

ALERT

FRAUD

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Clinton Administration Continues to Target Fraud at Financial Institutions

In November, Gerald M. Stern was sworn in as the Department of Justice's Special Counsel for Financial Institution Fraud. Stern is the second person to hold the job created by Congress in 1990. Stern comes to the post following his retirement in 1992 from Occidental Petroleum Corp., in Los Angeles, where he was senior general counsel. During his career he was also a trial attorney in the Civil Rights Division of the Justice Department and spent 17 years in private practice in Washington.

Fraud Alert recently discussed with Stern his new job as President Clinton's chief prosecutor of financial fraud.

Fraud Alert: Would you explain your role as Special Counsel for Financial Institution Fraud?

Stern: As I see it, I have three principal responsibilities as special counsel. First, to ensure that Financial Institutions Fraud (FIF) resources are adequate. Second, to supervise and coordinate investigations and prosecutions of financial crimes. Third, to ensure that full use is made of federal laws on civil enforcement, asset forfeiture, money laundering and racketeering to recover money.

To determine the adequacy of FIF resources, and to evaluate other aspects of the FIF effort, the Department of Justice recently sent questionnaires to the 93 U.S. Attorneys and the 56 FBI Special Agents-in-Charge of the FBI's field offices. In part the questionnaires are designed to collect data to help me evaluate the adequacy of FIF resources and whether any redistribution of those resources is warranted.

Fraud Alert: Will bankers notice any differences in the approach to bank fraud taken by the Clinton Administration compared to the Bush Administration?

Stern: The prosecution of bank fraud is a major

priority for this administration, as it was for the previous administration. I don't anticipate any differences.

Fraud Alert: Will the prosecution of fraud cases resulting from bank failures continue to grow or has it crested?

Stern: Not surprisingly, there has been an increase in FIF investigations and prosecutions since the increases in investigative and prosecutive resources provided by FIRREA [the Financial Institutions Reform, Recovery, and Enforcement Act of 1989] and the Crime Control Act of 1990. We have not seen signs that there will be any significant decrease of FIF cases in the immediate future, although the number of financial institution failures under investigation has shown a decrease in recent months. So I cannot say that it has crested. But it is worth noting that prosecutions of notorious S&L figures, like Charles Keating, Don Dixon, Ed McBirney and David Paul may have crested; many such individuals have become residents of federal prisons since the government's FIF enforcement effort got under way in earnest in the late 1980s.

Fraud Alert: Will there be a change in the number of prosecutors and investigators working on fraud cases resulting from bank failures?

Stern: There may be a shift in resources from one locale to another due to changes in FIF inventory since the original allocation of FIF resources. But until the FIF questionnaires have been reviewed, we cannot determine whether such a shift, or some other change in FIF resources, should be made.

Fraud Alert: What changes can bankers expect to see in the prosecution of fraud at open banks?

Stern: We have no current plans for change, but I would be pleased to hear from the banking community any suggestions they may have. We will, of course, continue to concentrate on prosecuting major cases,

Continued on page 2

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Continued from page 1

seeking terms of imprisonment in such cases and endeavoring to recover losses resulting from fraud.

Fraud Alert: What efforts are under way to improve the collection of court-ordered restitution?

Stern: This is an area where I would like to see improvement. In December, I attended a meeting at the Office of Management and Budget where the entire issue of collections, including court-ordered restitution, was discussed. I expect to spend a substantial amount of my time and attention on this important matter.

Fraud Alert: Can the public expect to see new initiatives in the area of financial institution fraud?

Stern: There are no new initiatives now; however, from my initial review of the FIF enforcement effort to date, it appears to me that while we have been very

Bowron named to lead Secret Service

When Treasury Secretary Lloyd Bentsen announced the appointment of Eljay Bowron as the 18th Director of the United States Secret Service, Bentsen emphasized the agency's responsibilities in the area of financial fraud.

Bentsen named Bowron to the post to replace the former director, John Magaw, who has moved over to the Treasury's Bureau of Alcohol, Tobacco and Firearms as director.

Before his promotion, Bowron was Assistant Director of the Secret Service for Protective Operations, responsible for planning and implementing the protective operations for the President, Vice President and visiting heads of state.

In making the announcement, Bentsen noted that while personal protection is important, the Secret Service's has a larger role. "It investigates currency counterfeiting, credit card fraud and fraud against our financial institutions. This aspect of the Secret Service's work takes on even more significance in an era when criminals are becoming more and more sophisticated and have access to the latest technology," Bentsen noted.

Bowron joined the Secret Service in 1974 and has served as Special Agent-in-Charge of the Atlanta Field Office; Deputy Assistant Director, Office of Investigations; and Deputy Special Agent in charge of the Intelligence Division.

A graduate of Michigan State University, Bowron early in his career worked in the Secret Service's Chicago and Houston field offices. ■

effective in prosecuting FIF offenders, there may be more we can do to prevent FIF crimes. Hence, I am asking the Interagency Bank Fraud Enforcement Working Group to examine the existing measures taken to prevent FIF and to determine whether there are additional measures which should be employed. ■

McGruder tapped to head FinCEN

Julius McGruder has been named Acting Director of the Financial Crimes Enforcement Network (FinCEN) of the Dept. of Treasury.

McGruder, a veteran law enforcement agent, succeeds Brian Bruh who retired in October after serving as FinCEN's first director from 1990-1993.

McGruder will work closely with Treasury Assistant Secretary for Enforcement Ronald Noble on a comprehensive review of Treasury's anti-money-laundering programs and organizations.

Prior to his FinCEN post, McGruder was Special-Agent-in-Charge of the Chicago field office of the U.S. Customs Service. McGruder graduated at the top of his class from the Chicago Police Academy and was a patrolman with the Chicago Police Department until he joined the Customs Service in 1974.

FinCEN was created in 1989 by Treasury in response to President Bush's "War on Drugs." The global information-gathering center is an attempt to improve the coordination of financial crimes enforcement within Treasury and among other agencies. FinCEN brings together for the first time in one place the information and expertise of federal agencies involved in the investigation of financial crimes and the regulation of financial institutions. ■

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David Paul of CenTrust Faces April Sentencing After Entering Guilty Plea to Securities Fraud Charges

David L. Paul, who was found guilty of 68 counts of fraud by a federal jury in November, pleaded guilty in February to 29 charges of securities fraud, growing out of the failure of CenTrust Bank.

Paul faces sentencing in Miami on April 1.

In the November trial Paul, the former chairman of CenTrust, was found guilty of felony charges that he siphoned \$3.2 million from the Florida S&L to support a lavish lifestyle. He was also charged with filing false tax returns and obstructing an administrative proceeding of the Office of Thrift Supervision.

Paul was acquitted on one count of mail fraud, while two counts of perjury were dropped by government prosecutors before the case was sent to the jury.

"Of all the big cases we have done down here, our people felt confident about this one because of the overwhelming documentary evidence and the way the testimony came in," Ross Gaffney, the top FBI official in charge of bank fraud cases in South Florida, told the *Miami Herald* after the first trial.

"Given David Paul's stature in the savings and

loan industry, this conviction ranks in the same category as Charles Keating," he said.

The central allegation was that Paul spent \$3.2 million of bank money on renovations to his estate on Miami Beach's LaGorce Island.

Several of the 54 government witnesses testified they helped Paul hide the cost of his home improvements in the bills for the CenTrust Tower in downtown Miami, which was then under construction.

An Internal Revenue Service agent testified that Paul committed tax fraud by not reporting the \$3.2 million on his tax returns.

At the second trial, Paul faced securities charges stemming from CenTrust's dealings with the Bank of Credit and Commerce International, Michael Milken and Charles Keating.

Paul, prosecutors said, secretly pilfered \$24 million from CenTrust and hid the S&L's financial problems from regulators with sweetheart bond deals.

CenTrust, which was once one of Florida's largest thrifts, failed in February 1990 at an estimated cost to taxpayers of \$1.7 billion. ■

Keep that Subpoena a Secret

Believe it: It is a federal crime to discuss a subpoena.

Some federal prosecutors are unhappy with bankers who recently have been treating subpoenas casually.

They want to remind bankers that any revelations about the subpoenas they receive are punishable by fines or prison sentences of up to five years. It is considered an obstruction of a criminal investigation, and it is a felony.

This is a special provi-

sion in the criminal code, which applies only to bank officers and directors who are served with subpoenas in a criminal investigation.

Under federal law, if any officer of a financial institution "with the intent to obstruct a judicial proceeding, directly or indirectly" tells anyone about a subpoena or its contents, which request the records of a financial institution; or which records have been provided to a grand jury because of a subpoena, is subject to

fines or imprisonment or both.

In addition, if an officer of a financial institution "directly or indirectly" notifies a customer that his records have been requested by a grand jury, or if a banker tells anyone else named in the subpoena about it, they have committed a crime.

Remember, if you are served with a subpoena keep its contents confidential.

Do not share the information with other officers and directors. ■

High Court to Decide if Lawyers and Accountants Can Beat FDIC Malpractice suits by Attributing Wrongdoing at Failed Banks to FDIC

The U. S. Supreme Court has been asked to decide whether suits brought by the FDIC on behalf of a failed institution for legal or accounting malpractice against the firms that served the institution can be defeated by attributing to the FDIC the fraudulent acts of the institution's insiders.

The High Court granted the petition for a writ of certiorari filed by the law firm of O'Melveny & Meyers. The FDIC filed a response to O'Melveny's petition agreeing that the Supreme Court should hear the case because of conflicting rulings between the Ninth U.S. Circuit Court of Appeals in the O'Melveny case, and the Fifth U.S. Circuit Court of Appeals in a case involving the accounting firm, Ernst & Young.

The FDIC, acting as receiver, sued the O'Melveny firm for professional malpractice in connection with legal services it provided to American Diversified Savings Bank, a California thrift, before it failed.

The ninth circuit ruled that under federal law, the wrongdoing of the thrift's insiders could not be attributed to the FDIC, when the agency, acting as

receiver, sues on behalf of the failed thrift.

In the Ernst & Young case, however, the fifth circuit held that under Texas law, the wrongdoing of the sole owner of a failed Texas thrift could be passed on to the FDIC when it sued the accounting firm on behalf of the failed thrift for accounting malpractice. The Ernst & Young case was settled as part of the global settlement with the accounting firm.

The issue to be decided by the Justices is whether the knowledge of wrongdoing by officers and directors of an insured financial institution, who retained counsel to provide legal services to the institution, can be attributed by the law firm to the FDIC when the agency, as receiver, sues the law firm for professional negligence.

The FDIC is pursuing similar claims against legal and accounting firms in amounts that exceed \$1.5 billion. If the wrongdoing of insiders, which takes place before the receivership, is to be attributed to the FDIC when it subsequently becomes the receiver, that effectively will bar recovery in these cases. ■



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