

The Gary McDuff Innocence Project

INTRODUCTION

Pettifoggers AUSA Shipchandler and DOE Counsels Jessica Magee and Janie Frank conspired and confederated to produce a penny dreadful.

Ninth Circuit Federal Judge Alex Kozinski states, "[it] is an open secret long shared by prosecutors, defense lawyers and judges that perjury is widespread among law enforcement officers." Stuart Taylor, Jr., *For the Record*, Am. Law., Oct 1995, at 72. This perjury phenomenon permeated every aspect of McDuff's trial; it's testimony, post-trial statements by prosecutors, and McDuff's follow-on proceeding. This problem system-wide is, generally speaking, an open secret. See Andrew J McClung, *Good Cop, Bad Cop: Using Cognitive Dissonance Theory to Reduce Police Lying*, *J2 U. L. Davis L. Rev.* 389, 405 (1999).

The following seeks to expose and reverse their unconscionable conduct.

For more than half a century, the Supreme Court has sought to put into practice, in its admonitions of prosecutors, the platitudes that adorn the halls of the Department of Justice. The court admonished that the principal in prosecutions "is not that it shall win a case, but that justice shall be done." *Berger v. United States*, 295 U.S. 78,88 (193 5); that admonition was reiterated again 64 years later by the Supreme Court in *Strickler v. Green*, 527 U.S. 263, 281 (1999).

Fifth Circuit Chief Judge Martin voiced his concerns; "What if Uncle Sam sues you, charges you with a criminal violation, even gets an indictment, and proceeds, but they are wrong. They are not just wrong, they are willfully and frivolously wrong. They keep information from you that the law says must be disclosed. They hide information. They do not disclose exculpatory information to which you are entitled. They suborn perjury." (As stated by Chief Judge Martin in *United States v. Hoffman, et al*, 2012 U.S. App. LEXIS 7050 April 2, 2012 (5th Cir. case No. 09-12129 Dissent).

What the government did was hide all its own lies and fabricate McDuff's alleged lies. The government's penny dreadful is a chronicle of slip-shod prosecution, infused with government perjury, deceptive sleight of hand, all typical quills in a pettifogger's quiver.

[The government withheld some 8,000 pages of *Brady*, *Giglio*, and *Jencks* materials from McDuff that were discovered when the Discovery (SEC investigative file) was delivered in a follow-on proceeding on and after a June 15, 2016 hearing.]

BACKGROUND

In 2004, Bradley Stark, convicted conman and fraudster, of Riverside, California, used his company (Sardaukar Holdings) to promote an insured investment program. In reality, there was no insurance protecting investors' money, nor was any of the investment activity taking place as represented. Instead, Stark operated Sardaukar as a Ponzi-scheme and defrauded his investors.

The largest investor in Sardaukar was the Dallas, Texas-based Megafund Corporation owned by Stanley Leitner.

Stark obtained Megafund money the brokerage services of an unregistered middleman by the name of James Rumpf, a confidential government informant, and his companies, Cilak International and CIG, Ltd. Rumpf used those two companies to raise money from investors' money which was forwarded to Stark after deducting his share of it. Rumpf never disclosed to Leitner the identity of Stark, his secret trader. On information and belief, after discovering Stark's fraud from Rumpf, the government allowed Americans to lose millions of dollars to pursue a personal vendetta.

SEC regulators were alerted to Stark's suspicious activity and in 2004 tied Stark to Rumpf as business associates. The money-trail led to Megafund as the source that was supplying Rumpf and ultimately Stark with investors' funds.

By April 2005, Megafund had raised approximately \$14 million from investors. Megafund representatives never disclosed the identity of James Rumpf or his companies to the Megafund investors. Of the \$14 million, Leitner retained \$3 million for Megafund and invested \$11 million with Rumpf. (The government never disclosed this until investors lost millions)

In June 2005, the SEC, FBI, and IRS enforcement division agents seized the business records of Sardaukar, Cilak/CIG, and the Megafund. The SEC filed a civil complaint against Stark, Rumpf, Leitner, and their respective companies. The SEC asked the court to appoint a Receiver over the estates of those companies to identify, preserve, and recover any assets derived from their unlawful operation of a ponzi scheme.

The court appointed Receiver (Michael Quilling) discovered that \$9.6 million of the \$14 million raised by Megafond had come from the Lancorp Group owned by Gary Lancaster. The Lancorp Group was based in Portland, Oregon.

Lancaster was the sole owner of the Lancorp Financial Group and the Lancorp Financial Fund. Lancaster was a seasoned professional with over thirty years of experience in financial services and private banking. In 2003, Lancaster accepted venture-capital money from a London-based, investment banker by the name of Terence de'Ath to form the Lancorp Financial Fund Business Trust. It was

formed in compliance with the U.S. securities laws as a Reg D Private Placement. Mr. de'Ath advanced the venture-capital money from his company - Secured Clearing Corporation - to Mr. Lancaster's company - Lancorp Financial Group, LLC. The agreement between de'Ath and Lancaster was that repayment of the venture-capital to Mr. de'Ath would be derived from profit participation in profits generated by Lancorp Group from the use of Lancorp Fund money.

According to the Lancorp Fund Private Placement Memorandum, Lancaster was required to use the money to invest in specified ways, directly or indirectly, through third parties who complied with the use of proceeds defined in the Lancorp Fund (PPM) documents filed with the SEC on May 27, 2003.

From March 17, 2003, to January 31, 2005, Lancaster operated the Lancorp Fund in accordance with the PPM and on April 5, 2004, an amendment removing the insurance policy element option and replacing it with a bank obligation that assured a specified value of any securities purchased using Lancorp Fund money was mailed to all investors.

After receiving written confirmation from Megafund's attorney that any money invested with Megafund would be protected against loss and used in accordance with the permitted use of funds listed in the Lancorp Fund trust documents, Mr. Lancaster placed \$9.3 million with Megafund in February 2005.

By June of 2005, Megafund had paid the Lancorp Group two profit payments as it contracted to do. However, the May profit payment was never paid, and Megafund did not return the \$9.3 million to Lancorp before the SEC closed down Megafund, Cilak/CIG and Sardaukar and filed a civil complaint against those entities and their owners.

As of June 2005, the facts show:

- 1) Bradley Stark (owner of Sardaukar) did business directly with James Rumpf (owner of Cilak and CIG). Stark knew of, but had no directly dealings or communications with, Stanley Leitner (owner of Megafund), or Gary Lancaster (Owner of Lancorp Group and Lancorp Fund).
- 2) James Rumpf did business directly with Stanley Leitner. Rumpf knew of, but had no direct dealings or communications with, Gary Lancaster.
- 3) Stanley Leitner did business directly with Gary Lancaster. Leitner did not know of, nor did he have any direct dealings or communications with, Bradley Stark until after the SEC intervention in June/July 2005. Once in contact with Stark, Leitner's dealings with him consisted of efforts to recover the Megafund money Rumpf had placed with Stark.

- 4) Gary Lancaster did business directly with Stanley Leitner only. Lancaster did not know of, nor did he have any direct dealings or communications with, James Rumpf or Bradley Stark.

Summary of Business relationships of the companies and their owners as of June 2005:

Stark - knew and dealt with Rumpf.
Stark - was aware of, but did not deal with Leitner or Lancaster.

Rumpf - dealt with Stark and Leitner.
Rumpf - was aware of, but did not deal with Lancaster.

Leitner - dealt with Rumpf and Lancaster.
Leitner - was not aware of, nor did he deal with, Stark.

Lancaster - dealt with Leitner only.
Lancaster - was not aware of, nor did he deal with, Stark or Rumpf.

The evidence establishes that ownership and control of those entities was as follows:

Sardaukar Holdings: 100% owned and controlled by John and Bradley Stark.

Cilak International & CIG, Ltd.: 100% owned and controlled by James Rumpf.

Megafund Corporation: 100% owned and controlled by Stanley Leitner.

Lancorp Financial Group & Lancorp Financial Fund Business Trust: 100% owned and controlled by Gary Lancaster.

Gary McDuff was not an owner, officer, employee, representative, or a control person for any of those companies, nor did he possess any investor funds or control any accounts where they were held.

Gary McDuff and his father, mother, and two uncles knew Leitner from January 2005 through May 2005 as investors in his Megafund. They were not aware of Stark or Rumpf.

Facts relevant to McDuff are as follows:

Gary McDuff knew Gary Lancaster. He met him in 2001, when Lancaster was employed in the private client division of U.S. Bank's trust department in La Jolla, California. McDuff was employed by de'Ath's Secured Clearing Corporation. Lancaster had credentials, 30 years experience, and a reputation as a conservative banker who held all the major securities licenses. Mr. de'Ath participated in financial syndications of fixed income debt products. Lancaster traveled to London and accepted de'Ath's offer of venture-capital to form and own an investment fund. McDuff was instructed by de'Ath and Secured Clearing Corp (McDuff's employer) to supply Lancaster with whatever money was needed to cover formation and operational costs until the Fund (Lancorp Financial Fund) had sufficient earnings to pay its own expenses. The Lancorp Fund was completed on March 17, 2003, and Mr. de'Ath assigned McDuff to other, unrelated projects for Secured Clearing Corporation.

Lancaster participated with Mr. de'Ath in a Citibank/Tricom securities transaction from April 2004 through December 2004. That investment met the PPM protocols and no investor lost money. Lancaster began looking for another place to invest the Lancorp Fund money at the conclusion of the Citibank/Tricom investment in December 2004.

In December 2004, Rev. John McDuff met Stanley Leitner. In that meeting, Rev. McDuff learned of Leitner's Megafund and asked if he could instruct the custodian of his IRA investment to place his money in the Megafund. Leitner suggested having the custodian/manager of Rev. McDuff's IRA money contact Leitner. Rev. McDuff's IRA was in Lancorp Fund. Lancaster and Leitner negotiated a management contract for the Lancorp money.

Gary Lynn McDuff was charged on August 13, 2009, with a conspiracy to commit wire fraud (Count 1), and promotional money laundering (Count 2).

On March 26, 2013, McDuff went to trial. McDuff was convicted by a general verdict after only six minutes of deliberation. McDuff was not represented by counsel, and McDuff declined to represent himself. Required *Brady, Jenks* and *Giglio* material was withheld by the government. Virtually all exculpatory evidence in the possession of the government was withheld by the government. He was offered an appointed defense attorney who admitted (pre-trial) never taking a case to trial and winning or winning on appeal. This resulted in McDuff presenting no defense at trial.

Because of the government's violation of its *Brady, Jenks*, and *Giglio* obligation, McDuff was wrongfully convicted. The conduct of the government was so egregious in McDuff's case that it shocks the conscious. Government witnesses gave perjured testimony at the AUSA's insistence. Their suborned perjury resulted in McDuff's conviction.

The incidents of perjury are methodical and repetitive throughout the trial: So protective was the government of the evidence of McDuff's innocence, that it was not all released to McDuff until 2016, post trial and appeal.

For example:

1) The government alleged that the owner of the Lancorp Fund did not have any securities licenses. FINRA-NASD-SEC official records show Lancaster held a series 6, 7, 63, and 65 license at all times in question. A government attorney lied about this at McDuff's criminal trial under oath.

2) The government alleged that Lancorp was not filed or registered with the SEC. Lancorp was registered with the Securities and Exchange Commission (FORM D filed on May 27, 2003). A government attorney lied about this at McDuff's criminal trial under oath.

3) The government alleged that Lancorp Fund provided insurance policy protection for investors to protect against loss. Before any investor's money was removed from escrow, Lancaster informed investors (in writing) that the insurance policy protection was no longer being offered. The government lied about the insurance declaration. Investors were given a choice to withdraw their money or agree (in writing) to remain invested without insurance. Government witnesses lied about this at McDuff's criminal trial under oath.

4) The government asserted McDuff controlled the Lancorp Fund. Documents reveal (Deposition of Lancaster) that Lancaster told investigators, SEC attorneys and Quilling (SEC Receiver) in 2005 and 2006 that McDuff did not control the Fund, its money, or its investment decisions. The government suborned and committed perjury (knowingly false testimony by government attorneys and agents) subverting the very foundation of our judicial system.

The evidence discovered post-trial, which establishes both proof of the perjury and the subornation of perjury, is contained in the filings by Mr. McDuff, which can be viewed online by [clicking here](#).