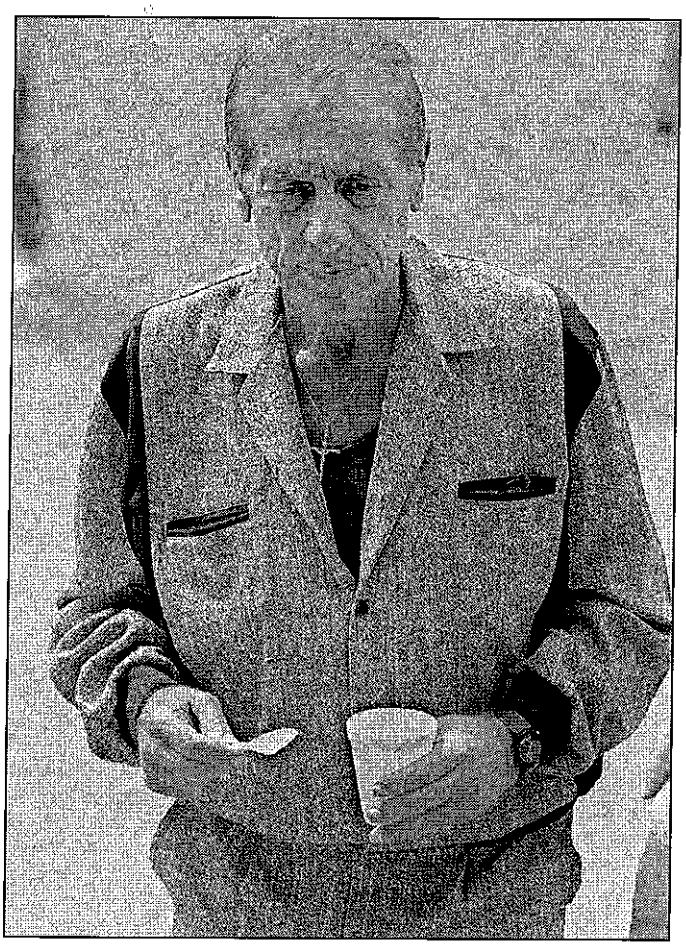
DeVecchio's reaction was not what Favo expected. The man charged with stopping the violence cheered for the shootings.

"He slapped his hand on the desk and he said, 'We're going to win this thing,' " Favo would recall two years later. "And he seemed excited about it.

"He seemed like he didn't know we were the FBI. It was like a line had been blurred... over who we were and what this was.... He was compromised. He had lost track of who he was."

The Post-Gazette's two-year investigation found that federal agents are often placed in positions where they can lose track and end up compromised.

Agents sometimes must make deals with the devil — criminal informants — to fight crime. The temptations to become partners with these criminals can be great. And the safeguards to prevent their defections are few.



Newsday

The late Gregory Scarpa Sr., shown here in a 1992 photograph, had longtime ties to organized crime and longtime ties to the FBI. His connections with one federal agent drew protests from within the FBI and charges that Scarpa was fed government information that he used against his mob enemies.

Questionable ally

No one mentioned Gregory Scarpa Sr. by name when Favo and DeVecchio talked that morning.

Scarpa, a gangster who's lust for murder earned him the nickname "Killing Machine" in New York's tabloids, had sided with the Carmine Persico faction against Orena in the bloody Colombo crime family fight.

But Scarpa was also a government informant — common in federal law enforcement. Agents use them to get

Continued on next page

About this series

Hundreds of times during the past 10 years, federal agents and prosecutors have pursued justice by breaking the law.

Today, in the sixth of a 10-part series, the Pittsburgh Post-Gazette continues its examination of this culture in which the pursuit of convictions has replaced the pursuit of justice, sometimes at any price.

Continued from previous page

inside information about criminal conduct. Sometimes these informants are paid money. Sometimes their reward is leniency if they happen to be facing a prison term.

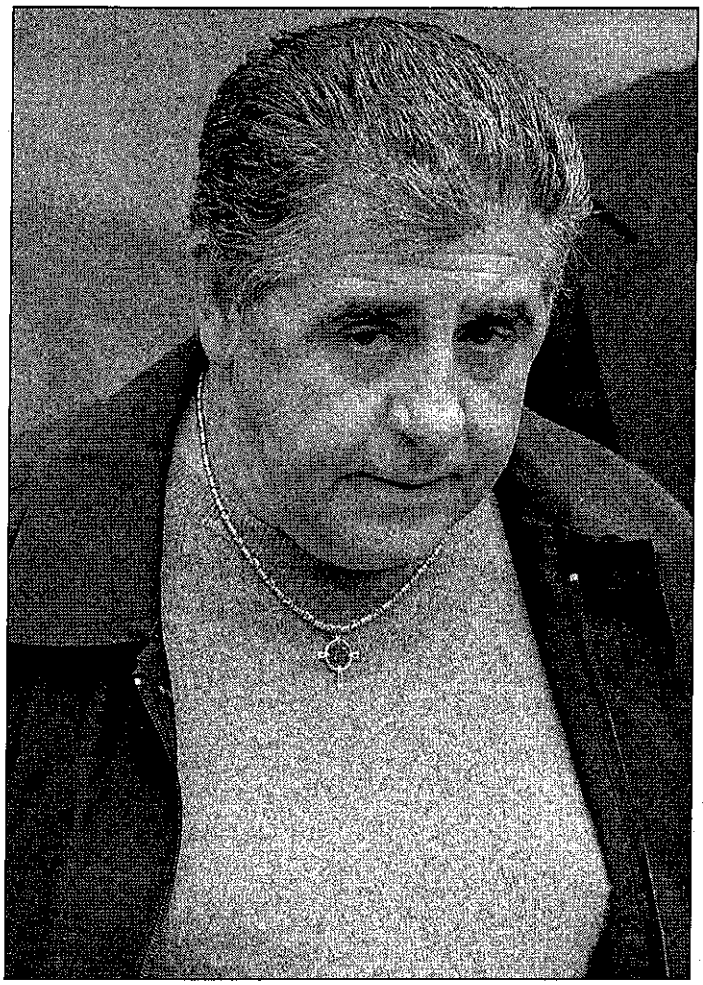
For three decades, Scarpa had been an informant for the FBI. His relationship with DeVecchio, which lasted at least a decade, went beyond any accepted FBI practice, fellow agents have testified.

DeVecchio not only ignored Scarpa's day-to-day criminal activities, he was accused of assisting in the Mafia killer's success.

Accusations against DeVecchio, made in sworn statements by other FBI agents, cooperating FBI witnesses, government documents and court testimony, include:

- Giving Scarpa the names of other FBI snitches, so Scarpa could put them in harm's way while shielding his own illegal operations.
- Telling Scarpa where the FBI was placing wiretaps so he could avoid them.
- Informing Scarpa of pending indictments against his associates — in one instance, allowing Scarpa to help his son disappear before the younger Scarpa could be arrested.
- Handing over the addresses of Scarpa's enemies in the Colombo crime family war so that he could track them down and kill them.
- Fabricating evidence against Orena and other Scarpa adversaries so they would be sent to prison.

DeVecchio has admitted accepting gifts from Scarpa. But he steadfastly has denied any other wrongdoing. In several recent court cases, he took the Fifth Amendment rather than discuss his relationship with Scarpa.



Newsday

Victor Orena, shown being led into federal court in New York City in 1992, was sentenced to life in prison for crimes related to the Colombo crime family war. Federal agents and informants say FBI Special Agent R. Lindley DeVecchio helped Orena's organized crime enemy, Gregory Scarpa Sr., fabricate evidence against Orena.

Yet the files and firsthand reports of other agents detailing his actions have resulted in more than a dozen New York mobsters being acquitted after juries learned the FBI had conspired with criminals to commit crimes.

Orena wasn't so lucky. He was sentenced to life in prison before the Scarpa-DeVecchio relationship was uncovered. His attorneys' efforts in getting him a new trial have so far failed.

And what of the Justice Department's probe into the actions of its rogue agent? The agency's investigation exonerated DeVecchio.

The Post-Gazette's two-year investigation into misconduct by federal law enforcement officials found the kid glove treatment of DeVecchio is not unusual.

The Justice Department did not respond to questions the newspaper posed about concerns raised in this story.

Making converts

Informants are supposed to help federal agents arrest criminals. But too often, these informants create new criminals out of those very agents.

Former Drug Enforcement Administration agent Celerino Castillo III says he knows why. The government has come to rely on informants to make cases more and more often, he said. And these informants have power and material possessions and money — temptations they gladly use in their efforts to compromise an agent.

The safeguards that are supposed to help prevent it often are ignored.

"You know, there's an old saying: 'Tell me who you hang out with, and I'll tell you who you are,'" said Castillo, of McAllen, Texas, who worked mostly undercover for the DEA for 12 years.

Mike Levine agrees. The upstate New York man spent 25 years as a DEA agent, the final 10 as a supervisor.

"As a street agent and as a supervisor, one of the biggest problems was agents falling in love with informants," he said. "They literally become part of the crime. It's just a flat out conspiracy.

"[Agents] tell informants, if you come in with a good case, you get away with murder ... literally. And [informants] know what's going on. They know if they dangle a good case in front of a gullible agent or an agent whose morality is not such that it gets in the way of his ambition, that agent starts to overlook what the informant does."

Compounding the problem, Castillo said, is a mentality within federal law enforcement that will forgive almost any conduct as long as agents produce.

Undercover agents especially are often left to their own devices by supervisors

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— "suits," Castillo and Levine call them — who have little experience but a driving interest in moving up the career ladder "by not making waves," Castillo said.

"There's a great disrespect and fear of management at DEA," Levine said. "Most management don't really know anything about drug cases. They are bureaucrats with no real-world experience."

Levine said DEA operations manuals order supervisors to review undercover investigations with agents at least once a month. Other federal agencies have similar requirements.

That doesn't happen often, especially in deep undercover operations, he said.

"Unrestricted secrecy is unlimited corruption," he said.

Ego also drives misconduct, Levine said.

"The individual agent who gets himself in league with the bad guys, like DeVecchio, listens to this guy tell him, 'I'm going to make you famous. You're going to have a book deal, a movie deal.' "

It reaches the point that even a murder can be overlooked, Levine said, since it's rationalized as one bad guy killing another.

The media's fascination with big crimes feeds the process, he said.

"Prosecutors have careers made by media," Levine said. "Early on in the War on Drugs . . . that manifested itself when literally every Spanish-speaking person you busted would eventually have a link to the Medellin cartel. Agents would see . . . the hype, media would gobble it up. Before you knew it, [agents] started lying or hyping their own cases. What quickly happened was that if you made a top media case, or made the big guys look good, you got rewards yourself."

Associated Press file photos

Gregory Scarpa Sr. died of AIDS-related illness in 1994. His relationship to the FBI at that time dated back at least 30 years. Although they knew he was dying, federal officials never questioned him about his relationship with the FBI agent who dealt with him even though other agents made charges that the relationship had grown too friendly.

And then there's money.

Castillo fought in Vietnam and began his career in law enforcement as a Texas cop. In 1980, he joined the DEA and worked in New York, Peru and Guatemala, where he was in charge of anti-drug operations centered in El Salvador from 1985 to 1990.

As part of his job, Castillo said, he sometimes handed checks to snitches for more than $100,000, even as he earned less than $40,000 a year.

Agents often work long hours at low pay in dangerous surroundings for little appreciation and can rationalize that accepting a gift or a loan from an informant is OK.

"Before you know it, he is compromised," Castillo said.

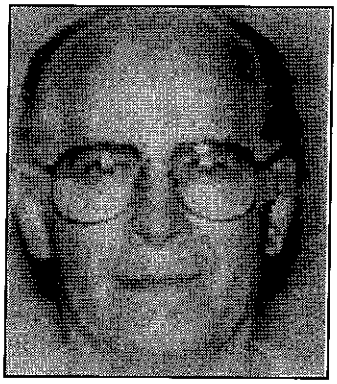
Castillo said he finally quit his DEA job in disgust in 1992. He now writes and teaches law enforcement classes to high schoolers.

He believes agents simply become expendable. He's seen case after case where agents who may have worked for years undercover get little help readjusting to the real world when they're reassigned.

"Basically, I realized they could care less about me."

Levine said a solution to the problem of keeping agents on the right side of the law would be for the Justice Department to come down hard on those caught in an illegal activity.

It won't happen, he said, for one simple reason: "They'd have to go after themselves. People are going to ask them 'How did that happen? How did you let that happen? You're the supervisor.' "



James "Whitey" Bulger was a notorious organized crime figure in Boston, but federal agents kept secret another part of his identity: government informant.

Unwanted information

Geovanni Casallas has seen that government reluctance up close.

He is serving 24 years at the Federal Correctional Institution at Bradford, Pa., and, like most convicted drug smugglers, got the chance to cut his sentence by snitching on others in the drug trade.

Casallas had good information. When he was arrested in 1991, he was working for two men on the southern U.S. border whose crimes included arranging for the theft of an airplane to smuggle drugs; overseeing the transport of hundreds of pounds of illegal drugs into the United States; and splitting both drugs and money from those shipments among themselves and others.

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The government turned down his information. Not only that, prosecutors warned his lawyer that if Casallas pursued the charges, they might be inclined to indict his wife, who was with him when he was arrested, and eliminate any reduction in sentence that Casallas might otherwise be promised.

For in this case, one of the men Casallas fingered was a government informant who had lured Casallas into the drug deal. The other was an agent for the DEA, who also was based in Texas.

Investigating its own in this case would do more than harm the informer and the agent, the Post-Gazette found. If they were found guilty of the charges made by Casallas, dozens of cases in which they participated or testified might face reversals in court.

Casallas finally agreed not to press his charges against the informant and agent, to spare his wife from indictment. Casallas pleaded guilty and accepted a federally mandated 24-year prison term.

But once in prison, he found he couldn't — in good conscience — allow what he considers a travesty of justice. He sent a sworn affidavit detailing what he knew to U.S. Attorney Gaynelle Griffin Jones of Houston in February 1995.

He got no satisfaction.

Finally, after five years in prison, he asked a federal judge for a writ of mandamas, which asked that an investigation be undertaken into his allegations.

The judge granted his request and ordered federal prosecutors to conduct a grand jury investigation.

They did. But they never called Casallas — the person who was an eyewitness to the misconduct — to testify. The investigation was concluded in a few months and no action was taken.

Agent ignored

Such inaction is just as common for those who spot misconduct from the inside.

FBI Special Agent Jerome R. Sullivan pleaded guilty last year to being a spy for associates of New York's Gambino crime family. Sullivan had been party to some spectacular successes for the FBI. He said he was driven to criminal actions by stress, alcohol and gambling addictions caused by almost 20 years of undercover work.

How Sullivan's actions could have escaped the notice of supervisors and colleagues for so long has never been made clear.

Sullivan skimmed almost $200,000 that was supposed to fund an undercover money-laundering investigation directed at members of Colombia's Cali cartel. He wrote bogus memoranda and fake expense reports to cover the criminal activity; kept $100,000 from another money-laundering scheme; stole $100,000 from a raid at a check-cashing business; and pocketed money from the sale of un-stamped cigarettes he seized from a member of organized crime.

He said he even scammed a judge to win the release from prison of organized crime figure Daniel "Fat Danny" Laratro. Sullivan told the judge Laratro had provided "substantial assistance" to the government in cases against several key figures in New York's Lucchese crime family, which was trying to gain access to the garbage business in Florida.

U.S. District Judge Stanley Marcus reduced Laratro's five-year sentence to three years — time he'd already served.

Of course, Laratro had given the government no help. But he helped Sullivan in a big way — arranging for his $100,000 gambling debt with Lucchese-connected bookmakers to be forgiven. Laratro also promised to provide Sullivan with more than $200,000 to start up a business after he retired from his government job.

Sullivan pleaded guilty to a 10-count indictment and will soon be sentenced. His lawyers have argued that because of job-related stress and full cooperation, he deserves no more than a few years in prison.

Well-placed friends

It's not always just a rogue agent who trades sides.

Several agents in Boston's FBI office seemed beholden to lifelong gangster James "Whitey" Bulger.

Bulger was known as an untouchable in Massachusetts — the crime boss who always managed to avoid federal wiretaps, warrants and racketeering charges that landed many of his associates in prison.

Massachusetts residents figured Bulger's brother, William, former president of the Massachusetts Senate and current president of the University of Massachusetts, was privy to inside information that helped safeguard his brother.

But it was Whitey Bulger's work as an FBI informant between 1971 and 1990 that helped keep him out of prison.

Unbeknownst to his criminal colleagues, Bulger provided critical information to FBI agents that led to the indictments of many leading members of La Cosa Nostra in Boston.

In return, the FBI protected Bulger from arrest while he operated his illegal loan-sharking and drug distribution businesses in South Boston, where he protected his enterprise through brutal assaults and murders.

Someone finally pierced Bulger's immunity. In January 1995, Bulger and five others were indicted on racketeering charges by a federal grand jury. The indictment suggested Bulger was responsible for the deaths of at least four people, dating to the 1960s.

Curiously, five days before Bulger's indictment, he disappeared. FBI agents have denied any connection, but lawyers and judges have publicly questioned the strange circumstances surrounding the Bulger investigation and his timely disappearance. Bulger has never been found.

FBI Agent John Morris, who headed the FBI's organized crime unit in the city, admitted he allowed Bulger and his associate, Stephen Flemmi, to commit crimes over a period of 20 years. In exchange, they provided the agency with information that helped set up the arrests of several gangsters.

Morris also admitted on the witness stand that he had accepted gifts from Bulger and Flemmi, including French wine and almost $6,000, including $1,000 he used to take his girlfriend with him to a 1992 Drug Enforcement Administration convention in Georgia.

In return, Morris said, he shielded Bulger and Flemmi from prosecution because they were his most important secret informers — he characterized them as the most prized informants in New England history.

It was part of an FBI policy in Boston — albeit an unwritten one — that protected such high-ranking gangsters in exchange for the information they could provide on lesser known thugs that agents could then arrest.

Morris denies he tolerated murders by Bulger.

Yet he admitted he and other agents did little when an informant told them Flemmi and Bulger had offered him money to murder an Oklahoma businessman who had crossed the pair in a South Florida Jai Alai venture. The businessman

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was later murdered. The case has never been solved.

The biggest fallout in the Bulger case may be yet to come.

The FBI kept secret the fact Bulger was the source of information agents used to get wiretaps from federal judges for the telephones of dozens of gangsters — many of whom were then convicted of crimes based on that evidence.

In one instance, the FBI learned through Bulger that a mafia swearing-in ceremony was being held outside of Boston, so secret cameras were installed to record it. Those tapes caused a sensation across the country.

Since federal judges weren't told Bulger was the source of information for many of the wiretap requests, the evidence obtained from those taps could be thrown out through appeals.

And since federal agents did not disclose their close relationship with Bulger when they testified in these trials, that also could be the basis of successful appeals.

Last summer, the FBI announced a $250,000 reward for Bulger's arrest.

Court records show that at about the same time agents had spotted Bulger's car in a suburb of New York City. Bulger never returned to the car.

Choosing sides

It was the first week of December 1991, and Vinnie Fusaro was stringing Christmas lights outside his home in Brooklyn. Gregory Scarpa Sr. was one of several passengers in a car that drove slowly by.

In a sworn statement given two years later to the FBI — when Scarpa was already in prison and near death — a government informant named Larry Mazza gave this account of what happened next:

Scarpa had his window open and his rifle ready as the car approached Fusaro's Brooklyn home. Scarpa fired three shots, killing Fusaro. A month later, he gunned down Nicholas Grancio.

Both Fusaro and Grancio were middle-aged, small-time hoodlums whom Scarpa believed were Orena loyalists in the battle for control of the Colombo crime family.

During this time — and throughout the Colombo crime family war — DeVecchio would call or meet with Scarpa almost every day during the Colombo crime family war, agents and the documents said.

Based on that, Orena's attorneys believe DeVecchio was aware that Scarpa committed the murders.

"Despite the knowledge that Greg Scarpa killed Grancio, and was believed to be actively prosecuting the war, the FBI did nothing to monitor or curtail Scarpa's irrepressible violence, or otherwise reign him in," Orena's attorneys would write later. "He was not arrested, or interrogated, for this crime. At no time did the FBI seek a search warrant for Scarpa's home to determine if Scarpa possessed the gun that killed Grancio. ... After Grancio was killed, Scarpa remained utterly free and unfettered to kill again — and so he did."

DeVecchio has denied having any knowledge at the time of Scarpa's role in these murders, but there was no doubt DeVecchio and Scarpa were close. They even had a code. When DeVecchio had to call Scarpa, he would sometimes refer to himself as "Mr. Dello" or "Mr. Della." In turn, Scarpa would call himself "34" and refer to his FBI contact as the "girlfriend."

No one outside the FBI knew about this cozy relationship, though a lot of people had their suspicions. Attorneys for Victor Orena were certainly curious.

Orena faced a nine-count racketeering indictment in late 1991, charging him with murder, murder conspiracy, firearms possession, extortion and loan sharking — all stemming from his fight with the Colombo family faction that included Gregory Scarpa Sr.

Orena's attorneys believed most of the evidence had been fabricated by Scarpa, with the aid of DeVecchio. Before Orena's trial, they asked the FBI to turn over everything they had about Scarpa, since it was their belief he had started the internecine war and caused most of the bloodshed.

Federal prosecutors eventually turned over only 77 pages of documents about Scarpa's work with DeVecchio, although in subsequent cases, thousands more would be released. There wasn't a single word about the gunmen who had tried but failed to kill Scarpa in 1991, precipitating the mob war that followed.

Orena's attorneys believe they know why. Their theory is the attack was staged, and Scarpa then used it as an excuse to declare war on Orena and his loyalists.

When the lawyers tried to find the forensic evidence that should have been gathered at the scene, they found the shell casings were missing; the photographs were missing; and there was no report filed on interviews with Scarpa.

As aspects of the relationship became known, DeVecchio admitted to his superiors that Scarpa would bring him gifts. When Cabbage Patch Dolls were popular but scarce, Scarpa gave a few to DeVecchio for his children. He gave him fine wine, pasta and other homemade Italian dishes during the holidays.

Orena's attorneys were unable to make their case without the thousands of pages of information about Scarpa and DeVecchio they suspected were in FBI files but were unable to obtain. Orena was convicted on the charges in 1992. The 2nd U.S. Court of Appeals turned down his appeal based on prosecutorial misconduct and other issues — as has the U.S. Supreme Court.

He still hopes he can persuade a judge through a writ of habeas corpus petition that the actions of the government have sent him to prison illegally.

While Orena remains in prison, more than a dozen other men involved in the Colombo crime family war have either been acquitted or had their cases dismissed because of the Scarpa-DeVecchio connection.

DeVecchio has retired from the FBI. Scarpa died in 1994 of AIDS transmitted by a blood transfusion during stomach surgery in 1986. He was 65.

The FBI had known for years he was in poor health. Yet no federal official ever questioned him about the issues raised by his relationship with the FBI during the Colombo Family crime war.

Last month, his son, Gregory Scarpa Jr., testified in New York during his own racketeering case that DeVecchio had given his father "carte blanche" to commit crimes, including five murders, so long as he kept working as a government informant.

Scarpa Jr., 47, is arguing that he received that same protection from the government.

DeVecchio, who was granted immunity in the case in exchange for testimony, disputed that. Scarpa Jr., already doing a 25-year sentence for drug smuggling, was convicted in October on conspiracy charges. He has not yet been sentenced.

Agents can't keep hands off drug evidence

When federal agents broke the "Blue Thunder" heroin ring in New York City, they snared 34 men suspected of reaping millions in drug profits between 1986-1991.

Yet it turns out the biggest crooks included at least two agents of the U.S. Drug Enforcement Administration who were involved in the arrests.

As members of a multi-agency task force, the agents, through illegal arrests and seizures, succeeded in enriching their own lives while destroying the lives of innocent people.

And prosecutors withheld information on the investigation of the agents during the trials of several targets of the Blue Thunder probe — violating the defendants' rights to information for their defense.

For example, Alfred Bottone was charged with being one of the leaders of the heroin conspiracy, but he never learned during his trial that the very officers who investigated him were being investigated themselves.

In fact, one of the agents would eventually end up in the same prison as Bottone, who is serving a life sentence.

Sammy Shalikar and his brother-in-law also were nailed by the Blue Thunder task force. They'd both fled Iran in 1979 and founded Gallery 2000, a successful jewelry store in the Bronx.

On June 22, 1992, drug task force officers used false evidence to obtain a search warrant for Shalikar's Great Neck, Long Island, home and his jewelry store, where several bags of jewelry and cash were seized.

The task force officers found no drugs.

Shalikar and his brother-in-law were charged with conspiracy to distribute cocaine based on the testimony of a government informant who later would be proven a liar. Shalikar spent six months in jail on Rikers Island as the case wound its way through the federal court system in Manhattan.

Finally, U.S. District Court Judge Pierre Leval dismissed all charges against Shalikar and his brother-in-law.

"It was a scandalous and terrible event when misconduct by law enforcement officers results in the filing of false charges," Leval wrote in 1993.

But that wasn't the worst of it.

Shalikar eventually learned that the task force officers who arrested him had themselves been under investigation for theft. One of the task force members, Robert Robles, admitted that he and his partner, Joseph Termani, sold tens of thousands of dollars worth of jewelry that was seized from Gallery 2000 during the raid.

Shalikar and his brother-in-law lost their store to bankruptcy.

Termani confessed to the thefts after he was confronted by Robles and others involved in the sale of heroin they stole and sold in another case — this one related to Bottone.

Five years after being sentenced, Bottone says the same misconduct that led to Shalikar's arrest was also present in his Blue Thunder trial, yet he says no one wants to listen because he has a criminal record.

Bottone figures if his appeal is ever heard, the evidence will show that all three agents who caused his imprisonment were corrupted long before his case began. And that prosecutors never gave him the opportunity to use that information to raise questions about their credibility on the witness stand.

Giving in to the temptation

Rene De La Cova was a highly respected supervisor with the U.S. Drug Enforcement Administration in 1994, working undercover in Fort Lauderdale, Fla. Five years earlier, it was De La Cova who had been selected to serve an arrest warrant on Manuel Noriega after American forces invaded Panama.

De La Cova and his partners routinely investigated and arrested people who might bring in more money in a month or a week, or a day than the agents earned in year. Or five years.

In a 1994 operation, De La Cova and his partners were working under cover and had agreed to launder $3 million for a Houston drug operation.

Once they got the money, they began arranging for the drug dealer's arrest.

Then De La Cova got a late-night call. There was another $700,000 to launder, a drug dealer told him.

Could he do it?

De La Cova should have obtained authorization to continue the investigation. Instead, he flew to Houston without telling anyone.

He stuffed the money into his luggage, flew back to Miami, and stashed some of the cash in safety deposit boxes. The rest went into stock brokerage houses and banks across the country.

De La Cova got caught. Just how isn't clear — a judge sealed his case file shortly after he pleaded guilty in 1995. He was sentenced to three years in prison.

Under federal sentencing guidelines, someone convicted of engaging in a drug- or money-laundering conspiracy involving that much money would normally face more than 20 years in prison.

Still, De La Cova's arrest ruined not only his career, but his wife's.

Theresa De La Cova, a nine-year DEA investigator, resigned after her husband's arrest.

Unique way of solving mystery

When three civil rights workers were reported missing and probably murdered near Philadelphia, Miss., in 1964, FBI Director J. Edgar Hoover sought out an unusual person for help.

Gregory Scarpa Sr. was an up-and-coming New York City mobster whose reputation as a ruthless hitman would eventually earn him the nickname The Killing Machine.

Scarpa agreed to travel secretly to Mississippi after FBI agents had spent several fruitless months searching for the bodies of the three young men, and their killers.

When he arrived, FBI agents told him that an appliance store owner in Philadelphia, Miss., reportedly a member of the Ku Klux Klan, had information on where the three civil rights workers were buried, but he refused to talk.

Conventional interview techniques had failed. So Scarpa decided to buy a TV.

Scarpa assured the man that he would blow his head off if he didn't disclose where the bodies were.

When he stopped by the appliance store at closing time to pick it up, he threw the store's owner into the trunk of his car. He then took him to a shack and alternately beat him and threatened him for three days. Finally, Scarpa placed a revolver in the man's mouth, and assured him that he'd blow his head off if he didn't disclose where the bodies were buried.

The man talked.

A team of FBI agents using bulldozers dug up the decomposing bodies beneath 17 feet of red Mississippi clay in an earthen dam.

Seven men were eventually charged with federal civil rights violations related to the murder.

This bizarre chapter in American crime-fighting didn't end with the arrests. Scarpa returned to his life of crime in New York City and eventually initiated a killing spree in a fight for control of the infamous Colombo crime family in 1992.

Court papers related to that war show that, from the time he left Mississippi, Scarpa maintained his close ties with the FBI.

A troubling pioneer

It's not the kind of "first" that would be fondly remembered.

Daniel Mitrione, an FBI agent in the bureau's South Florida offices from the mid-1970s to early 1985, was the first FBI agent ever charged with joining a Colombia-to-U.S. drug-smuggling ring — a ring he was duty bound to try to shut down.

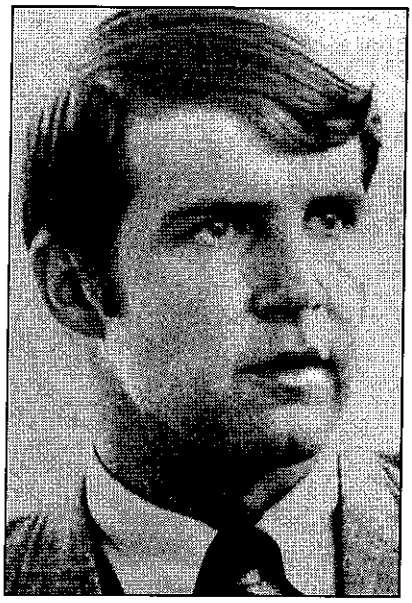
His penalty was mild.

He agreed to testify against other smugglers. In return, he served three years in a monastery for wayward priests — federal authorities knew his life would be worthless in prison.

He also turned over almost $1 million in illegally gained assets, a modest amount compared to the amount of drugs brought in by dealers that included a number of men from the Pittsburgh area.

Indicted in the same drug conspiracy were the ring's Florida leader, Hilmer Sandini, several South American drug smugglers, and some of the largest drug dealers Western Pennsylvania has ever known, including Eugene Gesuale.

Vincent Ciraollo of Deerfield Beach, Fla., was a minor target by comparison. He served six years on drug charges stemming from the conspiracy indictments and insists he was innocent of the crime. One of the government's key contentions at Ciraollo's trial was that he'd planted a bomb under Sandini's car to keep him from testifying.



Daniel Mitrione became the first FBI agent charged with joining a Colombia-to-U.S. drug smuggling ring.

Ciraollo insisted he not only hadn't planted the bomb on the car, but he'd actually disarmed it after noticing wires dangling from the car — saving Sandini's life.

Further, during pre-trial motions when Mitrione was exposed as an undercover agent, Ciraollo heard that Mitrione had planted the bomb. He had good reason: Sandini would be the key witness detailing Mitrione's betrayal of the FBI.

But no mention of that fact was allowed at Ciraollo's trial. Prosecutors argued the allegation was nothing more than a rumor.

After his conviction, Ciraollo requested files on the FBI's investigation through a Freedom of Information Act request. It was more than five years before he got an answer, well after he'd been released from prison.

Included was an FBI Criminal Investigative Division Informative Note written two days before Ciraollo and the others were indicted.

It stated the FBI in South Florida had extensive information indicating Mitrione had placed the bomb on Sandini's car and characterized his actions as an attempted homicide.

No one turned that letter over to Ciraollo's defense lawyers, as court rules require. Instead, prosecutors tried to pin the bombing on Ciraollo.

The reason the information wasn't given to Ciraollo, said Leon Rodriguez, an assistant U.S. attorney for the Western District of Pennsylvania, was that the memo about the letter was never sent to the Pittsburgh office. He said it was cabled from Miami to FBI headquarters in Washington, D.C., and was never made available to prosecutors in Pittsburgh.

Mitrione was never charged in the attempted homicide.

Surprise response to newspaper ad

This was no average street dealer. The Philadelphia drug dealer took his cue from mail order catalogs.

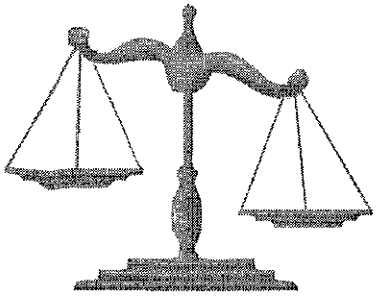
He mailed letters to known drug suppliers in the Philadelphia area, identifying himself only as "Salvatore."

The letters quoted his price — $75,000 per kilogram of heroin.

When FBI agents in Philadelphia heard about the mysterious mail-order drug dealer, they jumped, figuring that if they tracked him down, he could lead them to a major heroin trafficker.

After a two-month investigation in 1994, agents learned that "Salvatore" was actually one of their own, an FBI special agent who stole about 100 pounds of heroin from his bureau's evidence room.

Kenneth R. Withers, 33, a seven-year veteran, was charged in June 1994 with theft and trafficking violations.



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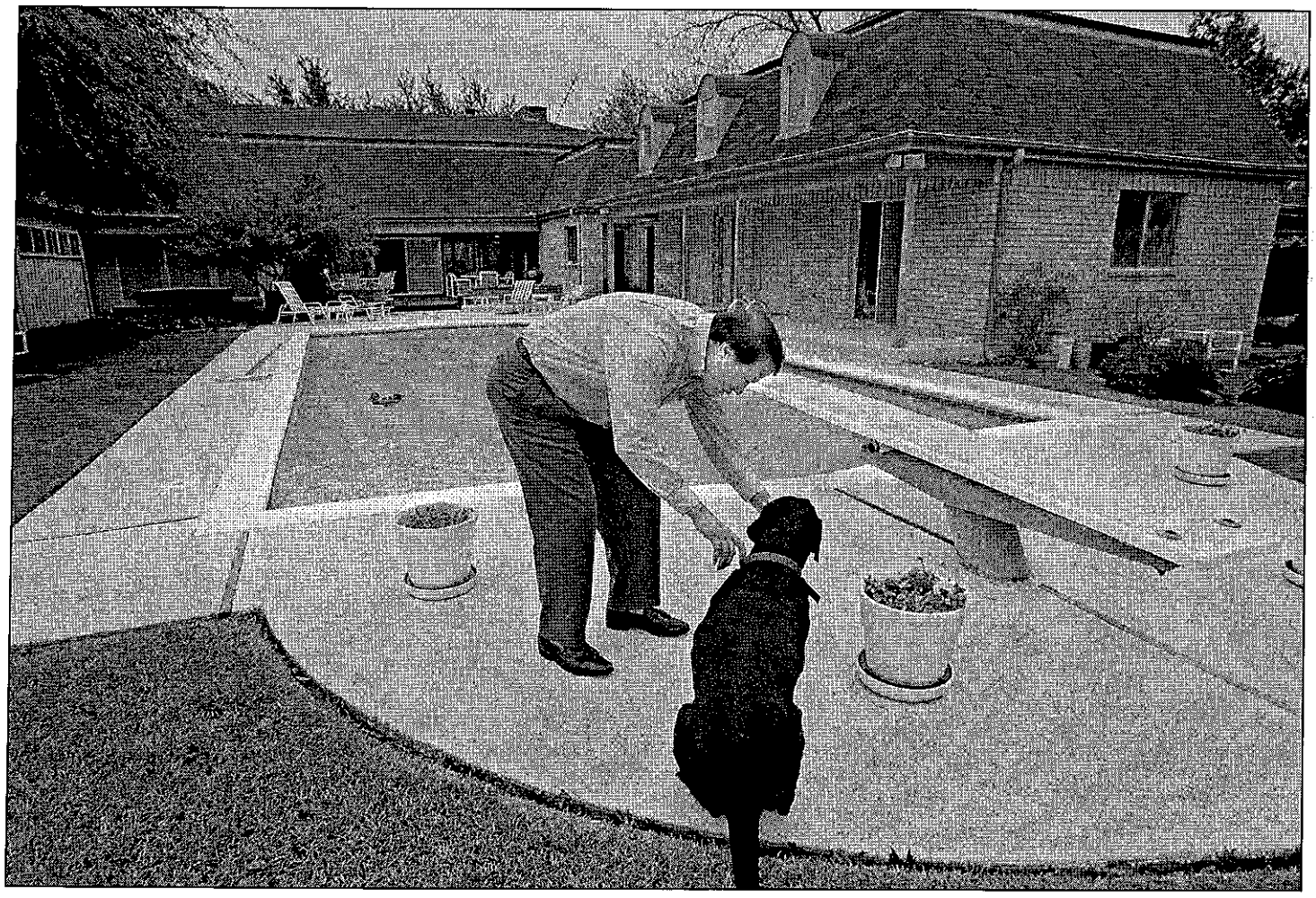
Win at all Costs

Part 7 of 10

Government misconduct in the name of expedient justice

When safeguards fail

Grand juries make questionable calls when prosecutors hide the evidence



Darrell Sapp/Post-Gazette

William Moore Jr. of Dallas lost his company in a four-year legal battle after he was indicted by a grand jury for trying to bribe U.S. Postal Service officials. Moore, now a successful consultant, was exonerated when a judge threw out his case after the prosecution could produce no evidence tying him to the crime.

By Bill Moushey
Post-Gazette Staff Writer

The 54-page indictment against William B. Moore Jr. was the result of a "paintstakingly thorough" 31/2-year investigation, federal prosecutors said.

The case was backed up by more than 50,000 pages of documents, and the government called 84 witnesses during the six-week trial that started in October 1989.

Moore, the millionaire chief executive officer of Recognition Equipment Inc. of Dallas, was accused of participating in a scheme to bribe officials of the U.S. Postal Service.

Repeatedly, though, U.S. District Judge George Revercomb of Washington, D.C., asked Assistant U.S. Attorney James B. Valder when he would link Moore to the crime.

Outside of a few inferences, Valder never did.

His case rested upon the premise that Moore and company Vice President Robert Reedy cleverly insulated themselves from other perpetrators of a contract procurement scam by maintaining "plausible deniability."

Defense attorneys had a different explanation. They said Valder had misled and cajoled a grand jury by distorting facts, threatening witnesses and withholding exculpatory information in order to force an indictment, even though no evidence connecting Moore to the crime existed.

The judge never ruled on the defense attorneys' allegations of misconduct. Instead, he dismissed, for lack of evidence, all charges against Moore, his company and his associate — before the defense even presented its case.

Moore had spent almost four years and $9 million defending himself. A hostile takeover had destroyed his company. He'd suffered a heart attack. And he was angry.

Associated Press

Arnold I. Burns, a deputy attorney general under President Reagan, is on an attorney's task force seeking changes in the grand jury system – a system that is "as far afield from what it was intended to be as it could possibly be," he says.

He wanted to sue the government for its obvious manipulation of a grand jury to create a crime that wasn't there.

Attorneys warned him that it would probably be fruitless.

So far, they've been right.

As the Post-Gazette's two-year investigation found, the American justice system has made it simple for federal prosecutors to use a grand jury to win an indictment against almost anyone. But it has made it nearly impossible to punish them when they abuse that right.

"[The federal grand jury] is no longer a protection of the person who is suspected of crime, it is a vicious tool," said Arnold I. Burns, who was deputy attorney general for President Reagan and is a member of an attorneys' task force seeking changes in the grand jury system.

"The grand jury process today is as far afield from what it was intended to be as it could possibly be."

Change in role

The framers of the Constitution included grand juries as a safeguard — providing that no person should stand trial for "a capital or otherwise infamous crime" without grand jurors first determining that sufficient evidence existed to press charges.

A federal grand jury usually has 23 members and a prosecutor needs the approval of only a simple majority — 12 votes — to win an indictment charging a crime.

Federal prosecutors have tremendous power when they convene a grand jury. They decide whom to seek indictments against and what charge that suspect should face. They also determine what evidence grand jurors see, what witnesses they hear and whether to grant leniency to witnesses who might testify against a defendant.

They can frame arguments that favor their version of events, emphasize the testimony of one witness, and ignore the testimony of another.

Evidence presented before a grand jury may be so flimsy that it would not be admissable at a trial. Grand jurors may hear rumors

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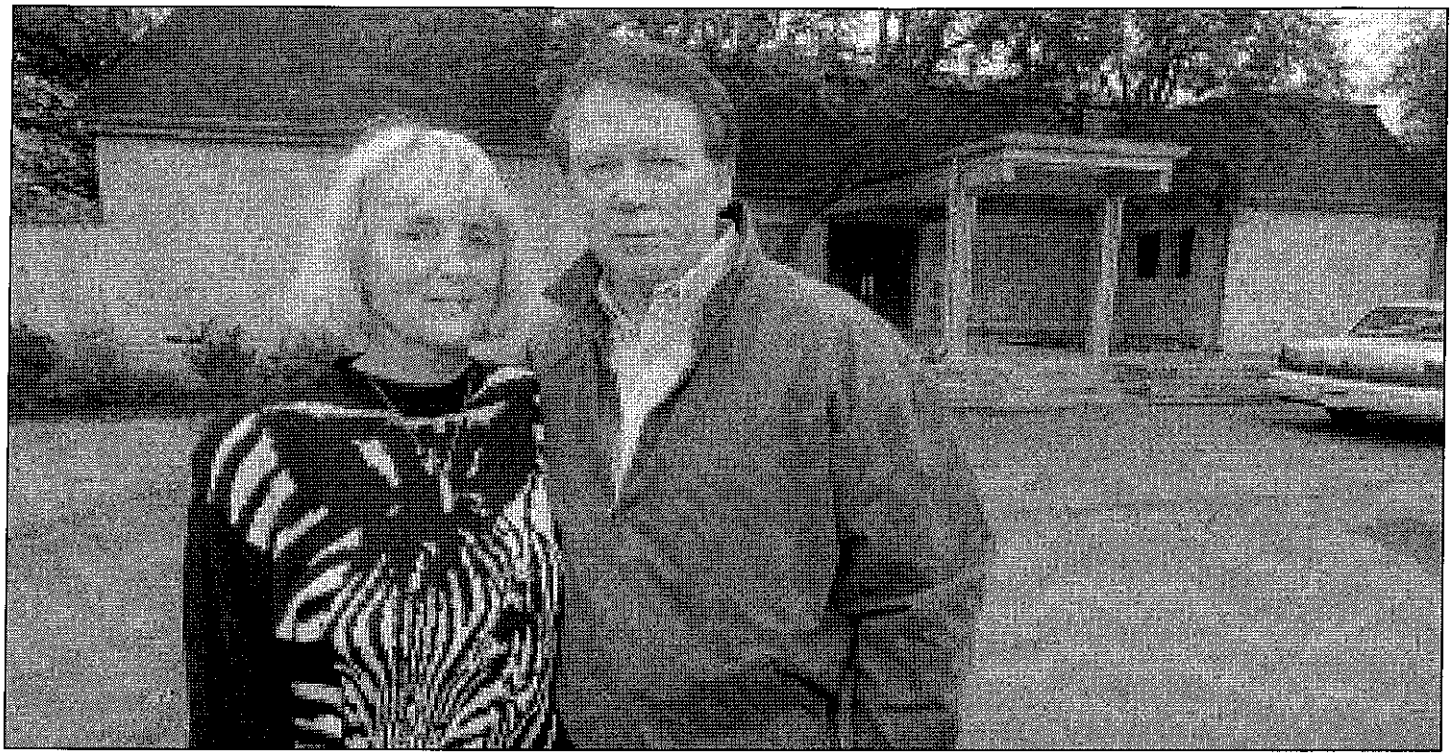

Darrell Sapp/Post-Gazette

William Moore Jr. is convinced that he would never have faced the trumped up bribery charges had he not criticized U.S. Postal Service officials when trying to sell them the sorting equipment that his company manufactured. The charges were thrown out before Moore had a chance to offer a defense in the case. Moore, shown here with his wife, Chelen, lost his business while fighting the charges.

Continued from previous page

from witnesses or even use their own knowlege of an alleged crime in determining whether to indict. A defendant has no right to be present or even have an attorney present to listen to the proceedings or rebut false accusations.

Defense attorneys complain that grand juries can easily be manipulated by an unscrupulous prosecutor and that the problem has become worse because there is little oversight of the proceedings by federal judges. In addition, the Supreme Court has expanded grand jury powers.

For instance, Moore said Valder not only deceived the grand jury about the facts of the case, but that he also possessed evidence that strongly suggested Moore was innocent yet withheld it. Moore said Valder's actions violated the Justice Department's rules requiring such disclosures.

But in 1992, the U.S. Supreme Court ruled in a 5-4 decision that prosecutors have no legal obligation to provide "substantial exculpatory evidence" to a grand jury — a standard requirement in a trial.

Justice Antonin Scalia wrote in the case — U.S. v. Williams — that it is "sufficient for the grand jury to hear only the prosecutor's side."

Justice John Paul Stevens issued a vitriolic dissent, saying the majority's finding "is inconsistent with the administration of justice . . . and should be redressed in appropriate cases by the dismissal of indictments obtained by improper methods."

Burns agrees.

"Every so often," he said, "you wind up with (a federal prosecutor) who is some sort of a crazy zealot, no background, no experience, no frame of reference, uncontrolled, unfettered, very dangerous."

He said the grand jury process should be reformed so prosecutors have an obligation to present exculpatory material. He also believes suspected felons and their lawyers should have an opportunity to be heard, and that judges should be more active in supervising grand jury proceedings.

"I have the greatest respect in the world for Justice Scalia," Burns said in a recent interview. "I consider him a friend. But . . . he does not have a full appreciation that if you are indicted, you are ruined, even if you are acquitted."

Burns mentioned the case of former U.S. Department of Labor Secretary Raymond Donovan, who served under Reagan and was indicted by a grand jury on charges of public corruption. He was acquitted after a prolonged trial.

"Like Donovan said, 'I was acquitted, now how do I get my reputation back,' " Burns said.

Enjoying secrecy

Grand jury proceedings are held in secret, in theory to protect the innocent from the unchallenged statements of witnesses.

That secrecy also helps conceal prosecutors' misconduct — such as happened in the case of Miami Police Officer Reinaldo Rodriguez.

Rodriguez can be accused of poor judgment — he admitted visiting the home of a known drug dealer.

But that lapse should not have resulted in a 27-year sentence on drug charges — especially when there is substantial evidence to show prosecutors used a grand jury's secrecy to pro-

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Grand jury proceedings are held in secret, in theory to protect the innocent from the unchallenged statements of witnesses. That secrecy also helps conceal prosecutors' misconduct.

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mote the perjury of a witness.

U.S. Drug Enforcement Administration Agent Lee Lucas told grand jurors he saw Rodriguez drive Joseph "Junior" Ayala, one of South Florida's most notorious drug suppliers, to the home of Miami drug dealer Francisco Novaton on Nov. 23, 1993.

Rodriguez admitted he knew Novaton and had been to his house on a few occasions.

He said he had visited Novaton's mother, who was a high priestess of a Cuban-based voodoo-like religion called Santeria, which combines black magic with Catholicism. Rodriguez practices the religion.

He denied ever accompanying a drug dealer to Novaton's home.

Lucas's testimony was persuasive. Under questioning by Rodriguez's attorney at a pre-trial hearing, he repeated his grand jury story and said Rodriguez and Ayala left the car with a black bag — presumably filled with money.

Based largely on Lucas's testimony, a jury sentenced Rodriguez to 27 years for providing protection to Novaton's drug enterprise.

Two years after his conviction, Rodriguez learned another DEA agent had testified before the grand jury about that same November night. This agent's testimony should have been turned over as part of the discovery process, but prosecutors kept it under wraps.

DEA Agent Raymond Carvil said the person who arrived with Ayala that night was a "white Latin female," and he made no mention of Rodriguez or a bag of money.

Unlike Lucas, Carvil had a videotape of his surveillance to back up his statements.

Since grand jury proceedings are secret, it's not clear how grand jurors reconciled Lucas's version of events with that of Carvil's. Or if the contradiction was even pointed out by prosecutors or noticed by grand jurors.

That's not unusual, the Post-Gazette investigation found. Grand jury witnesses sometimes testify months apart, and prosecutors have no obligation to point out discrepancies among witnesses or even bring up a witness's testimony again. Witnesses with statements not to a prosecutor's liking may be quickly dismissed. And prosecutors routinely emphasize or ignore whatever they want in pressing for an indictment.

But because the grand jury system does not allow defendants to rebut false testimony, Lucas's statement helped indict Rodriguez. Then prosecutors compounded Lucas's inaccurate testimony by keeping Carvil's statement from Rodriguez's attorneys.

In 1996, attorneys for Rodriguez asked for a new trial, based on the prosecutor's misconduct — noting that he'd made no effort to correct Lucas's version of events.

A judge turned down the appeal, citing, incredibly, the very testimony of Lucas that Carvil and his videotape discredited.

Rodriguez appealed again.

"This newly discovered evidence suggests assistant U.S. attorneys . . . allowed and then knowingly exploited the perjured testimony of Agent Lucas from the inception of the investigation repeatedly misrepresenting the facts," stated Rodriguez's attorney, William Matthewman.

Matthewman has asked for a new trial or a dismissal of the case based on the blatant misconduct.

"Surely, the criminal justice system cannot tolerate such a pervasive pattern of deceit by a federal agent and prosecutor," he said.

Rodriguez remains in prison, awaiting the court's decision.

Perjury unpunished

Witnesses who lie before grand juries on behalf of the government are seldom punished.

Indeed, federal prosecutors often threaten grand jury witnesses whose testimony doesn't conform with the government's version of events.

Thomas Sanders is a retired Air Force pilot who logged almost 1,000 hours of combat flying during the Vietnam War. After he left the service, he lived in a house owned by his brother.

The house burned in an accidental fire in July 1993.

In September 1994, Sanders' brother, Jim, was indicted for mail fraud. He told prosecutors some of the records of his company had been destroyed in the 1993 fire.

Prosecutors didn't believe him and had Thomas Sanders testify before a grand jury.

Here are the key points of that testimony: There were records other than his own in the house, but he wasn't sure if they were his brother's. Some of the records were "not recognizable, burnt." And there might have been more records in the attic, which he presumed would have been destroyed in the fire.

A fire official testified that no records were destroyed.

Based on that contradiction, Thomas Sanders was charged with perjury.

In the trial's closing argument, Assistant U.S. Attorney Daniel S. Linhardt of Sacramento, Calif., several times misstated Sanders' grand jury testimony, insisting Sanders had said that "everything in the attic burned."

Despite the protests of his attorney over the misstatements, a jury found Sanders guilty. During the

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sentencing hearing, Linhardt admitted he'd been "mistaken" about what Sanders had said — that Sanders never testified before a grand jury about anything in the attic burning.

The prosecutor wasn't punished for his misstatement.

Sanders was sentenced to six to 24 months in prison.

His appeal has been denied and he is living and working in Houston, waiting for an order to report to prison.

In a complaint to the U.S. Justice Department's Office of Professional Responsibility, Sanders charged that Linhardt engaged in misconduct from the moment he came out of the grand jury room.

"[Linhardt] stepped out into the hall and advised my attorney that he was going to have me indicted if I didn't go back into the room and 'change my story.' I didn't know enough about the situation to know what he wanted me to say," he told the OPR.

He hasn't heard if his complaint is being investigated.

Making deals

Perhaps the biggest tool federal prosecutors have to mold testimony is the promise of leniency for a grand jury witness facing criminal charges.

Consider the case of William Moore, accused of trying to bribe U.S. Postal Service officials in Dallas.

In the late 1980s, he'd been trying for months to get the U.S. Postal Service to take a look at an optical scanning device his company developed that could greatly speed up mail sorting. He'd had no success. People who'd worked with the government said he should hire a lobbyist.

It turned out Valder was investigating the lobbyist Moore hired, John R. Gnau Jr. of Michigan, for passing bribes to Peter E. Voss, a member of the Postal Service's board of governors.

Another target of the investigation was William Spartin, an executive recruiter who had joined in Gnau's bribery scheme.

Prosecutors promised Spartin that he would not be prosecuted if he provided truthful testimony. He told federal prosecutors he didn't know if Moore had been told about the bribes — and a polygraph test showed he was telling the truth.

After Valder heard of Spartin's statement about Moore, he confronted him in an interview room and tore up the non-prosecution agreement the government had promised. Valder would later say he was trying to get the witness's "attention."

Spartin's lawyer asked Valder for a second chance, saying Spartin was trying to be helpful. So Valder "refreshed" Spartin's memory by showing him government summaries of grand jury statements made by co-defendants and other witnesses — summaries Moore's attorneys said prosecutors had slanted against him, despite prosecutors' ethical obligation to make a balanced presentation of the facts.

In an interview room, Valder then questioned him again about Moore. In 19 separate answers, Spartin said that he wanted to be helpful, but he had nothing incriminating on Moore. "I'm not going to lie," he said.

Spartin said the summaries seemed to indicate there was enough evidence to "hang" Moore's company and Moore himself.

Valder took Spartin into the grand jury room, then carefully crafted a question that avoided asking what Spartin actually knew about Moore's involvement.

"Do you recall that you told [postal inspectors] that, in your judgment, Moore and Reedy did know that Voss was receiving money from Gnau relative to the [procurement contract]?" Valder asked.

"That is my opinion, yes sir," Spartin replied.

Grand jurors never learned of Spartin's 19 earlier denials.

Moore's lawsuit argued that Valder used similar threats to slant the testimony of a second witness.

Prosecutors asked Frank Bray, a mid-level employee of Moore's company, to read and confirm as truthful a 22-page summary of his statements that prosecutors had prepared.

When Bray and his lawyers realized the summary intimated that Bray knew Moore had knowledge of the bribes, he refused to sign it. Valder threatened Bray with perjury if he didn't sign. After a negotiating session that lasted until 1 a.m., the two sides reached a compromise: Bray would sign the statement as drafted if Valder would allow Bray to tell grand jurors he didn't know if Moore was aware of the bribes.

Valder agreed. But then he never gave Bray the opportunity to make that statement before the grand jury. All grand jurors knew of Bray's statements to prosecutors was his summary, which he'd told prosecutors had been wrongly slanted against Moore.

The Justice Department's Office of Professional Responsibility found nothing wrong with such conduct. It exonerated Valder 19 months after Moore filed his complaint.

One of Moore's criminal lawyers, Robert Bennett, another former U.S. attorney who recently represented President Clinton in the Paula Jones and Monica Lewinsky cases, called the case "an outrageous and shameful exercise of prosecutorial power. The power was frighteningly abused."

Valder never returned phone calls seeking comment.

Paid for mistakes

Moore figures he made two mistakes.

He had criticized the government loudly and publicly when the Postal Service refused to look at his company's new scanning device.

Then he'd opened his books to investigators when they inquired about his relationship with Gnau, because he knew he had nothing to hide.

He believes his criticism of the Postal Service prompted the government's initial investigation, an accusation the government has denied. Then, after he'd opened his books, he learned through third parties that Valder was feeding the information to a federal grand jury, trying to connect it to the bribery scandal.

"I did not believe this could happen to somebody like me in America," he said. "I'm a patriot, businessman. ... I got to the pinnacle of my success, and these guys use criminal statutes to bring me down when I hadn't done anything."

Moore was elated to be exonerated, but his professional career was in ruins. He'd been removed from his position as head of the company after his indictment, and competitors initiated a hostile takeover. They bought the company and its extensive research on equipment, then promptly merged with existing operations, putting 3,000 employees out of work.

Moore rebounded by establishing a profitable consulting business, but he still felt angry that he never got his day in court.

"It's one thing to wave your arms around and rail about this type of thing, but I couldn't get the issue of accountability out of my mind," he said. "These people aren't accountable. They get away with things like this and claim this 'immuni-

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ty.'

"They can literally lie, cheat and steal."

His decision to sue the government occurred by chance.

He met Paul "Mickey" Pohl, a top litigator in the Pittsburgh office of the Cleveland firm of Jones, Day, Reavis and Pogue — the nation's second-largest law firm — while on vacation in Hawaii.

While his firm is not known for suing the government, Pohl was intrigued by the case. He thought it might offer an opportunity to change the law surrounding federal immunity.

Pohl took the case on contingency. Moore agreed to pay all his expenses. The suit, filed in a Texas federal court, sought damages of $30 million.

Moore's civil suit accused Valder and some postal inspectors of prosecuting him because he had criticized the way the government did business.

The suit also charged that:

• Valder told several postal inspectors in the presence of a grand jury witness that he did not care whether Moore was guilty — he just wanted to secure a "high-profile" indictment to further his career.

• Valder and postal inspectors intimidated and coerced witnesses into changing their testimony to incriminate Moore.

• Valder concealed evidence of Moore's innocence.

• Valder manipulated witness testimony and presented to the grand jury false, incomplete and misleading written witness statements.

• Prosecutors lost, destroyed or concealed from the grand jury exculpatory information.

• Prosecutors disclosed grand jury testimony to third parties in violation of grand jury secrecy rules.

• Prosecutors withheld exculpatory information from Moore after the grand jury indicted him — a violation of Moore's discovery rights.

In its responses, the government claimed absolute immunity, which is designed to free the judicial process from the harassment and intimidation associated with litigation.

Moore's lawsuit has been appealed to the Supreme Court, but the only part that remains alive is a complaint about the action of postal inspectors, although appeals are pending on court decisions that held that Valder's grand jury conduct was immune from prosecution.

When Moore speaks of the outcome of his case against Valder and the postal inspectors, he insists he will not stop until someone tells him he can't push the matter further.

He finds it hard to accept that the government cares so little about abuses like this, which do real harm to citizens.

"The fact of the matter is ... we've got judges' opinions time and time again showing the government did this to these people and the government says they did nothing wrong.

"I want to prove once again that if I want to complain about the government of the United States, I can do it. And I want to show that you shouldn't get punished for doing that."

Businessman goes to prison when agent's false testimony isn't corrected

A grand jury indicted Eugene Kent on 60 counts of mail fraud in 1996 for co-mingling funds in a self-insurance pool his insurance company had set up for a string of South Dakota banks.

No money was lost or stolen. All claims were paid. Kent had violated federal rules that say a reserve fund in such an insurance plan must be kept separate from other accounts.

A jury thought most of the charges flimsy and acquitted him on 58 of the counts. That didn't get him off the hook. The penalty on the two remaining counts required a federal judge to sentence him to 27 months in prison.

It wasn't until after he was in prison that Kent learned that a grand jury had erred in bringing the indictments against him in the first place. A federal agent testified falsely before the secret panel that Kent had mailed the checks when in fact, he hadn't.

And since defendants and their lawyers aren't allowed to be present at grand jury sessions, the false information was never corrected and Kent went to prison.

Here's what happened: The two fraud counts on which he was convicted were based on the fact that he'd received two insurance premium payments through the mail. During the grand jury investigation, FBI Agent Alan Peek had testified he was "able to confirm" that both of the checks had been mailed.

But the payments actually had been shipped to him via Federal Express. And prior to 1994, that wasn't considered mail for purposes of federal crime laws. All of Kent's transactions had occurred prior to 1994.

Kent never raised the issue during trial because he didn't realize it was an issue. At his trial, in fact, the federal prosecutor never directly asked how the checks were sent.

After a year in prison, Kent filed a motion for a new trial based on this newly discovered evidence and the fact that prosecutors and agents had misled juries about it.

The government's response never addressed whether the checks were sent through the mail. It simply argued that Kent's claims should have been made during his trial.

His appeal is now before the 8th United States Court of Appeals and Kent is hoping he can at least get a hearing on his argument.

In the meantime, he has been going to school in prison and working as a clerk. He has an exemplary record. He also wonders how a man who never did anything in his life but work hard, lost his business, went to prison and was disgraced in his community because a federal law enforcement officer let bad information go before a grand jury and never bothered to correct it.

Promoter says attractive property made him a target

By Bill Moushey
Post-Gazette Staff Writer

When federal officials asked professional wrestler Vince McMahon five years ago if he'd bought steroids from a Harrisburg doctor in 1989, he not only admitted it, he produced the canceled check for $530 to prove it.

McMahon knew that sales of the muscle-building steroids were banned by the government in 1991, though they were perfectly legal in 1989. But with just that small amount of evidence, federal prosecutors convinced a grand jury in 1993 to indict McMahon, who might be best known for inciting riotous behavior as ringleader and owner of the World Wrestling Federation. The four-count indictment accused him of conspiring with Dr. George Zahorian of Harrisburg to dispense steroids to wrestlers between 1985 and 1991. The doctor had been convicted of illegally distributing steroids in June 1991 during a high-profile trial that identified numerous big-time wrestlers, like Hulk Hogan, as steroid purchasers.

McMahon's attorney, Jerry S. McDevitt of the Pittsburgh firm Kirkpatrick and Lockhart, knew some legal problems might be afoot before that.

A few months before the indictment, McDevitt got a call from a federal investigator, who asked for a copy of the deed for the property of a company McMahon owned in Stamford, Conn., called Titan Sports Inc. It was worth more than $7 million.

McDevitt and McMahon figured, correctly, that the feds planned to pursue the steroid case in the hopes they could link it to the Connecticut property, and then grab it under federal laws that allow the forfeiture of property linked to illegal drugs.

What riled McDevitt was that the government had issued a news release after Zahorian's conviction stating unequivocally that possession of steroids prior to 1991 was not illegal. McMahon had acknowledged his 1989 purchase at that time.

Eric Paul Zamora/Associated Press

World Wrestling Federation owner Vince McMahon, center, has come across some tough characters, like boxing's Mike Tyson, left, and pro wrestler "Stone Cold" Steve Austin. But McMahon came up against his most formidable foe when the federal government indicted him for distributing steroids. The government spent millions of dollars in its investigation of McMahon, then dropped all but one charge. He was acquitted of that charge.

McDevitt also knew the Connecticut property had been purchased after McMahon's steroid purchase in 1989, so connecting it to a drug transaction to attempt a forfeiture simply wasn't possible.

But federal prosecutors tried anyway. They even announced their intentions to the national media on the courthouse steps in Stamford.

That nearly ruined McMahon financially. Banks and creditors became anxious and considered pressing the wrestling magnate on money he owed.

"I had to go talk with them, to tell them these charges were nonsense," McDevitt said.

A few months later, without fanfare, the government dismissed all but one of the charges against McMahon stemming from the indictment. The forfeiture action was also quietly withdrawn.

The only count that went to trial accused McMahon's company of a conspiracy to defraud the U.S. Food and Drug Administration, even though no one else was named in the "conspiracy" which, under federal law, must involve at least two other parties.

McDevitt tried to subpoena officials at the FDA, but the government successfully moved to quash the subpoenas by arguing they were not relevant, even though the agency was listed as the victim in the grand jury indictment.

The government presented its case. McDevitt didn't bother.

"It was such a weak bunch of garbage we did not even bother to put on a defense," McDevitt said.

In his closing arguments, McDevitt pointed out that the government failed to demonstrate how the FDA was victimized in this supposed fraudulent scheme.

Then-Assistant U.S. Attorney Sean O'Shea told the jury that if McMahon had wanted FDA officials to testify, he could have had them subpoenaed — a surprising position given O'Shea's effort to quash the subpoenas. McDevitt called O'Shea's statement "grotesque prosecutorial misconduct."

McMahon and his company were acquitted. He went back to work orchestrating high drama in the WWF rings all over America.

"In the end," McDevitt said, "the government spent a couple of million bucks and two years of grand jury time on this witch hunt. Like all witch hunts, the scary thing was the witch hunter."

Win at all Costs

Part 8 of 10

Government misconduct in the name of expedient justice

Calculated abuses

With their backs against the wall, prosecutors bring out their dirtiest tricks

By Bill Moushey
Post-Gazette Staff Writer

Federal prosecutors frequently rely on promises of leniency when they use criminals to snare other criminals, but the government's word isn't necessarily its bond.

In 1990, Mary Ann Rounsavall pleaded guilty to helping her brother deal drugs and was sentenced to five years in prison. Then in 1994, as she awaited her release from prison, prosecutors brought new charges against her in connection with the same drug ring that the government said her brother James was still operating.

She and her brother were charged with bringing millions of dollars worth of drugs from Southern California to Nebraska and laundering the proceeds of the drug sales. She was even accused of selling drugs over the telephone while she was locked up.

But the government's case was thin.

A judge declared two mistrials based on prejudicial testimony by government witnesses. So prosecutors pressed Mary Ann Rounsavall to snitch on her brother in exchange for a lenient sentence for herself.

Darrell Sapp/Post-Gazette

Helmut Groebe, shown loading boxes outside his restaurant in Miami Beach last January, was a highly paid government informant, despite having outstanding arrest warrants against him in Germany. Groebe returned to Europe over the summer and was arrested and sent to Germany to face charges. His story is on **Page A-6.**

She refused.

Prosecutors told her they might go after other members of her family unless she testified.

She still refused.

Then they arranged for her to see her brother, who had been taken from the prison where they both were being held and placed in a hospital intensive care unit, suffering from viral pneumonia and a recurrence of his rheumatoid arthritis. They told her he did not have long to live, and his grave condition at the hospital gave credence to their claims.

Mary Ann Rounsavall talked to her mother, Gladys Rounsavall. She told Mary Ann it would be best to testify against James. If he was dying, then Gladys would at least know her daughter wouldn't risk a long prison term.

So Mary Ann Rounsavall testified. Her statements sent James Rounsavall to prison for life. In return, Mary Ann Rounsavall had been promised about eight years.

But the prosecutors in her case reneged on their pledge. They made no request that her sentence be reduced based on her cooperation, and the judge had no choice under federal mandatory sentencing guidelines but to give her a 20-year sentence based on her own confession.

U.S. District Judge Richard Kopf, a hard-liner

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About this series

Hundreds of times over the past 10 years, federal agents and prosecutors have pursued justice by breaking the law.

They lied, hid evidence, distorted facts, engaged in cover-ups, paid for perjury and set up innocent people in a relentless effort to win indictments, guilty pleas and convictions, a two-year Post-Gazette investigation found.

Today in the eighth of a 10-part series, the Post-Gazette examines a law enforcement culture that has allowed the pursuit of a conviction to replace the pursuit of justice, no matter what the cost.

Prosecutors lied to her about her brother's health to get testimony

Continued from previous page

in drug cases, denounced the prosecutor for failing to live up to his promise. He called the action "horribly wrong."

Mary Ann Rounsavall also learned that her brother was healthy — he isn't dying at all. She was tricked.

Disregarding ethics

The Pittsburgh Post-Gazette's two-year investigation found hundreds of cases in which federal agents and prosecutors violated rules and laws to make cases.

Some incidents went beyond treading across the line of ethical or legal guidelines. These cases involved actions where the abuse of power was cynically calculated to inflict harm well beyond the limits of the law.

Marvin Miller, ethics committee chairman for the National Association of Criminal Defense Lawyers, admits he is a harsh critic of federal prosecutors and their actions.

He said there is no question prosecutors over the past decade have increasingly subscribed to an anything-goes mentality, often pushing the limits of the law to the point that their conduct becomes unethical.

"These guys are unconcerned about misconduct," he said.

Thomas Dillard, a former U.S. Attorney for the Northern District of Florida and currently a criminal defense lawyer in Knoxville, Tenn., said prosecutors have free rein in such matters because the power judges once wielded to mitigate their conduct has been taken away.

"They don't have any authority in the charging, they have no authority in the sentencing," Dillard said. They have really no way of checks and balances like there used to be.

"We've slowly conceded any oversight of federal prosecutions. There is nobody who is in charge that has any oversight. It's been slow in coming and gradual in its appearance, but by golly, it's here now."

Arnold I. Burns, deputy attorney general under President Reagan, said the problem is not with the majority of federal prosecutors, but with an overzealous fringe element.

"Every so often, you wind up with [a federal prosecutor] who is some sort of a crazy zealot, no background, no experience, no frame of reference, uncontrolled, unfettered, very dangerous, particularly with the sentencing guidelines," he said. "With them, the prosecutor has more and more power. In fact, he has all the power."

Piling it on

Another variation of sentencing misconduct is called sentencing entrapment — one of the most insidious forms of misconduct found in this investigation.

Sentencing guidelines approved by Congress in 1987 require a specific penalty for every federal crime. Judges can't consider most extenuating circumstances — a provision set up so defense attorneys can't shop for lenient judges.

A person's sentence — and prison time — is determined by the charge brought by agents and prosecutors. They can easily manipulate those charges, especially in drug cases, where the amount of illegal substances sold is translated into the amount of prison time a convict faces.

For example, in 1992, Lorenzo Naranjo was sentenced to 10 years in prison for buying 5 kilograms of cocaine from a government informant in the San Francisco Bay area.

The informant had pressured Naranjo for months about a drug deal and was turned down. Naranjo finally agreed to buy some cocaine, but not nearly enough to suit DEA agents, who told their informant to badger Naranjo to buy more, according to an opinion rendered by the 9th U.S. Court of Appeals.

The informant finally succeeded, effectively doubling Naranjo's prison sentence.

Martin Parrilla of Butte, Mont., was also a small-time dealer who agreed to sell a government informant less than $200 worth of cocaine in 1996.

Agents for the U.S. Bureau of Alcohol, Tobacco and Firearms told the informant to set up another deal and offer Parrilla a handgun in exchange for cocaine. That would also hook him on a federal firearms charge. Parrilla agreed to the deal, and was arrested on both federal drug and firearms charges.

He agreed to plead guilty after federal agents dropped the firearms charge. But his pre-sentence report showed a gun was involved in the deal, even though Parrilla argued it was the result of entrapment. A judge said his hands were tied and doubled Parrilla's sentence, as required by federal guidelines.

Both Naranjo and Parrilla were lucky. Appeals courts agreed they'd been entrapped, and cut their sentences. That doesn't always happen.

In 1992, John Behler, a 49-year-old Vietnam veteran who lived in Dunbar, Neb., was sentenced to 19 years in federal prison for supervising a drug conspiracy in which he was the only person to go to prison.

He'd never been charged with a crime before.

According to the government, for three years Behler had traveled to Colorado, where he bought methamphetamine, which he then brought back to Nebraska and sold.

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Both men were lucky. Appeals courts agreed they'd been entrapped, and cut their sentences. That doesn't always happen.

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Behler admitted frequently buying the drug in Colorado. But he said he used it himself. And 400 taped conversations made by federal agents on Behler's phone disclosed only one instance where he sold the drug, providing a small amount to a friend of his wife.

When Behler was arrested, he was carrying less than one-half of a gram of methamphetamine. Based on that amount alone, Behler would have faced only minor drug charges.

But federal prosecutors found two former girlfriends to testify against him. One had been arrested on drug charges herself, and received leniency for testifying against Behler, though she denied any such deal in court. Prosecutors are supposed to correct such lies, but did not in this case. The other girlfriend said she testified because he repeatedly threatened her. Both said he'd sold the drugs he'd bought in Colorado.

Agents found no drugs in his house when he was arrested, only $200 in cash, and no other assets to suggest he was a drug kingpin. Yet the testimony of his two former girlfriends prevailed.

But prosecutors had only gotten started.

The government arbitrarily decided Behler had transported one ounce of methamphetamine on every trip he made to Colorado — 14 ounces total. Under the sentencing enhancement provisions of mandatory federal sentencing guidelines, that ensured Behler a sentence of at least 10 years. Prosecutors then used the wrong guidelines to add four more years based on the drug's purity — a mistake the judge in the case failed to catch.

Behler didn't have a gun when he was arrested, but his former girlfriends testified that he used to carry one. So prosecutors added a weapons possession charge, which added another five years to his sentence.

Then they added more time for intimidating a witness, even though the testimony of the witness who claimed intimidation had been impeached in court.

Had Behler faced state charges, he might have gotten probation.

Had he been sentenced for bringing in 14 ounces of methamphetamine, he would have gotten five years in prison.

But because of the manipulation of mandatory sentencing guidelines by prosecutors, he ended up being sentenced to 19 years as a drug supervisor.

An appeal he filed in prison had some success — a judge agreed to cut 71/2 years from his sentence based on the government's arbitrary determination of the purity of the drugs he'd purchased. He has filed other appeals on what he considers other sentencing guideline errors, as well as discovery violations and perjury.

Behler worked as a welder and a bouncer before he was arrested. He admitted he used lots of drugs.

But by no stretch of the imagination could he have been considered the kingpin of a drug conspiracy.

If there were a drug conspiracy, he said, "wouldn't it look good if you had two people in jail, instead of one guy getting 19 years?"

Helping him 'jump'

In the fifth part of this series, the Post-Gazette reported on a scam by prisoners called "jumping on the bus," in which inmates buy inside information about a crime they had no part in, often purchasing it from government informants. They memorize it and offer to testify against people charged with the crime. In return, prosecutors promise to cut their sentences.

John Pree's ticket to freedom went beyond that. He said federal agents approached him and asked him to lie to help win indictments against more than a dozen reputed Detroit-area gangsters. The agents promised to provide the information he'd need.

Federal agents had long sought to put Vito Giacalone, boss of the Detroit organized crime family, and several of his accomplices behind bars.

Pree was a long-time criminal facing a life sentence after being arrested following his armed robbery of a home in 1992. Federal agents told him they could make that sentence disappear.

In court filings, here's how Pree described the deal: Federal agents provided him information about a number of crimes, including the torture and murder of Detroit gangster Peter Cavataio. Pree would plead guilty to these crimes, testifying that he'd been acting on the orders of Giacalone and his associates, who would face life sentences.

In exchange, the life sentence Pree was facing for the armed robbery and being a career offender would be dropped, he'd be sentenced to 20 years for the murder he didn't commit, then federal agents would quietly arrange for that 20-year sentence to be reduced to less than a decade behind bars.

Pree said they also promised him a new identity and cash to begin his life anew.

Pree said he agreed to the deal, even though he'd never met Giacalone. "[Federal agents] would bring me police reports to read, photographs, then their rendition of things that happened," he said in a recent

Continued on next page

Magluta remains in prison. It has been seven years since his initial arrest. He has yet to be convicted of even one crime.

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telephone interview.

Pree told the fabricated testimony of the Cavataio murder to a grand jury, and more. Yes, he'd burned down Giacalone's girlfriend's house in suburban Detroit so Giacalone could collect the insurance, he told the grand jurors. There were mob-ordered fire bombings, hidden business interests in brothels, intimidation of witnesses, political corruption and more, Pree testified.

There were a few hitches. He testified that he'd murdered the gangster in 1986, when the killing actually occurred in 1985. And he failed when asked to pick his victim out of a photo lineup.

"That's because I didn't know him," Pree said from prison.

Pree said he repeatedly failed a polygraph test before testifying.

Nonetheless, Pree's grand jury testimony in March 1997 helped indict 17 suspected mobsters in the federal government's largest crackdown of organized crime figures in Michigan.

Agents placed Pree in the federal witness protection program and sent him to a prison in Minnesota to await his call to testify at the trials of Giacalone and others.

Pree said he soon began to get nervous about the deal. There was no word on the promise to cut his prison time. Several of the men he'd testified against had agreed to plea bargains, so his testimony wouldn't be needed at trial. And if the federal prosecutors didn't fulfill their part of the deal, he feared he might be sentenced to life in prison for a murder he didn't commit. And aside from that, he had found some things in his armed robbery conviction that he believed might help him get the verdict reversed on appeal.

His misgivings intensified after federal agents stopped responding to his calls and letters.

So in 1997, he withdrew his guilty plea in the murder.

He told the court he'd lied in linking crimes to Giacalone and underlings. He said his FBI contacts had cautioned him to keep that information to himself.

Even though he still faced life in prison on the home invasion charge, Pree said in an interview that the charade had worn on him. "I'm not going to lie for these guys [federal agents] anymore."

Without Pree's testimony, two suspects he'd implicated were acquitted, while others were convicted after prosecutors were able to convince another gangster to become a government witness. Giacalone, who was facing life in prison based on Pree's statements, agreed to a 61/2-year sentence in exchange for pleading guilty to one charge of conspiracy.

As for Pree, he has appealed his conviction on the armed robbery charge. And after withdrawing his guilty plea in Cavataio's slaying, federal prosecutors quietly dropped murder charges against him.

Keith Corbett, chief of the organized crime and racketeering section for the U.S. Attorney's Office in the Eastern District of Michigan, characterized Pree as an admitted perjurer and said the government has contested each issue Pree has broached.

As for his planned testimony, Corbett said, "We would not have attempted to use Mr. Pree as a witness unless we believed what he was telling us."

Corbett said all of the matters regarding Pree are still under review.

Pree has been removed from the witness program and is now imprisoned in Michigan.

Jury disregarded

Sometimes prosecutors won't take no for an answer. Even when the no comes from a jury.

Federal agents in South Florida said Sal Magluta was the largest cocaine supplier they'd ever caught when they heralded his arrest and that of his partner, Willy Falcon, in 1991.

They were in prison for 52 months before their trial finally got under way.

In February 1996, Magluta and Falcon were acquitted on all counts.

Defense attorneys were able to show that virtually every witness called to testify against them was lying or had been given freedom in exchange for their testimony. Jurors said afterward the testimony was not believable.

Prosecutors weren't ready to give up, though.

Only a few days after his acquittal, they released information to the media showing Magluta and Falcon had attempted to negotiate a plea agreement in which they would plead guilty and turn over to the U.S. government vast quantities of cash, real property and cocaine in exchange for a lesser sentence.

Such negotiations are supposed to be confidential.

Then, only three weeks later, the government indicted Magluta with yet another crime — perjury — based on a statement he had made before he was indicted on the drug charges.

Magluta's attorneys were outraged. Their client had been acquitted and now federal prosecutors were trying to find another way to put him in prison.

"The best evidence of actual prosecutorial vindictiveness is the release of information about the negotiations for a plea agreement in direct contravention to (federal court rules and their) requirement of confidentiality," wrote attorney

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Roy Black. "The only purpose for disclosing this information was to prejudice Magluta in the eyes of the public. The disclosure would stand as justification for the government continuing to seek indictments against him."

Among the points made in their appeal: The 52 months Magluta had been imprisoned awaiting his first trial would cover any penalty that might be imposed on the perjury charges, which stemmed from statements he'd supposedly made 61/2 years earlier.

Magluta's attorneys also argued the government was simply trying to re-try a case it had lost.

Magluta remains in prison, awaiting action from an appeals court. It has been almost seven years since his initial arrest. He has yet to be convicted of even one crime.

Last summer, his problems got worse. The foreman of the jury that found Magluta not guilty was charged with accepting a $500,000 bribe to fix the case. That case is still pending.

Bowing to pressure

Mary Ann Rounsavall has filed an appeal seeking a reduced sentence based on the government's promises to her. In addition to accusing the government of breaking its promise, the appeal also says some of the testimony she gave in her brother's case was provided by federal agents.

During a telephone interview, she described how she finally relented to government pressure and agreed to testify against her brother.

She remembers the fateful meeting with Assistant U.S. Attorney Bruce Gillen after weeks of negotiations about whether she would tell on her brother. Gillen didn't respond to a Post-Gazette request for comment.

"I said, 'If I sign this plea agreement, how much time am I going to do?' Bruce Gillen told me seven to 10 years. At the time, I was so upset with everything that I just said yes," she said.

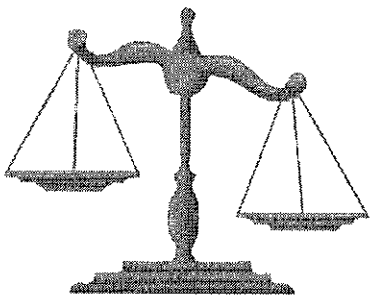
At a hearing in October, the government argued she had not fully cooperated in return for leniency, an argument her sentencing judge had earlier rejected.

During the course of her research into the appeal, Rounsavall said she found another case where the same U.S. Attorney's office did not fulfill promises it made on a deal. In that case, Roderick Pipes and LaSalle N. Waldrip, two Nebraska men caught in a cocaine case, had cooperated with the government.

In September 1997, the 8th U.S. Court of Appeals reversed the sentences they received after the government refused to give them reduced prison time. In that case, Nebraska agents said the two men had been forthright in their assistance, while agents in Oklahoma said they had not.

The re-sentencing of the two men has not been resolved.

As for Rounsavall, on Friday a judge granted her motion to compel the government to abide by its agreement. She will be resentenced Jan. 6.



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German criminal finds a lucrative life as federal informant

Helmut Groebe's history of fraud ignored as he traps people for cash

By Bill Moushey
Post-Gazette Staff Writer

Helmut Groebe destroyed the people he professed to love.

He defrauded one young woman he took as his wife after a whirlwind romance. At least three other times he convinced women that his love was genuine before draining their bank accounts. He lured one of them into a money-laundering sting that sent her to prison for 38 months. The U.S. government paid him for that service.

Groebe even set up his daughter and her husband in a new business, then arranged to steal their company's assets, leaving them at the mercy of creditors.

When Groebe — a German citizen — offered his services to the U.S. government in 1989, he was wanted in four countries for crimes ranging from fraud to drug smuggling to arranging a South American jail break. It was apparent this good-looking former professional bicyclist could talk just about anyone into doing just about anything.

Darrell Sapp/Post-Gazette

Businessman Wolfgang von Schlieffen went to a meeting arranged by Helmut Groebe, a federal informant who said he had buyers for von Schlieffen's cars and condominiums. The buyers were actually federal agents, who turned the conversation to drugs. At the end of the meeting, von Schlieffen was arrested on money laundering charges. His conviction was later reversed.

Groebe told federal agents he'd been an undercover informant in Germany for years and could help the government catch major drug traffickers and money launderers. The U.S. Drug Enforcement Administration signed him up.

But it soon became apparent Groebe didn't care if the people he went after were major criminals, or even criminals at all. The U.S. agents he worked for didn't seem to care, either.

Abusing the system

Federal agents must sometimes use criminals to help trap other criminals. But consider their offer to Groebe: Despite a criminal history that would bar his legal immigration, they offered him permanent residency in the United States, turned him loose with little supervision, promised to pay him more than $600,000, then ensured that charges against the people he entrapped would stick by unlawfully withholding from defense attorneys information about Groebe's criminal background and government payoffs.

"Do you have to put yourself in league with the devil for some higher good?" asked Mike Levine, who served as an agent and supervisor with the DEA for 25 years and now lives in upstate New York. "I think the net balance is we lose."

Levine knows the pain of drugs. His brother committed suicide after suffering from heroin addiction for 25 years. His son, a highly decorated New York City police officer, was killed by crack addicts during a holdup.

But agents who come to believe the end justifies the means — who believe they are entitled to do whatever it takes to remove criminals from the streets — simply succeed in perverting the system they are sworn to uphold, he said.

Gary McDaniel, a private investigator in West Palm Beach, Fla., knew he'd stumbled onto something terribly wrong when an imprisoned client asked him to see what he could find out about Groebe.

Tracking down Groebe's tangled criminal past required four years and trips to several countries. McDaniel offered to share his findings with the govern-

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ment. He met once with a federal agent, then got no further response to several letters and sworn statements he provided.

"That is the most frightening thing about all of this," McDaniel said. "Not only are (federal law enforcement officers) doing nothing with the offers I've made concerning this evidence, but they have yet to disclose specific information to the defendants" that Groebe helped snare and put in prison.

A veteran criminal

According to court records, Groebe's career as a criminal began in 1968, when as a 23-year-old he was implicated in his father's escape from a West German jail.

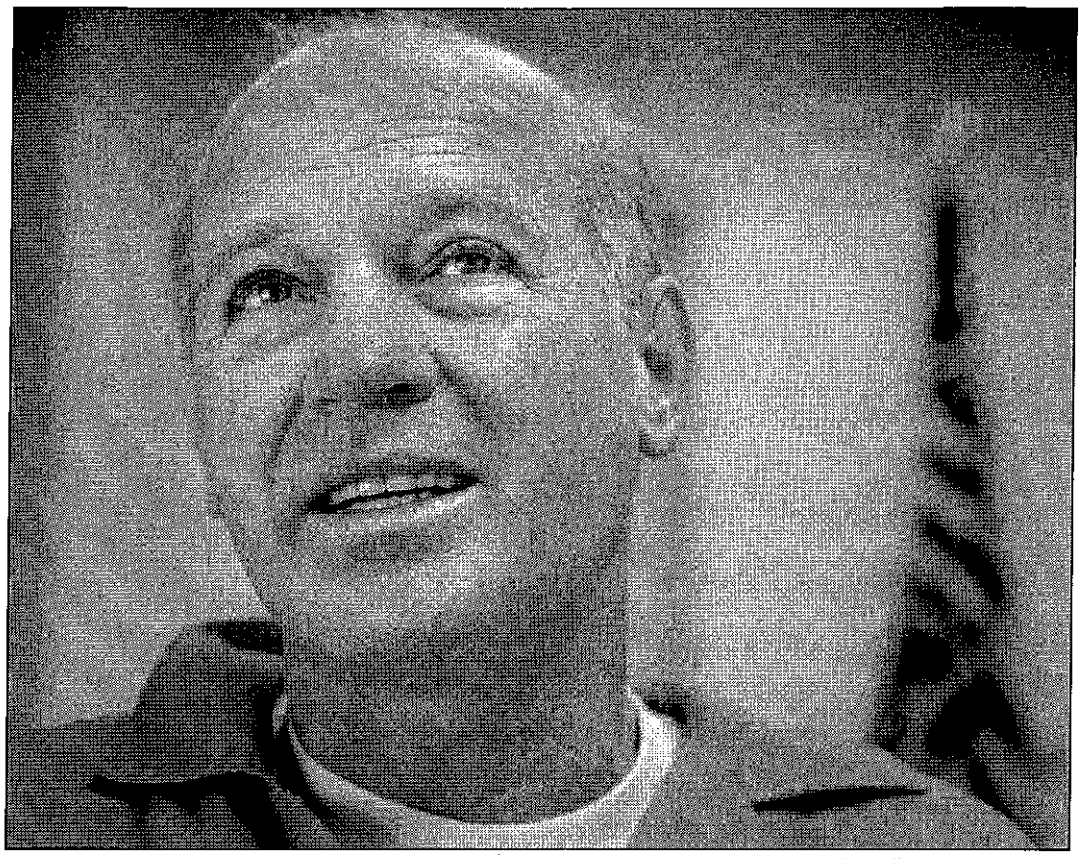
Groebe, now 53, was already well known as a professional cyclist in his native country. Soon his name began turning up in police and court documents.

His first fraud involved an advertising company he'd started that won a contract to print flyers for the German government. Rather than distribute them, he sold them for recycling and kept the money.

After that, he talked a wealthy German widow to whom he'd proposed marriage, and a doctor he'd known for years, into investing hundreds of thousands of dollars in an athletic center that they later learned he didn't own.

Some of his crimes resulted in brief prison stints. But he usually was released early because, according to court documents, he'd become a paid informant for the BKA, West Germany's equivalent of the FBI. Once, he even escaped from prison.

In 1984, Groebe slipped out of West Germany to Rio De Janeiro, Brazil, but he would fly between South America and Europe and occasionally the United States up to six times a year.



Darrell Sapp/Post-Gazette

According to a tape made during meeting with a federal agent and an informant, German businessman Wolfgang von Schlieffen, above, tried to keep the conversation focused on cars. The agent and the informant kept turning it back to drugs and drug money. Then, they arrested him on drug-related charges.

It was in Brazil that he set up a scam on his 20-year-old daughter, whom he hadn't seen in 18 years. He invited her and her new husband to come to Brazil for their honeymoon. Groebe had learned his new son-in-law was an accountant with wealthy clients who had money to invest. Groebe suggested a business deal to the newlyweds.

They would buy dental supplies from Germany, then export them to a Brazilian firm in which Groebe was a partner. They liked the idea, borrowed more than $100,000 from one of the son-in-law's clients and, in August 1988, had the products shipped to Brazil.

Groebe claimed nothing ever arrived. His daughter eventually filed theft charges against him in Germany and learned that the investor who had loaned money for the venture had been contacted by Groebe, who offered to pay off the loan in illegal drugs. The investor refused.

Groebe's daughter and son-in-law lost everything and soon were divorced. The criminal complaint and arrest warrant were allowed to lapse.

Sign him up

Despite the outstanding warrants against him, Groebe returned to Germany frequently in 1989 without ever being arrested. During that period, private investigator McDaniel learned later, Groebe went to work as an undercover operative for the U.S. government, first in Hawaii, then with the DEA in South America. Groebe and Lee Lucas, a then-23-year-old special agent with the DEA, traveled to Brazil, Peru, Colombia and Bolivia in their attempts to make cases against drug traffickers.

This new association didn't deter Groebe's career in crime. In 1990, he was accused of swindling the wife of a bank robber.

Hermann Sterr was a fellow German on the run in Brazil who faced charges back home of hiding more than $400,000 he'd stolen from banks in Germany and Austria.

Groebe immediately contacted German undercover officers so he'd get credit for Sterr's arrest. Then he sold Sterr a false passport and helped him escape to Peru — knowing he'd be captured at the border. That's exactly what happened.

Groebe then told Sterr's

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wife that for $20,000, he could arrange for Sterr's escape from a Peruvian jail. She made the payment. Groebe then bribed a Peruvian police officer, who allowed Sterr to slip away in a waiting car.

Last year, a woman who had also helped arrange Sterr's breakout reported to Peruvian officials that she was abducted, beaten and threatened with death if she did not keep quiet about the entire episode. Peruvian police eventually arrested three men outside her home, according to reports secured by McDaniel. The police reports said the men — all equipped with high-powered weapons — said they were working for Groebe. That case has yet to be resolved.

After several months on the run, Sterr was finally nabbed by German officials. He blamed his capture on Groebe.

Later in 1990, Groebe moved to South Florida, purchased a house, and soon opened a Bavarian-styled beer garden in Miami Beach, while continuing his undercover work for the DEA. To help, Groebe outfitted one table at the strip plaza restaurant with electronic surveillance equipment so that Groebe could record everything anyone said.

Faustino Rico Toro

Groebe had promised federal agents early on that he could deliver Faustino Rico Toro, a Bolivian government official in charge of leading that country's anti-drug efforts. In 1991, it looked as though he'd succeeded.

Rico Toro was leaving an afternoon mass at his church when Bolivian police arrested him on an extradition request from the United States. It accused him of being involved in a major cocaine trafficking ring.

Rico Toro had long been a controversial figure in the Bolivian military, accused by opponents of everything from human rights violations to aiding drug smugglers. When he agreed in 1989 to lead his country's battle against drugs, he knew more accusations would fly and that he'd face pressure from the United States.

The Bolivian government initially refused to extradite him, but seven months later, Rico Toro voluntarily agreed to travel to the United States to face charges that he was sure would be dropped when the facts became clear.

At the Federal Detention Center in Miami, Rico Toro's attorneys told him that federal prosecutors had linked him to drug deals on more than 500 audio tapes and 14 videotapes.

His chief accuser, Rico Toro learned, was a man he'd never met.

His name was Groebe.

In addition, federal prosecutors claimed four co-conspirators were prepared to testify about Rico Toro's role as a protector of drug kingpins.

Rico Toro was baffled as to how he could be implicated on tapes for crimes he knew he did not commit. And he wondered where the government had come up with the witnesses.

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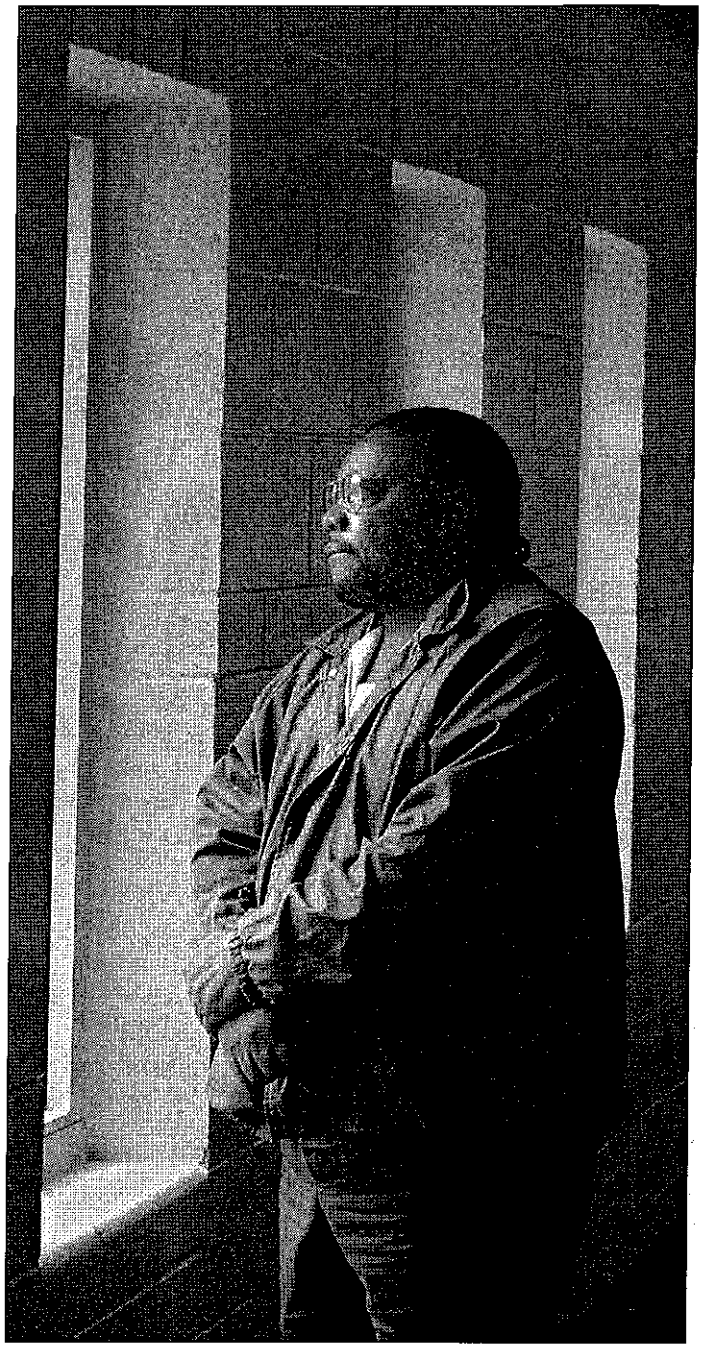

Above: Helmut Groebe provided information that led to the arrest and conviction of Bolivian official Faustino Rico Toro, above. He hired a private investigator to look into Groebe's background, a probe that revealed a long criminal history. The information helped Rico Toro win his freedom from prison.

Right: Jerry Smith, a Michigan resident, was told by Wolfgang von Schlieffen that Groebe had found $90,000 stolen earlier from Smith. When Smith contacted Groebe, the German said he could only repay Smith in drugs, not cash. Smith accepted the offer rather than go empty-handed, he says. He was immediately arrested by federal agents.

Darrell Sapp/Post-Gazette

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There was, in fact, no physical evidence of drugs. Rico Toro had never been caught with drugs, nor were any seized when Bolivian officials conducted raids on his home. They found no hidden assets that might point to profits he'd earned as a drug kingpin. The costs of fighting the case, in fact, would eventually leave him broke.

Rico Toro demanded an investigation in his native Bolivia and wanted a quick trial in this country. But it would be several years before his trial was finally scheduled, and by then the case had grown more and more curious.

Rico Toro had hired McDaniel, who learned Groebe had promised each of the four co-conspirators $20,000 if they would connect Rico Toro to drug couriers.

During the discovery process, McDaniel examined the hundreds of tapes the government said would implicate Rico Toro and found Rico Toro was in none of them. Groebe would later say in statements to the DEA that he met with Rico Toro, but did not wear a recording device because he feared for his safety if he did.

Then, as the trial drew near, the four co-conspirators signed sworn affidavits saying they refused to cave into pressure from American agents to implicate Rico Toro in drug trafficking.

Through McDaniel, Rico Toro learned that Groebe had been paid a total of more than $400,000 by the U.S. government (that amount would eventually exceed $600,000, including expenses) to help it make cases.

McDaniel also learned that the federal government had been contacted by one of Groebe's jilted lovers, who said Groebe had been committing crimes at the same time he was working for German and American law enforcement agencies. U.S. prosecutors never produced any of that information about its prized informer for defense lawyers, which is required under federal discovery laws.

But when defense attorneys began revealing their knowledge of Groebe and his tactics, prosecutors began talking about a plea bargain. Although Rico Toro faced several life sentences on the charges the government had brought, prosecutors allowed him to plead guilty to a minor drug charge and sentenced him to a few additional months of jail time.

Rico Toro said he accepted the deal not because he was guilty, but because he did not want to risk fighting the charges in a system of justice he could not trust.

Politicians in his own country, who had often chastised him in the past, had also cleared him of wrong-doing. A report by the Bolivian Commission for Constitution, Justice and Judicial Police in October 1991 found "there is no evidence for the guilt of Faustino Rico Toro."

After nearly five years in prison, Rico Toro flew home on Nov. 26, 1996.

Elena Abuawad

Elena Abuawad, a pharmacist, lived in Brazil with Groebe in 1989 and was unaware her lover was an informant for the DEA.

Abuawad was a widow who confessed to becoming infatuated with the tall, sweet-talking German. She loaned him more than $60,000 for what she thought were business deals. She became worried about her money when she learned Groebe was seeing another woman, but her concerns eased when Groebe proposed marriage.

Abuawad had been trying to sell a condominium she owned in Rio and Groebe told her he'd found an Italian buyer. The commission he'd earn on the sale, he told her, would be enough to help him pay back the money he owed her. The deal would close in Miami, and prior to the sale, Groebe cautioned Abuawad to go along with the buyer's request that the deal be in cash and that the details of the transaction be kept secret.

Groebe was an international businessman, so Abuawad was used to his occasional intrigues. She had suspected some of his deals involved drugs. But he had never put her at risk, and she said later she could not believe he ever would.

There was no real buyer, however. The man she met was DEA Special Agent Lucas, working undercover. Other undercover agents were also present.

Lucas mentioned the cash he was using came from illegal drug deals and asked Abuawad specific questions about laundering money. Her answers, she later said, came from the schooling she'd received from Groebe on the way to the closing.

As they left the meeting with cash in hand, Abuawad complained to Groebe that he had never told her the buyer was a drug dealer. Moments later, she was arrested and charged with money laundering.

Because she'd made up a story during the deal about how her son might be able to help her in the endeavor, DEA agents also threatened to indict him, Abuawad said, unless she pleaded guilty. So she got 38 months in prison. She never saw Groebe again.

Abuawad had no criminal record. No drug smugglers or gangsters had tried to launder the money. The only participants in this sting were federal agents. And they were prodded into the deal by an informant who'd set up his fiance. In fact, by then he'd found a new lover.

Wolfgang von Schlieffen

Wolfgang von Schlieffen came to America in 1990 with money to invest. He did well.

He leveraged his loan from a German bank into real estate, construction, property management and import/export businesses in the Miami area — and enjoyed the fruits of his labor. He owned a yacht and several expensive cars, including a Rolls Royce.

"Everything I touched turned to gold," he said during an interview at a federal prison in Seagoville, Texas, last January. "It was a challenge to me. I wanted to accomplish the American Dream. I was so close."

Von Schlieffen, a divorced father of four, had never had been arrested. Then, on April 5, 1993, he met Groebe. They hit it off immediately — both came from the same hometown in Germany. They knew some of the same people. They shared an interest in new enterprises. Soon, they were talking about condominiums and von Schlieffen's cars — a couple of which he wanted to sell.

A few days later, Groebe told von Schlieffen he knew someone who might be interested in buying both the cars and condominiums. They agreed to meet and show the cars to the prospective buyers.

"He was absolutely convincing, everything he said was precise. He was definitely a professional liar," von Schlieffen said in a recent interview.

"I totally trusted him."

They set the meeting with the prospective buyers for April 8, 1993, in a room at a travel agency. Both the buyers were, in fact, federal undercover agents. One was Lucas, the DEA agent who'd been working with Groebe for several years.

Von Schlieffen told them the cars were in mint condition and began explaining the improvements he'd made during the year he'd owned them, according to a transcript of the conversa-

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tion, which federal agents taped.

The buyers listened, but kept turning the conversation to drugs — they were dealers, they said, and that was where the money was coming from. They even flashed a little package at von Schlieffen that contained what he believed to be cocaine.

"I [thought], 'Why am I here, where did he bring me?' I figured I'm in a drug dealer nest," von Schlieffen said.

The transcript of recordings made at the meeting shows he tried to steer the conversation away from drugs or drug money and to his investment opportunities and the cars. It also shows von Schlieffen struggling with his English, a language he had not yet mastered.

"I told them I have no sources for this [cocaine], I can't get involved in this, but I have excellent business deals for you," he said. The transcript confirms his statements.

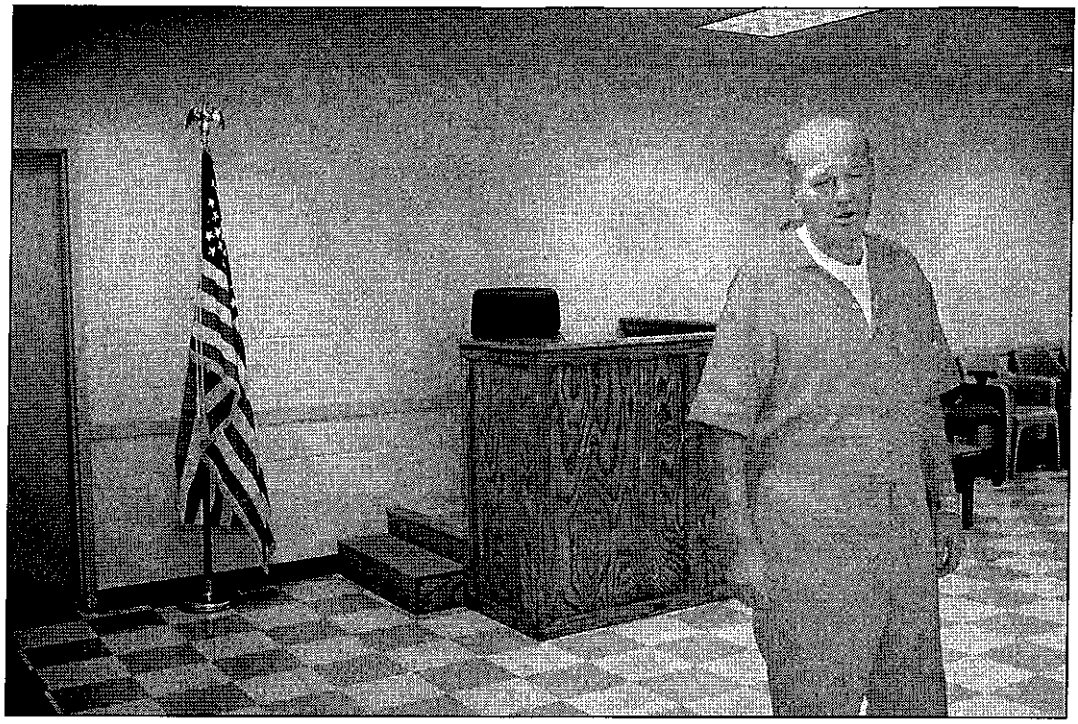
But they also confirm he told the buyers that if the price were right, he didn't care where the money came from. The two buyers threw $10,000 on the table as a downpayment on the auto purchases. He picked it up and at their request counted it. Moments later, agents with guns rushed in and arrested him.

He can be heard on the tape protesting that what they were doing was wrong — this was a car deal.

"I said it was all a misunderstanding," von Schlieffen recalled.

But knowingly accepting money from drug dealers for the car resulted in money-laundering conspiracy charges against von Schlieffen.

While von Schlieffen was out on bail, his attorneys asked federal prosecutors for all discovery materials — any evidence that might show their client's innocence or discredit witnesses who testified against him.



Darrell Sapp/Post-Gazette

A federal judge recently overturned Wolfgang von Schlieffen's conviction, and he hopes to post bond so he can be free until the government decides whether to try him again. The government's key witness, Helmut Groebe, is now facing perjury charges in Germany.

The government told defense attorneys Groebe had been convicted of fraud in Germany in 1977, and that they knew of no other crimes on his record — the same thing they told defense attorneys in the cases of Abuawad, Rico Toro and several other individuals Groebe would implicate in crimes.

They described Groebe as an efficient, high-level government informant. Groebe testified in the von Schlieffen case that he would be paid for his work, but he only listed specific payments that never surpassed $150,000. He didn't mention that the government had promised him more than $500,000 for his various entrapment efforts.

Groebe was smooth on the stand. He placed von Schlieffen into a calculated conspiracy to engage in cocaine trafficking. Based mostly on his testimony, von Schlieffen was convicted in a four-day trial in February 1994 and sentenced to 8 years in prison.

Gathering evidence

Rico Toro was the first to hire McDaniel to learn more about Groebe. Then von Schlieffen and Abuawad heard about his investigation of Groebe, although Abuawad had almost completed her prison time by the time McDaniel visited her.

The information gathered by McDaniel, with the help of a London investigator named Jackie Williams, helped win Rico Toro his freedom and may soon free von Schlieffen.

McDaniel amassed more than 3,000 pages of documents about Groebe, detailing his criminal past and government payoffs, facts that were hidden from defense attorneys.

The judge who sentenced von Schlieffen reviewed the affidavits provided by McDaniel and reversed von Schlieffen's conviction, sending it back to the government to decide whether to schedule a new trial. Von Schlieffen waits in a Texas prison cell for an answer to his lawyer's latest petition requesting that he be released on bond.

Abuawad was released from prison in 1996 and returned to South America.

Before she left the United States, she gave McDaniel permission to release a tape recorded interview that followed her release.

"I was in love," she said. "I wanted to get married, and I wanted to have a home again. If he asked me to do something, I was going to do it because I didn't want to lose him."

After her first lawyer died of a drug overdose, she hired Julio Ferrer. After learning the truth about Groebe, he lashed out at the government in an appeal his client later withdrew when

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she ran out of money.

"It is difficult to imagine misconduct more egregious, more immoral, more unfair or more improper than that of the government using and paying an informant to falsely profess his love to a woman with no prior criminal record, to violate her person by making love to her ... under the pretense that he has romantic feelings for her, all for the purpose of inducing her to become involved in a criminal offense by playing on and with her emotions and taking advantage of her psychological vulnerability."

The government's response: Abuawad was guilty and all of her arguments were self-serving. The government would not comment about its relationship with Groebe.

Last January, a Post Gazette reporter approached Groebe as he loaded restaurant supplies into his gold Mercedes 500 convertible on a Friday evening outside his restaurant in Miami Beach.

Groebe said government officials knew about his past when they hired him as an informant. Asked about the complaints from people he'd set up, Groebe said their stories were filled with "lies and half-truths."

Finally, he said he could discuss the issues in more detail later and gave the reporter a telephone number. He never returned calls. A month later, Groebe sold his restaurant and disappeared. The new owners have since sued him for $150,000 on various fraud claims.

Last summer, Groebe was arrested in Austria on an outstanding German perjury warrant related to his escape from prison.

He has posted bond and German legislators — who've been made aware of his frauds by his victims — are demanding a full accounting from the German government. His story played prominently in the German media.

Groebe was the subject of a German documentary last year. Its title: "King Rat."

Agents dug up more problems for archaeologist

It all started with the fossilized skeleton of a tyrannosaurus rex that Peter Larson excavated in South Dakota in 1990.

Larson had permission from the Indian rancher whose land he was searching to look for fossils. And he paid the rancher $5,000 for this find, before turning it over to the Black Hills Institute of Geological Research, which Larson founded in 1974.

That's where the government stepped in. The rancher had placed his land in trust to the government, federal officials said. So Larson had no right to anything found there and had to return the dinosaur bone. The rancher, in fact, claimed he didn't realize Larson's check was for the dinosaur fossil.

Larson, of Hill City, S.D., appealed all the way to the U.S. Supreme Court, which sided with the government.

But that's not where the story ended.

In fighting Larson's civil case, federal agents seized his records and the institute's records in 1992, scrutinized them for two years, then brought a 39-count indictment against him. He was convicted of two misdemeanors that are rarely enforced — taking a fossil worth less than $100 from federal lands and possessing a fossil from federal lands. He also was convicted on two felony counts of possessing more than $10,000 in "monetary instruments," cash and traveler's checks without declaring it when leaving or entering the country.

The charges were retaliation pure and simple for Larson's outspoken reaction to the federal government's tactics, Larson's defenders said.

None of the charges he faced related to the trophy dinosaur fossil he'd found. The money he'd taken out of the country hadn't been for drugs or other criminal activity. But Larson lost his appeals and was sentenced to two years in prison.

His lawyer, Patrick Duffy, offered this analysis to the media in South Dakota at the time: "The moral is, 'Don't [anger] the Department of Justice, because they'll crush you.'"

Under constant decree, FBI still violates order

For years, the FBI put the names of several Chicago residents on its list of suspected terrorists, long after a judge had ordered the agency to stop.

These so-called terrorists supported a group called the Committee in Solidarity with the People of El Salvador, which opposed U.S. policy in that country.

Last year, after more than 15 years of litigation, the FBI finally admitted it had been in error when it continued to spy on members and supporters of this "subversive" group. Under a consent decree, the agency pledged to give FBI agents training on how to conduct investigations without violating the First Amendment rights of individuals.

The case began when a group of Chicagoans discovered that between 1983 and 1985 the FBI had spied on them because of their affiliation — even though a 1981 court decree had ordered the agency to stop.

Lawsuits were filed in 1988 and in 1991, and U.S. District Judge Ann C. Williams ruled that members of the organization had been subjected to wide-ranging violations of the 1981 consent decree.

As part of a systematic covert investigation into the lives and activities of the organization's supporters, agents had analyzed phone, utility and banking records, none of which produced any evidence of wrongdoing. Even so, the FBI had continued to list several of its targets on the federal registry of suspected terrorists.

"It's a great day; after all this time, our names are finally going to be deleted from the FBI's terrorist files," said Phyllis Hasbrouck, a former Chicago leader of the group.

"Americans ought to be able to criticize their government's policies without being branded terrorists."

Government goes back on a deal

Al Diaz/Miami Herald

Alberto San Pedro struck a deal with the government in an effort to win his freedom. Federal prosecutors tried to back away from it but were stopped by an outraged judge.

In June 1989, Alberto San Pedro struck a deal with federal agents to avoid what would likely have been life in prison for smuggling cocaine.

The deal was this: The government would release him from a state prison sentence he was about to complete, then he would go undercover to snag the mayor and a commissioner of Hialeah, Fla., who were involved in an influence-peddling scam. In return, he would be granted immunity from the new drug trafficking charges and any other crimes committed to date, and freed from prison.

He was successful. The mayor was convicted in the scam, the commissioner pleaded guilty and San Pedro's cooperation was lauded by federal prosecutors as "substantial, truthful and invaluable."

San Pedro went back to prison to await his imminent release.

But by then, another set of federal agents and prosecutors from South Florida, working another case, had linked San Pedro to several drug-related crimes from years before, ranging from homicide to extortion.

Since San Pedro had been guaranteed immunity for all of his crimes, it appeared the agents were out of luck.

But not quite. Since immunity deals require a defendant's complete and truthful testimony, the agents scoured transcripts of San Pedro's grand jury testimony in the Hialeah cases.

Based on minor discrepancies between grand jury testimony and his testimony in court, they charged him with seven counts of perjury, figuring that would also eventually allow them to charge him with the other crimes.

In fact, within a month, San Pedro also found his name in a federal racketeering indictment, which court papers say was approved by then U.S. Attorney General Dick Thornburgh, who had been briefed on the entire chain of events.

But in 1991, a judge dismissed four of the perjury counts and a jury acquitted him on the remaining three. Now the government was hamstrung: Despite its best efforts, San Pedro had upheld his end of the immunity agreement.

Yet federal prosecutors continued to press racketeering charges against him and fight his release on bond, keeping him in prison for another five years.

In 1996, more than seven years after the deal was struck, U.S. District Judge Jose Gonzalez Jr. finally ruled the government was bound by its initial agreement and dismissed all of the remaining charges against San Pedro, setting him free.

"In a day when the confidence and trust of the American people in their government ebbs, it is critical that the United States government keep its word and live up to its obligations," Gonzalez wrote. "If doing so means that it must forego convicting one person of a crime, that is a small price to pay to preserve the integrity of our institutions."

Win at all Costs

Part 9 of 10

Government misconduct in the name of expedient justice

Wrath of vengeance

Prosecutors take aim at defense attorneys

By Bill Moushey
Post-Gazette Staff Writer

San Francisco lawyer Patrick Hallinan negotiated a sweet deal for Ciro Mancuso in 1990.

Mancuso was facing a life sentence on 49 felonies related to his massive Reno, Nev., drug trafficking operation.

For Mancuso's "full and complete cooperation and truthful testimony" in helping to convict others in the drug operation, the government agreed to seek only 10 years in prison. Further, he would be allowed to keep $600,000 he had in a Swiss bank account and various properties worth more than $4 million. The best news: prosecutors promised not to indict any other members of Mancuso's family.

Hallinan had played hardball in rancorous negotiating sessions with Assistant U.S. Attorney Anthony White and was elated with the results.

That soon changed. Within months, Hallinan would learn his client had secretly sought out prosecutors and struck another deal.

Mancuso had agreed to link Hallinan to the drug conspiracy. In exchange, court records show, prosecutors promised to give one of Nevada's most notorious drug traffickers probation — and no jail time.

In the crosshairs

When Congress enacted a series of get-tough-on-crime laws in the 1980s, no one realized defense attorneys would become such easy targets.

The same laws that have made it easier for prosecutors to prove money laundering and racketeering and other conspiracy charges made it especially easy to argue that defense attorneys had illegally conspired with their clients.

"When defense lawyers are aggressive, or innovative in terms of the kinds of issues that are raised, prosecutors have this tendency to assume the criminal defense lawyer is a member of a conspiracy," said William Aronwald, a former federal and New York state prosecutor who once supervised the Federal Organized Crime Strike Force in the Southern District of New York.

Aronwald is now a criminal defense lawyer in White Plains, N.Y.

"One of the problems is that prosecutors have this notion that it is impossible for criminal defense lawyers to successfully represent defendants in sophisticated organized crime or drug cases without getting into bed with their clients," he said.

Such attacks were an unexpected and unwelcome outcome of get-tough-on-crime legislation, he said, including mandatory sentencing guidelines approved in 1987.

These guidelines require tough sentences for federal crimes and give judges little leeway in reducing them. So one of the few ways a defendant can win a reduced sentence is to snitch on someone else in exchange for a recommendation from prosecutors for a reduced sentence. And what easier target for a desperate informant than his lawyer?

The Justice Department's Thornburgh Rule, which allows federal prosecutors to ignore ethics guidelines in the states in which they operate, can exacerbate the problem, Aronwald said.

For example, state ethics guidelines forbid contacts between prosecutors and a defendant unless the defendant's attorney is present. The Thornburgh Rule allows prosecutors to talk to defendants without the defense attorney's knowledge, as happened in the Mancuso case.

A measure approved by Congress this year would require the Justice Department to end its use of the Thornburgh Rule next year, but the Justice Department is already asking Congress to repeal the new law.

"Thornburgh took a position which frankly shocks the conscience of most judges and lawyers," Aronwald said. The

About this series

Hundreds of times during the past 10 years, federal agents and prosecutors have pursued justice by breaking the law.

They lied, hid evidence, distorted facts, engaged in cover-ups, paid for perjury and set up innocent people in a relentless effort to win indictments, guilty pleas and convictions, a two-year Post-Gazette investigation found.

Rarely were these federal officials punished for their misconduct. Rarely did they admit their conduct was wrong.

New laws and court rulings encourage federal law enforcement officers to press the boundaries of their power while providing few safeguards against abuse.

Today, in the ninth of a 10-part series, the Post-Gazette examines a law enforcement culture that has allowed the pursuit of a conviction to replace the pursuit of justice, no matter what the cost.

guideline means if you were a federal prosecutor, "you could ignore whatever ethical prohibitions there are."

John Wesley Hall Jr., a criminal defense lawyer who lives in Little Rock, Ark., and wrote a law book on legal ethics, said that too many prosecutors see defense attorneys as easy targets. If charges are brought against a defense attorney, there should be more than just an informant's allegations, he said.

"Any prosecutor who indicts without more information than his informant should be disbarred anyway," Hall said, "but they do it all the time.

"I'm scared. Every time I talk to a guy I'm worried that he is wired."

That's not to say some defense attorneys don't cross the line and deserve to be targeted. But the Post-Gazette found instances where tactics used against defense attorneys seemed to have less to do with their crimes and more to do with their success in court.

Aronwald said Justice Department officials aren't following their own rules regarding investigations into defense lawyers — rules written to ensure that lawyers receive the same due process safeguards as any American.

"You can't leave these types of decisions to some line prosecutor, or an ambitious U.S. Attorney," he said. "But it happens all the time. It has caused me to have this sense that while we have to continue doing the work we do, we have to make sure to insulate ourselves as much as possible so that we don't fall victim to false accusations," he said.

"That a lawyer zealously represents [a client] doesn't mean the lawyer's a co-conspirator."

A government target

The indictment shocked South Florida's legal community.

Federal prosecutors had won indictments against Miami criminal lawyer Frank Quintero, a leader in the local law community. Quintero had become so involved in the businesses of his cocaine cartel clients, the indictment charged, that he finally became one of them.

He was accused of buying a boat that was used to haul cocaine from Colombia to South Florida. In addition to one count of conspiracy to import cocaine, Quintero also faced one count of conspiring to distribute cocaine and eight counts of laundering drug money.

The government contended its witnesses would place Quintero in the middle of various drug deals involving his clients.

But Quintero maintained the only evidence against him had been bought by prosecutors through promises of leniency and payments to drug smugglers he'd helped defend.

His first trial ended with acquittals on most of the charges in August 1996. The jury deadlocked on four other drug and money laundering charges. Last February, the government began its efforts to try him again, but Quintero's attorneys have fought the effort in court.

They contend the government's actions have been so laced with misconduct that their client could never receive a fair trial and have asked a judge to dismiss all charges.

Quintero's lawyers, Robert C. Josefsberg and C. Richard Strafer, argued that after the case began to disintegrate, the federal government began breaking the rules in their efforts to convict him.

One of these incidents was documented earlier in this series. Federal agents asked marina owner Peter Roca if Quintero owned any boats linked to drug smug-

San Francisco Chronicle

Patrick Hallinan, above is part of a prominent family of lawyers in San Francisco. When defending accused drug trafficker Ciro Mancuso, he prevailed in contentious negotiations with a federal prosecutor to get a deal for Mancuso that would send him to prison for 10 years instead of life. Afterward, the prosecutor approached Mancuso with an even better deal: implicate Hallinan in a criminal drug conspiracy and walk free. Hallinan beat the charges in court and Mancuso went to prison.

Reno Gazette Journal

Ciro Mancuso

Quintero maintained the only evidence against him had been bought by prosecutors through promises of leniency and payments to drug smugglers he'd helped defend.

glers or had arranged the lease payments on them. Roca said no.

Under discovery rules, prosecutors should have made that statement known to Quintero, but didn't.

As the second trial approached, Quintero's lawyers learned of Roca's statement and listed him as a witness, to reveal the government's tactics. But just a few days before Roca was scheduled to testify, federal agents obtained a search warrant for Roca's business. They had the warrant sealed so no one could determine what they were trying to find.

Agents seized his business records and created such an uproar that Roca's landlord evicted him, effectively shutting down his business and eventually forcing him into bankruptcy. Roca was never charged with a crime.

In a motion to dismiss the charges against Quintero, attorneys cited several other incidents of misconduct.

The key prosecution witness against Quintero at his first trial was Alex Sanz, an imprisoned drug smuggler who said Quintero had been involved in money laundering. In exchange for testifying, federal prosecutors promised Sanz he would be released from prison.

Prosecutors insisted in pre-trial motions that it had carefully documented that Sanz's testimony had been truthful as it fought an attempt by Quintero's lawyers to put on a witness — an attorney Sanz had once hired — who would challenge Sanz's statements.

"The government ... would rather still believe the accusations of a convicted drug trafficker, Alex Sanz, who is 'cooperating' only in order to buy his own freedom, over the testimony of an officer of the Court, Vincent Flynn, who has no axe to grind whatsoever in this case," Quintero's attorneys wrote.

Quintero's attorneys also pointed out that the government's own documents showed Sanz had lied.

"Assistant U.S. Attorney Paul Pelletier's own files [that were turned over to defense attorneys in a case not involving Quintero] showed that Sanz was lying," Quintero's argument stated.

Quintero's attorneys also noted that a Dade County sheriff's deputy who had testified against Quintero made four false statements in his first trial. One lie concerned a message slip the deputy found in Quintero's office — a message that purportedly proved Quintero knew the real name of a drug fugitive he had associated with.

The government would learn that the message, in fact, was from someone else — yet hid that fact from the jury. Only as the second trial approached did prosecutors finally concede that fact, Quintero's lawyers said.

Quintero also noted that prosecutors had intentionally mingled certain documents submitted as evidence to make it appear that Quintero had numerous contacts with the drug fugitive.

"The deplorable sleight-of-hand tactics employed by the government should not be condoned,' " Josefsberg, said. "The government sought to fool the jury into buying into its theory of the case by manipulating exhibit numbers, all the while affording itself plausible deniability."

Finally, Quintero's lawyers said, the government's intimidation of Quintero's wife, who is also a lawyer, during a grand jury probe was unconscionable.

"The government, knowing Mr. Quintero's marriage was on the rocks, sought to prod her into making accusations against Mr. Quintero by referring openly about his (alleged) affairs with 'other women,' and his (allegedly) excessive gambling," the lawyers argued. "When she proved more feisty than anticipated and complained in front of the grand jury about the prosecutors' conduct, they lectured her and announced that, 'in a grand jury proceeding, a defendant has no rights.'

"This glimpse into the prosecutors' grand jury tactics is relevant, not because, standing alone, it would require the dismissal of the indictment, but rather because it reveals the beginning of a pattern of conduct which permeates this entire prosecution.

"At trial, the government put on false testimony and it continues to defend its witnesses, despite irrefutable evidence — including a tape recording — of the falsity of that testimony. Conversely, those who stand up for Mr. Quintero are humiliated (Mrs. Quintero) or subject to retaliatory searches and accused of perjury (Peter Roca). The same prosecutors, who apparently believe their targets have 'no rights' in grand jury proceedings, have, by their conduct, evinced the belief that defendants have no rights in trials either."

Prosecutors have consistently denied wrongdoing, saying there were legitimate reasons to search Roca's marina, that Sanz did not perjure himself on the witness stand and that the government did not abuse anyone before the grand jury.

"These nefarious allegations are symptomatic of an attempt to tilt the adversarial tables from a trial of the defendant's culpability for the crimes charged to a trial of the government," wrote Pelletier.

There has been no decision on Quintero's motion to have the charges dismissed.

Giving up his clients

Defense attorney Ronald Minkin did join his clients in crime.

For two decades, the

Southern California attorney counseled drug-smuggling clients, including operators of the largest marijuana smuggling operation in that region.

Eventually, he did more — helping them launder drug money and assisting them in bringing freighter loads of marijuana into the country.

When federal agents caught up with him in 1990, he cut a deal with prosecutors: He would deliver his clients in exchange for his freedom.

Minkin violated the most important tenet of bar association ethical standards — the confidentiality of the lawyer-client relationship.

Then federal prosecutors went one step farther. They began steering defendants or potential defendants to Minkin and recorded their conversations, too.

Eventually, all of Minkin's cohorts were arrested, and he prepared to testify against them.

Defense lawyers argued that all evidence should be suppressed because of Minkin's violation of the attorney-client privilege, and the misconduct by prosecutors in steering new clients his way, then taping them.

In 1993, a federal judge decided that simply suppressing evidence in the matter was insufficient. He dismissed all the charges against defendants that Minkin had helped snare.

Minkin quit practicing law and could not be found for comment.

A blood feud

When Assistant U.S. Attorney Anthony White brought charges against Ciro Mancuso in 1990, it was hailed as one of the largest drug conspiracy cases ever brought in Reno, Nev.

The indictment alleged that Mancuso used a multistate cocaine- and marijuana-smuggling operation to buy ranches, mountaintop retreats, beach-front estates and anything else he might want.

White, a decorated Vietnam veteran, was acclaimed once again as a hero for taking down Mancuso, who was known not only as a drug smuggler, but for the cagey ways he had avoided arrest and prison time for nearly two decades.

Mancuso would come close to succeeding again. He had information that might tempt prosecutors to cut him a break.

Mancuso could lay out the intricate smuggling network he used to bring drugs from the far reaches of South America into this country via Mexico. He knew the names and the roles of dozens of insiders in the operation, many of them bigtime and longtime smugglers.

But providing such information involved risks. Snitching against these people could get Mancuso killed. Instead, he laid out a deal implicating his lawyer, which involved far fewer risks. White bit on the proposal.

Patrick Hallinan was a prominent defense lawyer and an accomplished archeologist from San Francisco. His father was considered to be one of the finest lawyers to emerge from the city. His brother was head of the city's law department.

Mancuso was one of the wealthiest of Hallinan's longtime clients.

Hallinan filed a flood of paperwork after Mancuso's indictment, citing what he considered to be illegal and unethical actions by White. The animus between the two lawyers grew, and Hallinan had soon forced a deal in which Mancuso would be granted leniency for informing on others.

Then Hallinan became the unlikely target after Mancuso re-negotiated his deal to include, he has said in court papers, a probationary sentence. He would walk free instead of doing the 10 years he'd been promised earlier.

Within months, Hallinan, and 11 Mancuso confederates, were indicted for drug smuggling, money laundering and racketeering. All of Mancuso's colleagues ranked below him in his drug ring hierarchy.

White and other prosecutors in Reno had a history of trying to get high-powered lawyers disqualified from criminal drug prosecutions. But this was the first time a criminal defense lawyer had become the subject of an investigation because a client had turned on him.

In letters, the Post-Gazette sent specific questions about the Mancuso case to the U.S. Attorney in Las Vegas and to Justice Department officials but got no response.

"My perspective is that, when you lie down with dogs, you get fleas," John Keker of San Francisco, who was Hallinan's lawyer, said in an interview. "In Reno, that prosecutor had been running so wild for so long that they just lost all track of what's important and what the truth was.

"It was like the inquisition. It didn't matter what you'd done. You could be the devil, but if you confessed in this case, you'd get the sweetest deal. And if you could give them someone like Patrick Hallinan, you could walk."

From the start, Hallinan and his lawyers accused Mancuso of lying to weasel out of his prison time. And as Hallinan and Keker quickly found out, White had just begun.

Less than a month before the trial, White moved to oust Keker from the case because he had once represented Mancuso's wife in a minor criminal matter.

"Anybody who would try to disqualify me at this late date is a chicken who is afraid to try a case against me," Keker told the local media.

Keker responded in court with a scathing petition to dismiss the Hallinan indictment because it was filled with misconduct by the prosecutors.

As motion after motion was filed showing the weaknesses of the government's case, federal prosecutors tried another tack against Hallinan.

In June 1994, federal agents raided his San Francisco home, hoping to find evidence that Hallinan had smuggled Peruvian artifacts and was illegally trafficking in ancient art.

Hallinan had been an art collector since his undergraduate days at the University of California at Berkeley, when he studied for an archaeology degree.

No charges were ever filed against Hallinan based on the search warrant. He still has not recovered hundreds of documents and valuable pieces of art taken during the raid.

And in early 1996, Hallinan was acquitted when he faced Mancuso in court. His lawyers were able to prove that the government had coached Mancuso's testimony and that he was lying about Hallinan's direct knowledge of his drug activities and money laundering.

Mancuso was sentenced to a 10-year prison term.

In November 1996, Mancuso's lawyers filed an appeal of the sentence, contending that White had promised him "little or no jail time" for testifying against his lawyer. Mancuso's attorneys said the government breached its plea agreement with Mancuso.

A 9th Circuit U.S. Court of Appeals panel disagreed with Mancuso's lawyers. He is now serving his sentence at the federal penitentiary in Yankton, S.D.

Win at all Costs

Part 10 of 10

Government misconduct in the name of expedient justice

Failing to police their own

Justice's oversight office called ineffective, unresponsive

By Bill Moushey
Post-Gazette Staff Writer

The story was as devastating as it was untrue.

Newspapers across the country, including the Post-Gazette, reported in 1990 that Roger Pilon, a former Justice Department official, had been investigated and forced to resign for leaking — through his wife — top secret information to the apartheid government of South Africa.

But at the time, the FBI already had cleared Pilon of the unfounded charge. In fact, the Justice Department, in a letter sent in the fall of 1988 exonerating him and his wife of wrongdoing, had thanked Pilon for his patience and cooperation.

It would be years before Pilon learned in court that the men who leaked this erroneous information to newspapers — leaks that violated federal privacy laws — included top attorneys at the Office of Professional Responsibility, who were angry that the Justice Department hadn't heeded their recommendation to fire him.

OPR is the very office that is supposed to ensure that federal lawyers abide by the laws and ethical standards set by the federal government.

Pilon figured such blatant misconduct within the Justice Department's own watchdog agency would be punished. He was wrong. He eventually sued the Justice Department and in 1996 received a $250,000 settlement, but no one was ever disciplined.

"In negotiations (with the Justice Department), we asked that disciplinary action be taken," Pilon told Congress at a 1996 hearing on the ethical responsibility of attorneys. "That was the first thing to go. The department, it seems, would rather pay money — the taxpayer's money — than discipline . . . its own."

His experience mirrors many of the incidents detailed by the Post-Gazette's two-year investigation into misconduct by federal agents and prosecutors. Even when misconduct is clear, federal officials are loath to acknowledge it, punish it or ensure that it doesn't happen again.

U.S. Rep. John Murtha, D-Johnstown, whose Citizens Protection Act passed the House last year before being partially dismantled in a conference committee, last week described the Post-Gazette series as a diagram showing what needs to be reformed.

He said he has received calls complaining about misconduct by federal law enforcement officers from around the country since the series started three weeks ago.

Murtha said he will press for legislation to address problems raised in the series and will send a copy of the series to every member of Congress along with a letter describing the investigation as "required reading."

Referring to the Justice Department, he said: "When you have the ability and the vast resources to take away a person's liberty, you better play by the rules."

Rogue investigators

Created by the Justice Department in 1975, OPR investigates complaints lodged against Justice Department attorneys "involving violation of any standard imposed by law, applicable rules of professional conduct, or Department policy."

It also oversees internal investigations by the FBI and DEA. The U.S. Customs Department and Bureau of Alcohol, Tobacco and Firearms have their own internal affairs sections.

OPR employs 19 attorneys — its staff was doubled after 1995 Senate hearings into disastrous confrontations by federal agents at Ruby Ridge, Idaho, and Waco, Texas.

The Justice Department in a statement Friday said the following changes have been made since Janet Reno was appointed attorney general in 1993: The OPR now conducts investigations as soon as it learns of misconduct accusations rather than waiting until after litigation ends; it completes investigations even if an attorney resigns or retires; it publicly discloses results of OPR probes "in certain cases"; and it files complaints with state bar associations against lawyers who make "bad-faith complaints" with OPR.

The Justice Department also said that the U.S. Drug Enforcement Ad-

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"I've had cases where what they did was worse than what they claim the defendants did."

— Marvin Miller
National Association of Criminal Defense Attorneys

ministration and FBI Office of Professional Responsibility have been reorganized and expanded.

In Roger Pilon's case, it looked as though the system had worked.

After a nine-month FBI investigation in 1988, he and his wife, who lost an appointment at the Department of the Interior because of the probe, were cleared of charges that they'd illegally leaked classified information to the government of South Africa.

But OPR wasn't satisfied with the FBI probe and initiated its own investigation, which concluded that Pilon should be asked to resign or be fired. The Attorney General's office then reviewed both investigations, along with rebuttals by the Pilons' attorney. Again, Pilon and his wife were cleared. Afterward, they both resigned from their government posts to take jobs in the private sector.

Later, Pilon would learn that OPR attorneys thought he'd been cleared by the Justice Department because then-Attorney General Dick Thornburgh was miffed over an OPR investigation into two of his aides and wanted to discredit the office.

In an annual report published in 1989, the OPR made this erroneous statement: a high ranking Justice Department official had been forced to resign because he may have disclosed classified information to a foreign government. Newspapers quickly connected Pilon to the statement. The Justice Department again exonerated the couple, made it clear that Pilon had left for another job on his own volition, and this time paid Pilon and his wife $25,000 to cover legal expenses.

This was followed by still more leaks discrediting Pilon. This time he sued. The Justice Department fought the case for more than six years, and finally lost. In 1996, the department agreed to pay him $250,000.

OPR never disputed the leaks in court proceedings – it argued the disclosures didn't violate the law. The U.S. Court of Appeals noted that the leaks had been carried out by OPR Deputy Counsel Richard Rogers and Peter Nowinski, who had worked on the Pilon case but left the Justice Department before he leaked the materials to the press.

OPRGeneral Counsel Michael Shaheen was also questioned in the case. He denied in a deposition having done anything wrong. But the appeals court noted in its ruling a later deposition given by former Deputy Attorney General Donald B. Ayer, in which Ayer said Shaheen had tried to release confidential information to him about Pilon after Ayer had resigned from the department. Pilon said Shaheen was not questioned again after Ayer gave his testimony.

Shaheen could not be reached for comment.

Michael Gordon, a Justice Department spokesman, said: "No sanctions were imposed on any OPR official [in the Pilon case] because the Department determined that the conduct of the officials was legal." The appeals court judge disagreed.

Nowinski is now a federal magistrate in California and did not return a telephone call seeking comment.

Rogers eventually served as interim head of the OPR before being replaced last May. The Justice Department did not make him available for an interview.

Shaheen retired from the OPR last December. In June, he was appointed by Independent Counsel Kenneth Starr to examine allegations that a key witness in the Whitewater scandal — David Hale — had received cash from critics of President Clinton.

Pilon in 1996 testified in support of Murtha's Citizens Protection Act. He said the mind set in the Department of Justice has not changed, and he still has difficulty fathoming efforts to smear him.

"The only thing I can think of, and others have said it as well, is that Shaheen is a guy used to winning, and this is a case that he has lost at every turn," Pilon told the Post-Gazette.

Scrutinizing OPR

The effectiveness of OPR in its fight against misconduct is nearly impossible to quantify.

The agency issues annual reports regarding its work, but no specific cases are discussed.

The Post-Gazette talked to nearly 200 people who had filed complaints with the OPR. Most of them said the agency simply wrote them a letter saying it found no basis for their complaints. A few said OPR told them it was taking action. None of the complainants ever learned what that action was.

The General Accounting Office in 1993 reported a troubling pattern in 59 cases the GAO had monitored as the result of a 1992 audit of OPR.

It found OPR sometimes closed cases before doing basic investigative work like contacting other Justice Department agencies who were involved in the probes that led to complaints.

"Although OPR is responsible for helping to ensure that Justice employees uphold high ethical standards, OPR did not ask for or expect ... a response from (other Justice Department entities) concerning its investigative outcome," the GAO said.

Marvin Miller, who has served as chairman of the ethics caucus of the National Association of Criminal Defense Attorneys, said the

problem is a simple one: "The government will not prosecute its own.

"I've had cases where what they did was worse than what they claim the defendants did, and they are completely exempt from prosecution. No matter what kind of misconduct was committed, it's OK."

Arnold I. Burns, who served as deputy attorney general for President Reagan, said the problem may also be a matter of money.

OPR was staffed with capable people when he was in office, Burns said. "The problem was they had too limited a budget, a zillion cases and few people to run them, so it was not an effective check."

Murtha's concern

OPR is the focus of legislation U.S. Rep. Murtha wants to see passed next year. He wants the watchdog agency to make public all of its findings, and he wants Justice Department employees who engage in misconduct to face specific penalties from OPR.

"If they do violate their obligations and the law, there will be punishment," he said.

Murtha's concerns about overzealous federal prosecutions is personal.

He watched as his colleague, Rep. Joseph McDade, R-Scranton, had his political career almost destroyed by an eight-year federal investigation into allegations of accepting kickbacks from contractors he helped get government work.

In 1996, a jury acquitted McDade after deliberating only a few hours.

Murtha wondered how an average citizen could have withstood such an attack.

So he and McDade introduced the Citizens Protection Act in the House last year to establish oversight and safeguards that would protect citizens against unfair and illegal tactics by federal agents and prosecutors.

It was their belief, affirmed by defense attorneys and former federal prosecutors interviewed for this series, that real reform will require Congress to establish specific safeguards.

Their bill's most important provision would have established an independent oversight board to monitor federal prosecutors and require them to abide by the legal ethics laws of the states in which they operate. It also provided sanctions against prosecutors who knowingly committed misconduct.

Despite opposition from the Justice Department, the legislation was approved on a broadly bipartisan vote, 345-82.

The House bill became part of the federal appropriations package that Congress passed in October, and the Justice Department managed through intense lobbying to have many of the provisions killed in the conference committee that crafted the budget bill. The provision requiring federal prosecutors to abide by the ethics laws in the states where they work remained, but the appropriations bill delays its implementation for six months.

Murtha said the Justice Department has increased its efforts to have even the watered-down law repealed before it takes effect in mid-1999.

He said he plans to meet those efforts head-on.

"My fellow members didn't vote overwhelmingly for this because they liked us," he said. "Each and every one of them know of abuses and understand what people [who've suffered from those abuses] are saying."

He said he will work to get a bill passed in both the U.S. House and Senate, "so there is no chance for it to be repealed."

Special prosecutors enjoy even greater power

The Post-Gazette's investigation didn't look at the best-known federal prosecutor in the country.

Kenneth Starr, who's investigation of President Clinton could lead to his impeachment by the House of Representatives, works under the authority of the federal independent counsel statute, which gives him even more power than the federal agents and prosecutors that were the focus of the Post-Gazette series.

By law, Starr operates independently of the Justice Department, unlike federal agents and prosecutors. He also enjoys a virtually unlimited budget.

The targets of an independent counsel are few — there have been only 20 such investigations since Congress authorized them in 1978 — so the Post-Gazette focused exclusively on federal law enforcement officers, whose actions can touch any American.

Voice your opinion to Congress

If you would like to contact U.S. Rep. John Murtha, D-Johnstown, about his effort to strengthen oversight of the Justice Department, write to him at this address:

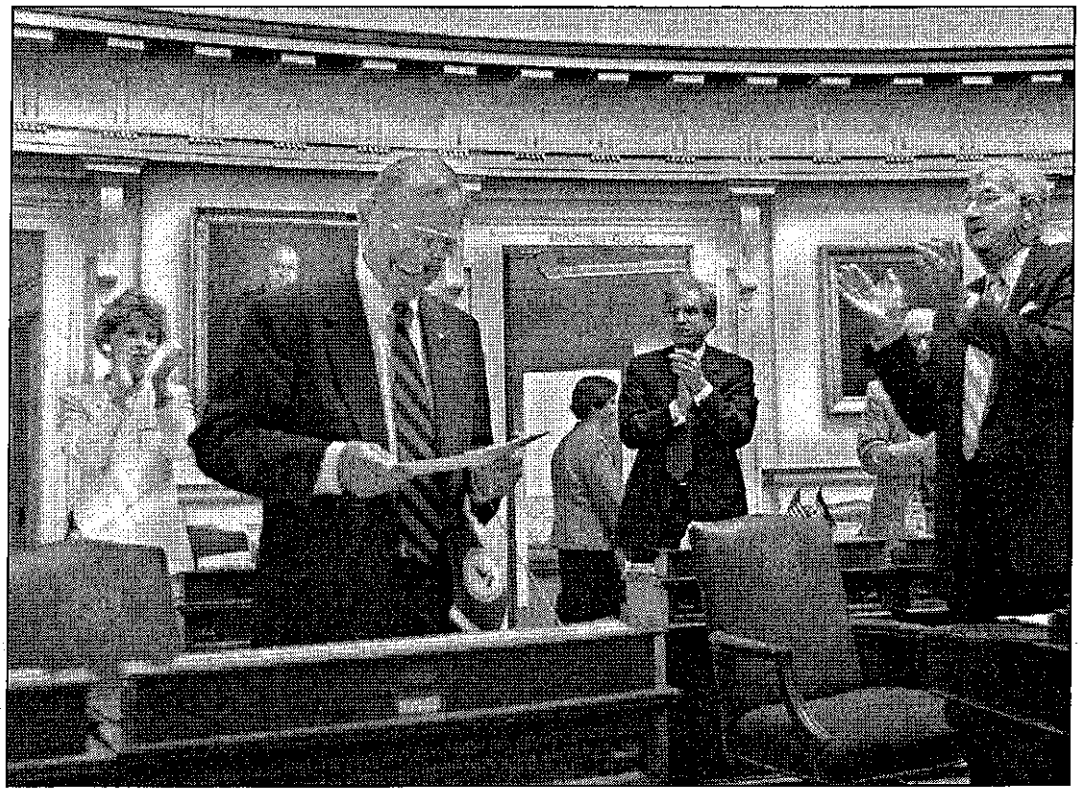
The Hon. John Murtha
U.S. House of Representatives
2423 Rayburn House Office Bldg
Washington, D.C. 20515
Phone: 202-225-2065

You can also write to House Judiciary Committee Chairman Henry Hyde at this address:

The Hon. Henry Hyde
U.S. House of Representatives
2110 Rayburn House Office Bldg
Washington, D.C. 20515
Phone: 202-225-4561

Or, you can contact your local representative.

Hyde Amendment makes violations costly



Richmond Times Dispatch

Virginia state Sen. Richard Holland received a standing ovation when he returned to office after he and his son successfully fought federal charges of violating banking laws. Holland then became the first person to successfully use the Hyde Amendment to recoup some of the financial losses incurred when battling the charges, which were ruled to be in bad faith.

Last year, Congress provided a measure of recourse for some victims of overzealous federal prosecutions.

Legislation introduced by U.S. Rep. Henry Hyde, R-Ill., chairman of the House Judiciary Committee, allows defendants to recover reasonable defense costs if they can show a federal case was "vexatious, frivolous or in bad faith."

Richard Holland, a 19-year veteran of the Virginia Senate, was the first to use the amendment successfully.

Holland is chairman of the board of the Farmer's Bank of Windsor, Va. In 1992, he and his son, Richard Jr., the bank's president, were told by bank examiners they would be fined and probably sent to prison for a series of improper loans made during the nationwide crash in real estate prices that followed changes in the federal tax code in 1986.

Holland told them they'd done nothing wrong.

"We told all of our employees to cooperate with these people," he said. "Whatever they want, give it to them."

In 1997, he and his son were indicted on 31 counts of banking law violations. The government then proceeded to try to destroy them professionally and personally, said Holland, now 73.

Less than a month before his indictment, his wife died in her sleep. Holland said his lawyers asked the government to hold off on the indictments while they mourned.

"They told my lawyer, 'No sir, we're going to indict them right now,' " Holland recalled last week.

Last April, during a pretrial hearing held four months before the trial was scheduled to start, a federal judge dismissed the charges after prosecutors presented their case. The government had presented no evidence of a crime, the judge said. Afterward, upon his return to the Virginia Senate, Holland received a standing ovation.

He then filed a claim with the government under the Hyde Amendment. After a two-day hearing, U.S. District Judge Henry Coke Morgan awarded the Hollands $570,000 toward their $1.6 million in legal fees, terming the government's actions "vexatious."

The Justice Department has said it will appeal.

That same month, Chief U.S. District Judge Richard Alan Enslen of the Western District of Michigan ordered the government to pay $404,737 to lawyers representing a company called Ranger Electronic Communications Inc. in another Hyde Amendment case.

He concluded that federal prosecutors had failed to disclose evidence that might have helped prove that the owners of the company were innocent of charges of illegally importing radio equipment.

In his ruling, Judge Enslen, quoted from Hyde's speech on the floor of the U.S. House of Representatives during debate on his amendment.

"[Some federal prosecutions are] not just wrong, but willfully wrong . . . frivolously wrong," the judge stated. "[These federal prosecutors] keep information from you that the law says they must disclose. . . . They suborn perjury."

Holland said he was fortunate to have the resources to fight the government but that it scared him to think about those who don't.

"The people who don't have the wherewithal, the resources or the will to fight the government when they say you're going to prison for 50 years, that's bound to scare the hell out of them," he said.

He said he found it easy to believe that someone might plead guilty to a lesser charge, rather than face a trial and decades in prison.

"That has made me believe there actually might be some people in prison who are not guilty," he said.

Aggressive attorney at OPR targets prosecutor, loses on all counts

By Bill Moushey
Post-Gazette Staff Writer

Agents of the Office of Professional Responsibility came down hard on William R. Hogan.

But Hogan, a prosecutor in the Chicago U.S. Attorney's office, was vindicated last August by a judge who determined that the exhaustive OPR investigation showed he was guilty of no wrongdoing.

"I have a very, very unfavorable view of OPR," said Hogan last week. "I would say they were rank amateurs.

"The agents involved and the lawyer involved had never tried any major cases. They had no concept of how to try the case. They had no experience in dealing with the witnesses and no appreciation of the realities and practicalities [of what goes on in this job]."

In the early 1990s, Hogan was the prosecutor who successfully won guilty pleas and convictions against 56 members of Chicago's notorious El Rukn gang — one of America's most violent street gangs. Police say the gang might be responsible for as many as 600 murders.

But in 1994, appeals courts began to reverse some of the convictions. Some gang members said they'd been granted special favors in exchange for their testimony, and defendants they testified against weren't informed of that special treatment, as required by federal discovery law.

Hogan was accused of allowing cooperative El Rukn witnesses to use drugs while in jail, to have sex with their girlfriends, to receive free cigarettes, food and beer, and to receive clothes and unlimited telephone privileges.

The Justice Department said in a statement Friday that it pursued an investigation of Hogan after it concluded that he engaged in "professional misconduct, poor performance and mismanagement" in the El Rukn prosecutions.

OPR, in one of its largest investigations ever, spent two years looking into the charges against Hogan. Based on OPR findings, he was fired in 1996.

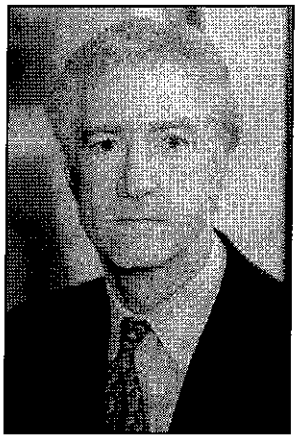
At every step along the way, Hogan insisted he'd done nothing wrong. He said most of the people OPR interviewed told the investigators Hogan had done nothing wrong. He filed mountains of paperwork proving his contentions, he said.

Yet OPR filed charges against him anyway.

While some of the charges made by El Rukn gang members about the favoritism they received were true, the incidents occurred without Hogan's prior knowledge while the gang members were in custody of entities like the U.S. Bureau of Prisons and the U.S. Marshals Service, Hogan said.

Last August, a judge ruled that OPR had gotten its facts wrong.

"They had the burden of proof and they couldn't prove anything," Hogan said.



William Hogan, a federal prosecutor in Chicago, was the target of an OPR investigation concerning favors given to imprisoned witnesses during an investigation and prosecution of the notorious El Rukn gang in Chicago. Hogan was eventually cleared by a federal administrative judge, but he is angry over what he calls sloppy investigative work by "rank amateurs" in the OPR.

A 196-page opinion issued by Howard J. Ansorge, an administrative judge, said: "A thorough analysis of the record in this appeal reveals that the agency did not carry its burden of proving any of the charges listed in the notice of proposed removal. Because the agency did not prove any of the charges, I reverse the agency's action removing the appellant from employment."

Hogan went back to work and the government was ordered to reimburse him for back pay and legal expenses. He is again trying cases. He is negotiating with the Justice Department to recover the hundreds of thousands of dollar he spent fighting for his professional life. He is also negotiating the amount of back pay he is due.

But he feels his reputation has been irreparably damaged.

Once those negotiations are complete, Hogan will decide whether to continue his employment with the Justice Department.

"They looked at every single aspect of my personal life, every woman I ever dated, interviewed friends, family members, friends of family members. They interviewed the guy my youngest sister used to date who had a subsequent drug problem. . . . They dredged [the man's past] up in front of his wife and daughter — absurd things. Their theory was I must have had some involvement [in drugs]."

The bottom line, Hogan said, was that the OPR investigation was simply incompetent.

"They got a ton of things wrong, even the most basic elements of the information. The two agents and lawyer who conducted it were completely incompetent and completely venal in the manner in which they created the report."

While the OPR investigators traced his life back to his childhood, Hogan said, none of the investigators who worked on a daily basis in the El Rukn case ever had even one conversation with the lawyer who filed the charges against him.

Congress steps in to protect whistleblower

Righting wrongs in federal law enforcement isn't easy. Dr. Frederick Whitehurst can vouch for that.

Whitehurst was an FBI chemist who in 1995 charged that FBI Crime Laboratory managers lacked proper training and routinely ignored or tried to cover-up problems in handling evidence.

He said FBI labs were dirty and dusty, which made accurately analyzing chemical evidence all but impossible. He said lab employees sometimes lied as witnesses to bolster government cases, and that he discovered some lab officials had rewritten reports he and others had produced for high-profile cases, such as the bombing of Pan Am Flight 103, so that they more closely adhered to the government version of what happened.

Whitehurst began reporting his concerns to OPR in 1986, and continued to do so for several years. He got no response. In the spring of 1993, he began sending letters to the Justice Department's Office of Inspector General.

The Inspector General is charged with promoting economy, efficiency and effectiveness at the Justice Department and investigates individuals who are accused of financial, contractual or criminal misconduct in the department's programs and operations.

Associated Press

Dr. Frederick Whitehurst, at left with his attorney, exposed procedural problems at the FBI Crime Laboratory. After confirming many of his concerns, the Justice Department suspended him. He filed suit against the department, and members of Congress criticized Justice for unfairly punishing Whitehurst for exposing the problem.

Inspector General Michael Bromwich said that while his department found "serious and significant" deficiencies in the way the FBI laboratories operated, Whitehurst's allegations that "many employees within the lab repeatedly committed perjury, fabricated evidence, obstructed justice, and suppressed exculpatory evidence" could not be substantiated.

As soon as the Justice Department received the report, Whitehurst was suspended from his $95,000-a-year job and escorted from the building by security. He then filed suit against the Justice Department for violating the federal whistleblower's law, which is supposed to protect employees who reveal wrongdoing, and for violating the federal Privacy Act for making public his allegations.

Eventually, he agreed to mediation and so far has received $1.16 million from the government in exchange for agreeing to leave the FBI.

The Justice Department also paid his $258,580 legal fees and agreed that it wouldn't pursue criminal or disciplinary actions against him.

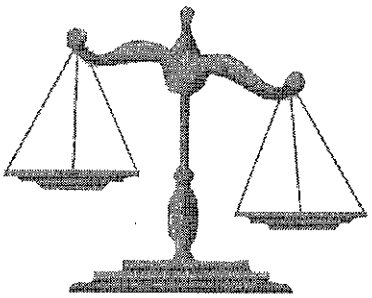
The FBI's removal of Whitehurst caused an outcry in Congress. Sen. Charles Grassley, R-Iowa, accused the Justice Department of exacting retribution against Whitehurst for whistleblowing.

"The FBI would have preferred to get rid of the messenger," Grassley told the media after the FBI announced Whitehurst's ouster early this year, hailing the chemist for his "immense public service."

Whitehurst has since founded the National Whistleblower Center's Forensic Justice Project, located in Washington D.C. The group is reviewing past FBI laboratory work to check for errors.

"These [lab technicians and scientists] were violating the civil rights of people in the courts of law, denying them fair trials and due process," he said last week.

"I want to know who got hurt. I am going to figure this thing out. I'm going to make a living figuring it out."



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— Part 9, TODAY: When defense attorneys become prosecutors' targets.

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