

RUN THIS BY THE LEGAL DEPARTMENT, BUT RUN SUPER FAST SO THE ETHICS DEPARTMENT DOESN'T SEE IT.

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12-21



# Conflicts of Interest

Assistant General Counsel  
(Ethics)

Department of the Navy

# References

- 18 U.S.C. 201, 202, 203, 205, 206, 207, 208, 209, 216
- 5 C.F.R. 2635, Subparts D, E, F
- 5 C.F.R. 2640
- DoD 5500.7-R (JER), Chapters 2, 3, and 5
- [www.usoge.gov](http://www.usoge.gov)
- [www.defenselink.mil/dodgc/defense\\_ethics.gov](http://www.defenselink.mil/dodgc/defense_ethics.gov)

# Goals of Brief

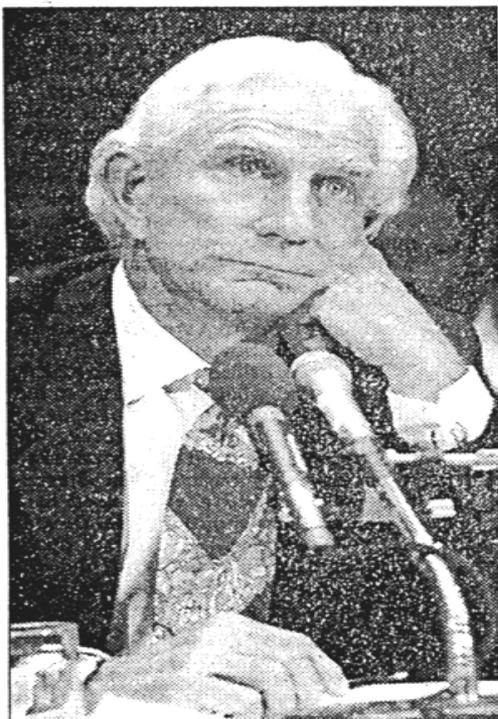
- To understand what constitutes a conflict of interest
- To identify resources
- To learn how to resolve conflicts

# Background

- Basic obligations of public service
- Purpose: to maintain public trust and confidence by making clear that public officials act only for the benefit of the public and not themselves
- Further purpose: to remain impartial

# THE FEDERAL PAGE

## Runyon Probed for Possible Conflict in Coca-Cola Vending Plan



FILE PHOTO/ BY J. SCOTT APPLEWHITE—ASSOCIATED PRESS

Postmaster General Marvin T. Runyon has recused himself and sold Coca-Cola stock.

By Bill McAllister  
Washington Post Staff Writer

The Justice Department is investigating Postmaster General Marvin T. Runyon for possible violation of conflict-of-interest laws in connection with a Postal Service proposal that would have given the Coca-Cola Co. exclusive rights to install vending machines in the nation's post offices.

Such an agreement, allowing machines in the lobbies of 40,000 post offices, would be extremely lucrative to both the federal agency and the soda company. Coca-Cola, the nation's largest soft drink company, and PepsiCo Inc., the second largest, separately have expressed interest in such a venture.

The vending proposal became controversial when Runyon, a wealthy former automobile executive who then held stock in Coca-Cola, became personally involved with the discussions, several postal sources said. According to a disclosure statement filed with the Office of Government Ethics in 1995, Runyon's holdings in Coca-Cola were valued at between \$50,000 and \$100,000.

Contracting laws governing federal workers, including postal workers, prohibit individuals from having business dealings with firms in which they have a financial interest.

Runyon acknowledged in a statement yesterday that he is under investigation by the Justice Department. And he said he had been a party to "senior management discussions" last year over

"a potential alliance between the Postal Service and Coca-Cola."

But he said he recused himself from further discussion of the issue and sold the Coca-Cola stock "upon learning of a potential conflict." The stock, which sources said may have been sold for more than the value listed on the 1995 disclosure form, had been in a blind trust from 1989 to 1994. Runyon said he purchased the stock in 1977 while a Ford Motor Co. executive.

Runyon declined a request to be interviewed yesterday and his statement failed to explain why the blind trust ended in 1994. Many senior public officials keep their stocks in blind trusts throughout their tenure in office.

The postmaster general said he is cooperating "fully" with the investigation and said he had "never" given any consideration to the possibility that he might personally gain from a Postal Service deal with the soft drink giant. He said he was "troubled to learn of the appearance of potential conflict."

The federal investigation is being handled by the Justice Department's public integrity section. Two postal sources said the office recently took the case before a federal grand jury in Washington, which has heard testimony from postal employees and others.

As postmaster general, the 72-year-old Runyon serves at the pleasure of the nine presidentially appointed postal governors, a panel charged with overseeing the independent federal agency. Runyon recently completed four years in office and announced he had no inten-

# Conflict of Interest - Definition

A conflict of interest is a personal interest or relationship, as defined by law or regulation, that conflicts with the faithful performance of official duty



# 18 U.S.C. 208

An employee is prohibited from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he or any person whose interests are imputed to him under this statute has a financial interest, if the particular matter will have a direct and predictable effect on that interest

# Participate Personally & Substantially

- **Participate:** decision, approval, recommendation, investigation or rendering advice
- **Personally:** directly, and includes the participation of subordinate when actually directed by Government employee
- **Substantially:** of significance to the matter

# In a “Particular Matter”

A particular matter is one that is focused upon the interests of specific persons, or a discrete and identifiable class of persons. It does not extend to broad policy options or considerations directed toward the interest of a large and diverse group of personnel.

(Hint: Can you identify who is involved?)

# Direct and Predictable Effect

**Direct:** a close causal link between any decision or action in the matter and any expected effect of the matter on the financial interest

**Predictable:** a real, as opposed to speculative possibility that the matter will affect the financial interest  
(magnitude of gain/loss is immaterial)

# Financial Interest

**Financial Interest:** Any current or contingent ownership, equity, or security interest in real or personal property or a business. Does not include future interest.

**Test:** Is there a real possibility that the Federal employee may gain or lose as a result of developments in or resolution of the matter?

# Imputed Interests

- Spouse
- Minor children
- Organization in which the employee serves as officer, etc.
- An organization with whom the employee is negotiating for employment



# Applicability

- Officers and civilians
- Enlisted personnel
- Special Government Employees
- Reserve personnel

# Resolution of a Conflict of Interest

- Disqualification (recusal)
- Regulatory exemptions
- Individual waiver
- Waiver for Special Government Employees
- Reassignment
- Change of duties
- Divestiture of the financial interest

# Regulatory Exemptions - Pooled Investments

- Diversified Mutual Funds
- Sector Mutual Funds
- Employee Benefit Plans



# Regulatory Exemptions - Securities

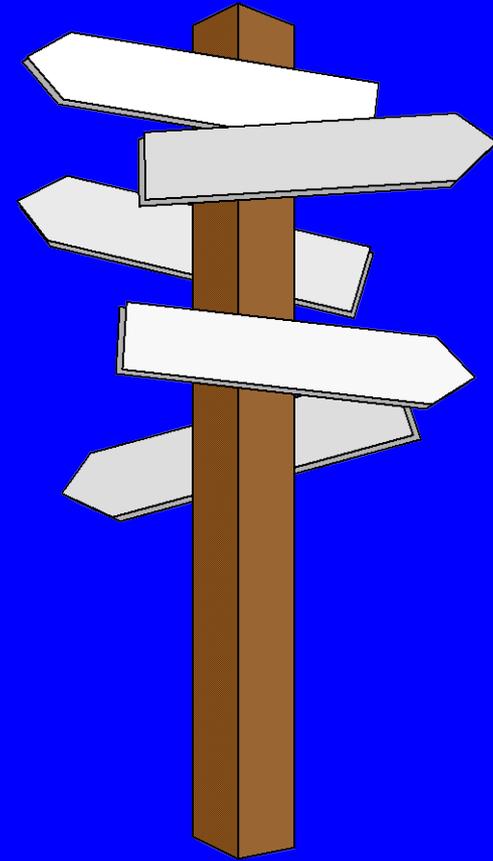
- De Minimus
- Short Term Federal Securities
- Securities Owned by  
Tax Exempt Orgs.
- General Partners



# Regulatory Exemptions

## - Miscellaneous

- Hiring Decisions
- Leave of Absence
- Multi-Campus Inst.
- Official Duties
- Commercial Discounts
- Mutual Insurance Co.
- Special Govt. Employees
- Federal Reserve Dir.
- Medical Products



# Official Duties

An employee of the Federal Supply Service Division of GSA may participate in GSA's evaluation of the feasibility of privatizing the entire Federal Supply Service, even though the employee's own position would be eliminated if the Service were privatized.

# Official Duties

The employee could not participate in the implementation of a GSA plan to create an employee-owned private corp. which would carry out FSS functions under contract with GSA, because implementing the plan would result not only in the elimination of the employee's Federal position, but also in the creation of a new position in the new corporation to which the employee would be transferred, the employee would have a disqualifying financial interest in the matter arising from other than Federal salary and benefits.

# Another View of a Conflict

- Potential impact on employee is not the only consideration.
- Two firms protested the Air Force's cancellation of solicitation for maintenance services, contending that the Air Force: (1) improperly conducted the competition; and (2) misevaluated their proposals. GAO held that the Air Force improperly cancelled the solicitation, since 14 of the agency evaluators held positions under the A-76 study and thus were subject to being contracted out, creating a conflict of interest that could not be mitigated. B-281224  
January 12, 1999

# 208 (b)(1) Waiver

Where the disqualifying financial interest in a particular matter is not so substantial as to affect the integrity of the employee's services to the Government

# Waivers - 18 U.S.C. 208(b)(1)

- Individual Waiver
- Requirements
  - Full disclosure
  - Issued in writing
  - Describe the interest, the matter, employee's role, and limitations on employee's ability to act
- Issued by official responsible for employee's appointment to his position

# Waivers - 18 U.S.C. 208 (b)(1)

- Factors:
  - The type of interest that is creating the disq.
  - The identity of the person/relationship
  - The dollar value of the disq. financial interest
  - Value in relation to individual's total assets
  - Nature & importance of employee's role
  - Need to consult with OGE when practicable
  - Waiver is publicly available

# Waivers - 18 U.S.C. 208(b)(3)

Applies to Special Government Employees  
who serve on advisory committees

# Waivers - 18 U.S.C. 208(b)(3)

- Requirements:
  - Advisory committee must be a FACA
  - Waiver issued in writing by appointing official
  - Need for individual must outweigh conflict
  - Facts must be fully described in the waiver
  - Waiver should describe limitations on e-ee
  - Waiver must be issued prior to taking action
  - Waiver may apply to present & future fin. int.

# Waiver - 18 U.S.C. 208(b)(3)

- Factors to consider:
  - Type of interest that creates disqualification
  - Identity of person whose interest is involved
  - Uniqueness of individual's qualifications
  - Dollar value of disqualifying financial interest
  - Value of the financial instrument involved
    - Need to consult with OGE when practicable
    - Waiver is publicly available

# Other Remedies

- Reassignment
- Change of duties
- Divestiture of financial interest

# Prohibited Financial Interests

- Employees shall not acquire or hold prohibited financial interests:
  - prohibited by statute
  - prohibited by agency regulation
  - prohibited by reason of agency determination of substantial conflict of interest

# Appearances (Impartiality)

## 5 C.F.R. 2635.502

- If a reasonable person with knowledge of the relevant facts
- Could question your impartiality in conducting official business
- Regarding a particular matter involving specific parties
- Where persons you know have a financial interest, are parties, or represent parties

# Appearances

## - Covered Relationships

- Members of household
- Relatives (close personal relationship)
- Persons, organizations, entities, that:
  - Have or seek some business relationship
  - Spouse, parent, or dep. child seeking employment
  - Employee served as officer, director, trustee, partner in last year
  - Employee is “active participant”

# Appearances -- “Catch-Alls”

- **Catch-all #1:** An employee who is concerned that circumstances other than those described would raise a question about his impartiality should use this process
- **Catch-all #2:** An employee whose duties affect the financial interests of a friend, relative, etc. shall comply with this process



## GSA Chief Scrutinized For Deal With Friend No-Bid Contract A Mistake, She Says

By Scott Higham and Robert O'Harrow Jr.  
Washington Post Staff Writers  
Friday, January 19, 2007; A01

The chief of the U.S. General Services Administration attempted to give a no-bid contract to a company founded and operated by a longtime friend, sidestepping federal laws and regulations, according to interviews and documents obtained by The Washington Post. Administrator Lurita Alexis Doan, a former government contractor appointed by President Bush, personally signed the deal to pay a division of her friend's public relations firm \$20,000 for a 24-page report promoting the GSA's use of minority- and woman-owned businesses, the documents show. The contract was terminated last summer after GSA lawyers and other agency officials pointed out possible procurement violations, including the failure to adequately justify the no-bid deal or have it reviewed in advance by trained procurement officers, officials said. The GSA's Office of Inspector General has launched an investigation into the episode and briefed Justice Department lawyers, according to sources who said they were not authorized to speak publicly about the ongoing investigation. Officials at the inspector general's office and the Justice Department declined to comment. In an interview Wednesday, Doan said she believed she was following proper procedures to hire the best firm available to quickly produce a report on diversity practices. "I made a mistake," Doan said. "I thought I was moving this along. I was immediately informed that I wasn't necessarily moving it along in the way that was best for it. So at which point they canceled it, life went on, no money exchanged hands, no contract exchanged hands. "I'm stunned, absolutely stunned by the amount of legs that this has taken, you know, how this has like kind of jumped up and run away with things."

# Appearances - Resolution

- Generally the same as for actual conflict situations (no regulatory exemptions) but permit participation with authorization by agency designee where employee's participation outweighs concerns over impartiality



# Agency Authorization

## 5 C.F.R 2635.502(d)

- Nature of relationship
- Effect on person's financial relationship
- Nature and importance of employee's role
- Sensitivity of the matter
- Difficulty of reassigning the matter
- Adjustments to employee's duties

# Extraordinary Payments from Former Employer

- Disqualified for 2 years
- Value is greater than \$10,000 and not part of standard benefits plan or practice
- Waiver of disqualification by agency head if amount of payment is not so substantial as to cause a question of employee's impartiality

# Getting to Yes!



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# Other Statutes - Bribery

- 18 U.S.C. 201
  - Crime to corruptly give, offer or promise anything of value directly or indirectly to a public official with intent to influence any official act or the commission of fraud.
  - Public official can include those who are not Federal employees
    - Includes enlisted personnel
    - Includes support contractors

# Other Statutes - Bribery

- Elements of the offense
  - Offender acted “corruptly” (“willfully”)
  - Offender acted with intent to influence
    - Actual or intended quid pro quo



# Other Statutes - Bribery

- Lesser included offense
  - Unlawful Gratuities (18 U.S.C. 201(c))
    - Varying degrees of same conduct
    - Primary difference between bribes and gratuities - intent to influence
    - 1989 Ethics Reform Act gave OGE authority to define exceptions
    - See U.S. v. Sun-Diamond Growers of California



**FILED**  
 NOV 28 2005  
 CLERK, U.S. DISTRICT COURT  
 SOUTHERN DISTRICT OF CALIFORNIA  
 DEPUTY

UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,	)	Criminal Case No. 05cr2137-LAB
	)	
Plaintiff,	)	<b>I N F O R M A T I O N</b>
	)	
v.	)	Title 18, U.S.C., Sec. 371 -
	)	Conspiracy to Commit Crimes against
RANDALL HAROLD CUNNINGHAM,	)	the United States; Title 26,
aka Randy "Duke" Cunningham,	)	U.S.C., Sec. 7201 - Tax Evasion
	)	
Defendant.	)	

The United States Attorney charges:

**INTRODUCTORY ALLEGATIONS**

1. At all times material to this Information, defendant RANDALL HAROLD CUNNINGHAM, aka Randy "Duke" Cunningham, was a Member of the United States House of Representatives for Congressional Districts located in San Diego County, within the Southern District of California.

2. From on or about December 3, 2001, until on or about March 8, 2004, defendant owned a condominium located at 1211 South Eads Street, Arlington, Virginia (the "Arlington Condominium").

10. At all times material to this Information, "Coconspirator No. 3" controlled a financial company located in Rosedale, New York.

11. At all times material to this Information, "Coconspirator No. 4" was the president of a mortgage company located in Greenvale, New York.

**COUNT 1 - CONSPIRACY**

12. The introductory allegations set forth in paragraphs 1 through 11 of this Information are hereby realleged as if fully set forth herein.

13. Beginning no later than the year 2000, and continuing through about June 2005, within the Southern District of California and elsewhere, defendant RANDALL HAROLD CUNNINGHAM, aka Randy "Duke" Cunningham, conspired and agreed with Coconspirator No. 1, Coconspirator No. 2, Coconspirator No. 3, Coconspirator No. 4, and others (hereinafter collectively referred as the "Coconspirators") to commit the following offenses against the United States:

a. Bribery of a Public Official, that is, defendant and his Coconspirators conspired and agreed that defendant would directly and indirectly corruptly demand, seek, receive, and accept items of value from his Coconspirators, in return for being influenced in the performance of his official acts, in violation of Title 18, United States Code, Section 201(b)(2)(A);

b. Honest Services Mail Fraud, that is, defendant and his Coconspirators conspired and agreed to devise a material scheme to defraud the United States of its right to defendant's honest services, including its right to his conscientious, loyal, faithful, disinterested, unbiased service, to be performed free of deceit, undue influence, conflict of interest, self-enrichment, self-dealing,

# Other Statutes -18 U.S.C. 203

- Prohibition Against Private Compensation for Services Before Government Agencies
  - Employees may not demand, seek, or receive compensation for any representational services:
    - In relation to a particular matter
    - In which the U.S. is a party or has a direct & substantial interest
    - Exceptions: SGEs, family members/estates, retired officers, testimony under oath

# Other Statutes- 18 U.S.C. 205

- Prohibition Against Representing Others in Claims Against and in Other Matters Affecting the United States
  - Includes virtually any matter
  - Exceptions
    - SGEs
    - Federal personnel matters
    - Fiduciaries of family members or estates
    - Testimony under oath
    - Retired officers
    - Certain employee non-profit organizations

# Other Statutes - 18 U.S.C. 207

- Post-Government Employment Restrictions



# 18 U.S.C. 209

- Employees may not receive supplementation of salary from a source other than the Government.
  - Concern: Multiple masters causes divided loyalty.
  - Dollar-a-year employees
  - Recurring issue: Payments to new employees by former private employers

# Other Statutes - 41 U.S.C. 423

- The Procurement Integrity Act
  - If an agency official ... participating personally and substantially in a ... procurement for a contract in excess or the simplified acquisition threshold contacts or is contacted by ... a bidder or offeror ... regarding possible non-Federal employment, the official shall:
    - Report the contact in writing
    - Reject possibility of employment
    - Disqualify himself from further participation

# Other Statutes - 41 U.S.C. 423

- The Procurement Integrity Act (cont'd)
  - If a Federal official intends to make a contact, he must submit written notice of disqualification to:
    - HCA
    - Source Selection Authority
    - Contracting Officer

# Miscellaneous Provisions

- Nepotism - 5 USC 3110
- Assignment of Reserves - JER 5-408
- Commercial Dealings - JER 5-409
- Civil Office Prohibition - JER 5-407
- Multiple Positions - JER 5-405
- Contracts with DoD Employees - JER 5-402



# Assignment of Reservist

- Don't assign to duties where they will have access to information that could give unfair advantage to private employer
- Screen Reservists to ensure no actual or apparent conflict exists
- Reservist has an affirmative duty to disclose any likely conflict

JER 5-408

# Helpful Hints

- How to identify a conflict of interest
  - Financial Disclosure Reports
  - Training (briefings for procurement boards)
  - Frequent interaction with supervisors
  - Know your client

# THE END

DILBERT SCOTT ADAMS

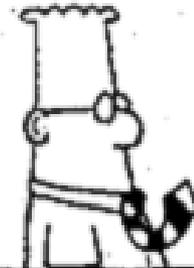
THIS CONCLUDES MY PRESENTATION. ARE THERE ANY QUESTIONS?



HOW DO I GET THE BOREDOM OUT OF MY HEAD?!!



THE FUNNY THING IS THAT I'LL LIST THIS ON MY ANNUAL ACCOMPLISHMENTS.



AIR!  
I NEED AIR!!!