

Unaddressed conflicts of interest link to 9-11
The elephant in the living room - Part I

Grand Juries in New York and Washington Expose Major Ashcroft Conflicts of Interest

Cheney's Task Force Met with Targets of Grand Jury Probes—Cheney Connected to Investigations—Served on Kazakh State Oil Board When Reported Bribes Took Place

By Michael C. Ruppert

March 26, 2002, 10:00 AM PST (FTW)—Attorney General John Ashcroft's prompt and public recusal from the Enron investigation because of a conflict of interest arising from Enron's donations to his 2000 Senate race has not been matched by a similar recusal in the case of federal grand juries in New York and Washington investigating two additional Ashcroft donors, ExxonMobil and BP Amoco. This, even though ExxonMobil gave more money to Ashcroft's campaign than Enron did.

A source familiar with the grand jury investigations, who spoke on condition of anonymity, told FTW that both grand juries are still active and that Ashcroft has quietly moved—in the wake of last December's departure of Southern New York's U.S. Attorney, Mary Jo White—to exert control over the New York grand jury from Washington and to exercise “unusual” influence over the Washington investigations. FTW has also received multiple reports that several high-ranking career prosecutors in both New York and Washington have raised serious objections to Ashcroft's actions and his failure to publicly recuse himself in these cases.

Channing Phillips, speaking for the U.S. Attorney's office in Washington, D.C. told FTW, “I checked with [Assistant U.S. Attorney] Wendy Wysong and she confirmed that the investigation is still ongoing. There are three aspects to these investigations: one in New York, one in Washington [at the U.S. Attorney's office] and one at main Justice [DoJ headquarters]. If the Attorney General had recused himself, we would know about it, and we are not aware of any such development.”

Marvin Smilon, a spokesman for the U.S. Attorney's office in New York told FTW, “The department has a firm policy where we can't comment on grand jury investigations.”

While federal rules of criminal procedure specifically prohibit the disclosure of the investigative activities of grand juries, they do not prohibit government officials from discussing matters of public interest concerning the progress or existence of grand juries, especially in cases where potential conflicts of interest arise. As a number of attorneys contacted for this story indicated that there are times when a justice department official would have a need, or even a duty, to inform the public of issues which indicate that the government is protecting the public interest.

Similar moves by Ashcroft, which deviate from established procedures, have occurred since Sept. 11, 2001. An Oct. 11, 2001 New York Times story by Benjamin Weiser and William Rashbaum was headlined, “Justice Dept. Takeover of Terror Prosecutions Frustrates U.S. Attorney.” Its lead sentence stated, “The decision to shift authority over potential criminal prosecutions stemming from the Sept. 11 terror attacks from New York to Washington has upset and frustrated law enforcement officials who have investigated Osama bin Laden for nearly a decade.” White’s authority, in spite of eight years of successful terror prosecutions, was thus transferred to Washington, in spite of the fact that her office had coordinated a Joint Terrorist Task Force, “that had won convictions of more than two dozen terrorists in five major trials.” Her office had also secured the cooperation of two former bin Laden aides and already had 15 of the 22 most wanted terror suspects, as identified by the White House on Oct. 10, under indictment.

Ashcroft’s decision in this case had an impact on the grand jury process. According to the Times, “Officials in Washington have not said where grand juries investigating the attacks will sit, or where the indictments may eventually be brought.” White, a Clinton appointee, resigned as U.S. Attorney in New York in December and has not responded to a request for an interview for this story.

The Allegations

The two grand juries have been investigating allegations that ExxonMobil, the world’s largest corporation, and BP Amoco paid cash bribes to the president of Kazakhstan, Nursultan Nazarbayev, and his oil minister, Nurlan Balgymbayev, and that Mobil engaged in an illegal oil swap of Kazakh oil through Iran in 1997. Vice President Dick Cheney’s energy task force—now the center of a constitutional battle over the release of its records—was meeting representatives of both companies after the grand juries had been empanelled as a result of information received from a Middle Eastern source in 1997 and inquiries from Swiss banks in 1999. The fact that these known targets of criminal investigations had access to the vice president’s energy task force would be comparable to having allowed Manuel Noriega, while under indictment for drug smuggling, to consult in the war on drugs.

At issue is a 25 percent stake purchased by Mobil in Kazakhstan’s Tengiz oil field, following an earlier purchase of 50 percent by Chevron and an apparently desperate attempt a year later to start making money from the fields by engaging in an illegal swap with Iran as a means of getting the Tengiz oil to market. Until Sept. 11, there was only one obstacle preventing the oil companies and their related industries from building the necessary pipelines, immune from Russian influence, which would have turned the Central Asian oil into dollars—the Taliban.

American companies with unrequited heavy investments in the region’s oil fields included ExxonMobil, ChevronTexaco, BP Amoco, Phillips, Total/Fina/ELF, Unocal, Halliburton and Enron. Enron’s investment alone, as reported by the Albion Monitor, exceeded \$3 billion in a power generating station in Dabhol, India that was floundering in red ink because Enron could not access inexpensive natural gas via a proposed trans-Afghani pipeline from Tajikistan. Enron

also had contracts to conduct feasibility studies for the construction of pipelines throughout the region.

ExxonMobil's role in the bribery and illegal oil swap, as well as the ensuing federal investigations, was comprehensively documented in a July 2001 New Yorker article entitled "The Price of Oil" by the venerable Seymour Hersh. Allegations being investigated by the New York grand jury involve felony violations (bribery) of the Foreign Corrupt Practices Act. The Washington, D.C. grand jury is investigating evidence that links Mobil to an illegal 1997 swap of Kazakh oil through Iran, which would constitute a felony violation of the 1996 Iran Trade Sanctions Act.

Possible penalties in the event of criminal convictions include "disgorgement" of any assets obtained as a result of the criminal actions. That would mean that two of the largest oil companies in the U.S. could lose billions of dollars in cash already paid into the region over a decade and forfeit their rights to profits from selling oil produced there. This possible outcome was surely not lost on Dick Cheney's energy task force which concluded its work last May.

An intransigent President Bush announced on March 13 that he would not release records revealing who the task force met with or what was discussed, in spite of a Feb. 27 court order signed by District Court Judge Gladys Kessler directing the Department of Energy to release the records.

However, it is clear that Kazakhstan-related issues were discussed behind Cheney's closed doors. In an analysis of the final report of the vice president's energy task force, released in May 2001, The Washington Times, on July 20, 2001 wrote, "While saying private investors must lead the way, the Cheney report devotes considerable time to the Kazakh market, urging U.S. government agencies to 'deepen their commercial dialogue' with Kazakhstan."

What is unknown at this moment is whether Ashcroft attended any meetings with the task force, or whether he discussed the status of the grand jury investigations while doing so.

Ashcroft's Biggest Conflict

ExxonMobil was the single largest oil and gas contributor to Ashcroft's 2000 Senate race, donating \$11,650—\$4,140 more than Enron—as disclosed by documents obtained from the Center for Responsive Politics. Other oil industry donors to Ashcroft's campaign which are heavily invested in Kazakhstan, or which represent firms that are, include Chevron (\$7,500), Enron (\$7,499), The Independent Petroleum Association of America (\$5,000), BP Amoco (\$4,000) and Halliburton (\$3,500).

Thus, the total reported corporate donations to Ashcroft's campaign, from firms with known vested interests in opening Kazakh oil fields, totals \$39,149. Taken together, these contributions (which exclude soft money donations reported only to the Republican Senatorial Committee) would rank these contributions second-only to Enterprise Rent-a-Car as Ashcroft's biggest 2000 contributor.

Within days of being publicly questioned by California Rep. Henry Waxman, (D), Ashcroft held a public press conference announcing that he would recuse himself from any part of the Enron investigations being conducted by the Justice Department. It now becomes both a fair and a glaringly obvious question as to why he has not done so with respect to the grand juries.

Some six months after the 9-11 attacks, and with a wealth of stories documenting oil interests in the region, the grand juries could expose the motives behind U.S. government July 2001 warnings to the Taliban, well documented in a number of European papers, “we will either bury you in a carpet of gold or we will bury you in a carpet of bombs starting in Oct. [2001].”

After repeated requests for comment about whether Ashcroft had recused himself from these investigations, Dana Perino, a spokeswoman for the Department of Justice and Ashcroft told FTW, “We cannot comment or discuss anything about whether there even is a grand jury, so we are not going to answer any questions or make any comment.” When advised by this writer that federal rules of criminal procedure did not prevent the attorney general from disclosing the status of the grand jury or his potential conflict of interest, Perino stated, “This is what my management told me to say. I’ll take your comment back to them one more time and call you back if they say anything else.”

As of press time no additional calls had been received.

The Tiger in the Task Force

A March 1, New York Times story by Don Van Natta reported, “ExxonMobil, the second-largest energy donor in the Republican Party, confirmed today that its executives met with Mr. Cheney. It was among the handful of companies that had declined to comment earlier this week about whether its executives had met with Mr. Cheney or members of the task force, although it did say that its interests were represented by the American Petroleum Institute, a trade council.

“In an interview today, company officials confirmed that ExxonMobil chief executive, Lee Raymond, met with Mr. Cheney for 30 minutes on Feb. 8, 2001. ExxonMobil officials also met with task force staff members for 45 minutes on Feb. 14 and made a presentation about future energy supply and demand, the company disclosed. The company said that on the same day, executives made a similar presentation to the General Accounting Office and to staff members of both political parties on the House and Senate Energy Committees. “

A Dec. 17, 2000 story by David Johnston of the New York Times stating that none of the companies connected to the alleged bribery (including ExxonMobil, BP Amoco and Phillips Petroleum) appeared to be focuses of the New York grand jury has been flatly contradicted by Hersh, who reported extensive negotiations and payments by Mobil in 1995-96 after direct negotiations between Mobil and Kazakh President Nazarbayev. In fact, Hersh investigated the suspicious activities of now retired Mobil Vice President Bryan Williams and intelligence-connected American businessman James Giffen, both of whom have been directly tied to the bribery and the Iranian oil swap. Giffen has been reported in a number of stories to be Nazarbayev’s “gatekeeper” for anyone wishing to do business in Kazakhstan. Hersh documented direct payments to Giffen’s company, the Mercator Corporation, from Mobil.

Additionally, Hersh wrote, “Mobil participants in the Tengiz negotiations worried constantly about the possibility of payments going astray. [Mobil exec] Don Voelte told me that the company was concerned that the purchase payments it was sending the Kazakh government via Swiss banks might be diverted for personal use by the Kazakh leaders.”

The Hersh piece makes it clear that Mobil’s involvement in the bribery and the Iranian oil swap was much deeper and more involved than this disingenuous statement suggests.

“Kazakhstan. [has] become notorious for exploitation, corruption and seemingly bottomless fields of oil whose bounty seldom benefits the average citizen.”

“The country has not prospered under [President Nursultan] Nazarbayev [‘s] rule. Social conditions have deteriorated steadily; per capita GNP is just \$1,300 dollars a year,” Hersh wrote. “A fifth of the country’s total money supply is now stashed in Swiss banks.”

“A Mobil employee who took part in [Mobil’s negotiations with Kazakhstan] in Nassau said that the Kazakhs made a series of extraordinary demands, seeking among other things, a new Gulfstream jet aircraft for Nazarbayev, funds for tennis courts at his home, and four trucks with Satellite dishes to be used by his daughter’s televisions network.”

In a July 5, 2001 article posted by the International Eurasian Institute for Economic and Political Research, the Kazakhstan 21st Century Foundation reported, “Nazarbayev is so worried about the investigations, which he considers politically motivated, that he got his puppet parliament to pass a law granting him lifetime immunity from any legal liability stemming from his actions in office, and another law that appears to legalize money laundering.”

What is clear, according to Hersh and other sources, is that as much as half of the \$1 billion paid by Mobil never made it into the Kazakh treasury.

BP-Amoco Exposed

The oil giant formed by the Dec. 1998 merger of British Petroleum and Amoco was made even larger by the April 1999 merger of BP-Amoco with the American oil giant, Arco. It too is at least a target of the investigations into Kazakh dirty dealings. Johnston’s New York Times story discussed the Department of Justice’s criminal investigations:

“According to a formal request filed under a treaty between the United States and Switzerland, the Justice Department says that on March 19, 1997, Amoco Kazakhstan Petroleum, one of the companies involved in the big offshore project in the Caspian Sea, transferred \$61 million from Banker’s Trust in New York in two payments to account 1215320 at Credit Agricole Indosuez, a bank in Geneva. (The Amoco unit is now part of BP).

“Three days later, the document says, Mr. Giffen and Kazakh officials began a series of what the United States government says were illegal transfers from the Kazakh treasury accounts into private accounts benefiting several Kazakh leaders.”

Johnston's account went on to describe how money was transferred out of these accounts into accounts that "benefited" Giffen and were allegedly used to disburse money into private accounts held or controlled by either Nazarbayev or Balgymbayev, his oil minister. By the time Hersh wrote his story, almost seven months later, the known total amount of payments from ExxonMobil and other companies exceeded \$1 billion, and documentation was beginning to show that much of it had been diverted into the private pockets of Kazakh public officials.

In a March 1 story, New York Times writers Don Van Natta, Jr. and Neela Banerjee reported on 18 corporations that were heavy Republican donors which got in to Cheney's task force. "The companies include the Enron Corporation, the Southern Company, the Exelon Corporation, BP, the TXU Corporation, FirstEnergy, and Andarko Petroleum."

Oil: A National Security Interest

The impending economic crash for the U.S. oil industry, and all of its downstream economic vassals, reached a crisis between 1996 and 2001 as the intransigence of the Taliban threatened to create an implosion within an industry that owned oil but could not get it to market. The crisis was so severe that the National Security Council (NSC) got involved. Oil had become a national security matter of the highest priority.

Both the Washington Post and the New York Daily News (as reported by the Albion Monitor on Feb. 28) obtained a series of emails showing that the NSC led a "Dabhol Working Group" composed of officials from various cabinet departments during the summer of 2001. The Working Group prepared 'talking points' for both Cheney and Bush."

Hersh, in "The Price of Oil," also documented a series of 1996 NSC meetings and discussions about Mobil's pending illegal oil swap. Although his reporting indicates that Giffen and Mobil VP Bryan Williams, who met with NSC staff, were warned that such a swap was illegal, and that the NSC sent warnings to other Mobil executives, the swap went ahead anyway. This, after Hersh quoted a government official as saying that Giffen had said that Mobil was smart and that it would do it through a European trader.

"We must come to recognition, personally and culturally, that corruption is not just a violation of the law, not just an economic disadvantage, and not merely a political problem, but that it is morally wrong.. It is now widely recognized that the consequences of corruption can be devastating: devastating to economies, devastating to the poor, devastating to the legitimacy and stability of government and devastating to the moral fabric of society."—John Ashcroft, The Hague, May 2001

Thanks to the Kazakhstan 21st Century Foundation for publishing the above quote.

Joe Taglieri, FTW Staff, contributed to this story.

COMING IN PART II - During the years when these alleged crimes took place, Vice President Dick Cheney, then the CEO of oil services giant Halliburton, was a sitting member of the Kazakh government's oil advisory board. What did Cheney know? When did he know it?

SIDEBAR—Federal grand jury rules, procedure

By Joe Taglieri, FTW staff

March 26, 2002, 10:00 AM PST (FTW)—The oft-maligned federal grand jury system dates back to feudal England and was incorporated by the founding fathers into the Fourth and Fifth amendments to the U.S. Constitution. Today, the grand jury is the first step in all federal criminal proceedings.

The grand jury's main function "is to review the evidence presented by the prosecutor and determine whether there is probable cause to return an indictment," according to the American Bar Association. Indictments are made on the basis of "probable cause," which basically means the grand jury is there to determine that the charges against a "target" are valid.

Ostensibly, the grand jury serves as a check on the prosecutor's power to file charges, but some in the legal profession claim that today, grand juries have "become captive to the unrestrained power of prosecutors," says the National Association of Criminal Defense Lawyers (NACDL).

"There's a saying that goes, 'you can get a grand jury to indict a ham sandwich,'" Washington, D.C.-based attorney John Clarke told FTW in a phone interview. "That saying is a reflection of the prosecutor's power, should he or she decide to exercise it. And there are various ways to abuse that power. Federal prosecutors don't always tell the jurors what their options are and dismiss them."

The Department of Justice would not return calls for comment on criticism of the grand jury system.

Grand juries, which conduct their proceedings in secret, are comprised of 14 to 23 people, who reside in the court district where the case in question was filed. Jurors' names and addresses primarily come from national voter rolls, motor vehicle license lists, and public utilities lists. There is no "juror selection" process. Federal grand jurors are not screened for biases relating to the case in question.

"Rule 6(e) of the Federal Rules of Criminal Procedure provides that the prosecutor, grand jurors, and the grand jury stenographer are prohibited from disclosing what happened before the grand jury, unless ordered to do so in a judicial proceeding," states the American Bar Association. "Secrecy was originally designed to protect the grand jurors from improper pressures. The modern justifications are to prevent the escape of people whose indictment may be contemplated, to ensure that the grand jury is free to deliberate without outside pressure, to prevent subornation of perjury or witness tampering prior to a subsequent trial, to encourage people with information

about a crime to speak freely, and to protect the innocent accused from disclosure of the fact that he or she was under investigation.”

Witnesses are the only participants in a grand jury proceeding who are allowed to disclose whatever they wish to whoever they wish, says the Bar Association. When a witness testifies before the grand jury, however, he or she is not permitted to have his or her lawyer present inside the jury room.

Juries usually sit for a month. But in special situations, such as those involving in-depth law enforcement investigations, “long term” grand juries can sit anywhere from six months to three years. In more complicated cases an expired grand jury can be immediately renewed for another term.

Other grand jury participants usually referred to as “targets,” may, at the end of a jury’s investigation, be labeled an “unindicted co-conspirator.” This happens if “the grand jury does not have enough information to indict someone but either knows of their identities and suspects they were involved in the conspiracy, or, does not know them specifically, but knows others had to be involved in the conspiracy,” said University of Dayton law professor Susan Brenner. “For example, in a large scale drug operation the grand jury may not know the specific identities of all the peripheral participants, but knows they were involved.”

A grand jury may also choose not to indict someone if, after returning one or more indictments, it is still investigating criminal activity involving the charged indictment, Brenner said. “If someone finds out they are the subject or target of a grand jury investigation through an indictment, they may flee the country, or try to influence witnesses, or otherwise obstruct justice,” said Brenner.

A grand jury also might not want to indict someone at the time of inquest but may want make clear an individual’s involvement in its investigation. “As with speculation, perhaps, that President Nixon was not indicted in Watergate because the grand jury and prosecutors might have thought it not a good idea, for various reasons, to indict a sitting President,” said Brenner.

Sometimes, indictments are kept sealed. A federal judge makes this decision, typically to prevent flight by one of the named parties or to protect an ongoing investigation.

The only people allowed inside the grand jury room during proceedings are jurors, prosecutors, one witness at a time, and a court stenographer. Judges play no role other than to rule on motions to quash grand jury subpoenas and decide on whether to seal an indictment.

Grand juries are supervised primarily by the U.S. attorneys assigned to prosecute a case in a given federal court district. The attorney general can by law intercede, and even appoint him or herself prosecutor, according to Brenner, but this is a rare occurrence. “It would be unusual because that is not what the attorney general does,” she said. “The attorney general is an administrative officer. He or she runs the Department of Justice, setting policy, seeing that things get done, dealing with contingencies like 9-11.

“It would seem odd for the AG, who has so much else to deal with on a meta-scale, to handle a specific investigation, which is, in a sense, on the micro-scale,” Brenner continued. “As an analogy, it would be odd, would it not, for the president of Ford Motor Co. to go handle the assembly of an SUV on the line? The president of Ford certainly is qualified and legally enabled to do that, but why?”

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