

# Major Fraud Cases of 2012: *Blagojevich, Edwards and Gupta*

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## I. *United States v. Blagojevich,* *Case No. 08-CR-00888 (N.D. Ill.* *2011)*

### A. Background

Following Barack Obama's 2008 presidential election victory, now former-Governor of Illinois Rod Blagojevich attempted to exploit his power to appoint a new Senator to fill Obama's former seat. Blagojevich sought millions in campaign contributions or a high-paying job in return for the appointment to the open seat.

Federal agents amassed considerable evidence of Blagojevich's corruption over the years, including almost 500 hours of wiretapped conversations. Before seeking to exploit Obama's Senate seat, Blagojevich allegedly withheld state funding for a children's hospital until he received a requested political donation, considered appointing his wife to salaried state positions for which she allegedly lacked qualifications, and allegedly "shook down" various companies in connection with state contracts. Blagojevich, for example, apparently sought a Hollywood fundraiser for himself by threatening to withhold \$2 million in state funding for schools in the congressional district then represented by Rahm Emanuel. Emanuel, who went on to become Obama's first chief of staff and later Mayor of Chicago, is the brother of Hollywood agent Ari Emanuel, whom Blagojevich unsuccessfully sought to enlist in his fundraising efforts.

Among the candidates that Blagojevich reportedly eyed for Obama's senate seat were Valerie Jarrett, who became Obama's senior adviser, and Jessie Jackson, Jr., who ultimately resigned his House seat in part due to becoming ensnared in the fallout of the Blagojevich investigation.

### B. Indictment & Trial

Blagojevich was arrested at his home on December 9, 2009. The United States Attorney for the Northern District of Illinois arrested Blagojevich without first obtaining an indictment because the office feared that Blagojevich was close to appointing a successor to Obama's senate seat, and the office was not ready to indict and go to trial. Blagojevich was impeached and removed from office in January 2009.

The original indictment issued on April 2, 2009 and charged Blagojevich with 19 counts including racketeering conspiracy, wire fraud, extortion conspiracy, attempted extortion, and making false statements to federal agents.

Shortly after Blagojevich's arrest, President Obama spoke to federal agents and prosecutors for several hours about the case. Blagojevich's lawyers, including panelist Aaron Goldstein, sought a subpoena to question Obama and for the prosecution's notes of the interview. Judge James B. Zagel denied Blagojevich's request. Rahm Emanuel and Obama's senior adviser, Valerie Jarrett also received defense subpoenas.

The first trial began on June 8, 2010 and took almost two months. The jury convicted Blagojevich of a single count: making false statements to the FBI. News coverage described deep divides amongst the jurors as to the remaining counts. Some jurors reportedly felt that Blagojevich merely had a big mouth or was unfairly the target of overzealous authorities. On the charge stemming from Blagojevich's attempt to sell the Senate seat, however, reportedly all but one juror voted to convict.

Fitzgerald immediately announced that the government would seek a retrial. In the second trial, which began May 2, 2011, Blagojevich faced 20

charges stemming from the same alleged underlying conduct. Prosecutors abandoned the racketeering charge and presented a reorganized case to the jury. As before, Blagojevich sought written reports of Obama's 2008 interview with the FBI. Blagojevich's request was again denied.

Unlike in the first trial, Blagojevich testified in his own defense in the second trial. From the stand, Blagojevich recounted his rise from a shoeshine boy who struggled with English as a second language and described his love of American history. He denied pressuring the Emanuel brothers to host a fundraiser. As for the Senate seat, Blagojevich explained that he had only been considering various possibilities and that his motivations were purely political. Rahm Emanuel and Jesse Jackson, Jr. also testified in the second trial as witnesses in the defense case.

Blagojevich was found guilty of 17 of the 20 counts against him, including wire fraud, attempted extortion, soliciting bribes, conspiracy to commit extortion, and conspiracy to solicit and accept bribes.

### C. Conviction & Sentencing

Judge Zagel imposed a 14-year-sentence. Blagojevich is presently serving his sentence, and the Seventh Circuit recently set a briefing schedule for Blagojevich's appeal.

## II. *United States v. Edwards, Case No. 11-CR-161-1 (M.D.N.C. 2012)*

### A. Background

The 2008 election also led to criminal charges against John Edwards, for allegedly misusing campaign funds to cover up an extramarital affair. Edwards, a former North Carolina Senator and 2004 Democratic Vice-Presidential candidate, had been a candidate in the Democratic presidential primaries in 2008. Before entering politics, Edwards earned renown and fortune as a trial lawyer.

During the lead-up to the 2008 campaign, Edwards began an extramarital affair with his campaign videographer, Rielle Hunter. Hunter gave birth to a child in 2008. Edwards admitted to the affair the same year, but denied fathering the child. A top Edwards aide, Andrew Young, claimed to be

the child's father for several years until Edwards ultimately admitted to being the father. Two of Edwards's key supporters reportedly spent almost \$1 million supporting Hunter and Young in an attempt to conceal the affair and Edwards's paternity. The money was provided by Rachel "Bunny" Mellon, a 101-year old banking heiress, and Fred Baron, Edwards's campaign finance chairman. Much of the money was delivered through checks written to Mellon's antiques dealer, Bryan Huffman, with memos for items such as "Antique Charleston Table."

According to news reports, Mellon's expenditures were motivated by her anger at the criticism Edwards received for his expensive haircuts. She wrote Young a note, instructing him "From now on, all haircuts, etc., that are necessary and important for his campaign—please send the bills to me—it's a way to help our friend without government restrictions." Huffman then signed the checks over to Young, who provided Hunter with a monthly allowance. Young allowed Hunter to move in with his family in 2007 to shield her from the public eye. After Young agreed to claim paternity, Hunter moved with his family to a hideout in Santa Barbara, California.

### B. Indictment & Trial

Edwards was indicted on six counts for misuse of campaign funds on June 3, 2011. The counts included conspiracy, illegal payments, and false statements. According to prosecutors, Edwards should have reported the money as campaign donations. The indictment was premised on the theory that the money was used for campaign purposes in that concealing the affair and child was necessary to prevent a scandal that would have forced Edwards out of the presidential race.

Edwards initially considered a plea deal. He refused to plead to a felony even with the possibility of avoiding prison, in part to avoid losing his law license. He also balked at pleading to a misdemeanor that would have sent him to prison.

Judge Catherine C. Eagles denied Edwards's motion to dismiss the charges on October 26, 2011. Edwards's lawyers argued that the money from Baron and Mellon was a personal gift and not a campaign contribution. Edwards also alleged that the United States Attorney, George Holding, a George

W. Bush appointee, brought the case because of political animus toward Edwards.

The trial began on April 23, 2012. Young, who had received immunity, was the key witness for the prosecution. Having fallen out with Edwards, he had gone on to write a memoir. He was also the target of a civil suit for taking possession of items belonging to Edwards and Hunter, including a reported sex tape. Young testified that the payment arrangement “felt and smelled wrong” but that Edwards assured him it was legal.

Mellon was not called to testify, but Huffman testified regarding their efforts to hide the checks from Mellon’s estate manager. Other witnesses offered dramatic testimony regarding Elizabeth Edwards’s pained response to the affair while suffering from the cancer that ultimately took her life.

The defense case was limited. Judge Eagles denied Edwards’s request to allow former chairman of the Federal Election Commission, Scott Thomas, to testify that the monies given were gifts and not political contributions.

Edwards’s chief campaign financial officer testified, however, that the FEC knew about the money and still approved the campaign’s reports after conducting an audit. Neither Edwards nor his daughter Cate, a lawyer herself who attended most of the trial, testified.

Abbe Lowell, a panelist and Edwards’s defense attorney, drew a distinction between Edwards’s personal sins and the legal charges he faced. Judge Eagles focused on campaign finance law in her instructions, explaining to the jury that “the government does not have to prove that the sole or only purpose of the money was to influence.” But so too, she noted, “if the donor would have made the gift or payment notwithstanding the election, it does not become a contribution merely because the gift or payment might have some impact on the election.”

### C. Acquittal

After nine days of deliberation, the jury acquitted Edwards of one charge and could not reach a verdict as to the five remaining charges. Judge Eagles declared a mistrial in what was seen as

a setback for the Department of Justice’s Public Integrity Section. Several weeks later, the Justice Department stated that it would not seek to retry Edwards.

## III. *United States v. Gupta, Case No. 11-CR-907 (S.D.N.Y., 2012)*

### A. Background

Rajat Gupta, a former senior executive at McKinsey and Company and board member of Goldman Sachs, became ensnared in the prosecution of his colleague, Galleon Group founder Raj Rajaratnam, whose conviction whose trial was highlighted in last year’s panel.

Before he faced criminal charges, Gupta’s career was an incredible success story. Gupta was born in Calcutta and was orphaned at 18. After earning a scholarship to Harvard Business School, he graduated at the top of his class and joined McKinsey in the 1970s. He was elected head of the firm at the age of 45 in 1994. Following his retirement in 2003, Gupta joined numerous corporate boards, including those of Goldman Sachs and Procter and Gamble. Gupta also earned a reputation as a renowned philanthropist, serving as a senior advisor, for example, to the Bill and Melinda Gates Foundation.

Gupta first met Rajaratnam through their work on the Indian School of Business. The two eventually partnered to form New Silk Route, a private equity firm. Gupta, however, lost the his entire \$10 million investment with Rajaratnam’s Galleon Group during the 2008 financial crisis.

Gupta was initially targeted by the SEC, which accused him in March 2011 of illegally passing tips about Goldman Sachs and Procter and Gamble to Rajaratnam. Rajaratnam was later convicted of insider trading. According to the SEC, in one instance Gupta allegedly called Rajaratnam moments after hanging up from a Goldman board call to tell Rajaratnam that Warren Buffet would be investing \$5 billion in Goldman. Moments later, Rajaratnam bought shares in Goldman that led to a \$900,000 gain. In other instances, Gupta allegedly notified Rajaratnam of earnings reports that would be issued the following day. Gupta sued the SEC, complaining that the SEC had deprived him of his

rights as a defendant by hastily instituting administrative proceedings against him.

Before being criminally charged, Gupta's alleged insider tips loomed large over Rajaratnam's trial. During Rajaratnam's trial, for example, the government's evidence included wiretapped recordings of Rajaratnam stating that "I heard yesterday from somebody who's on the board of Goldman Sachs that they are going to lose \$2 per share."

## **B. Indictment & Trial**

On October 26, 2011, Gupta was charged in the Southern District of New York with one count of conspiracy to commit securities fraud and five counts of securities fraud. Gupta pleaded not guilty and was released on a \$10 million bond. Judge Jed S. Rakoff presided over the trial.

In his pretrial filings, Gupta's lawyers, including panelist Gary Naftalis, sought to dismiss all counts and to suppress the government's wiretap evidence. Gupta also requested that the government be forced to provide a bill of particulars. The government argued that, although Gupta was not a participant in the wiretapped phone calls made by Rajaratnam, recordings of those calls were nevertheless admissible under the co-conspirator exception to the hearsay rule. Judge Rakoff ruled that the jury could hear the Rajaratnam calls, but noted that the ruling was subject to change during trial. Judge Rakoff also ruled that Gupta would be allowed to introduce evidence of his numerous charitable activities.

The government relied heavily on the testimony of an FBI agent to tie Gupta's participating in board meetings to Rajaratnam's stock trades. Various charts explained by the agent, for example, demonstrated the close proximity between Gupta's participation in board phone calls where the companies' earnings were discussed and Galleon's heavy trading in those companies' stock ahead of earning announcements. The government also called Lloyd Blankfein, Goldman's CEO, as a witness.

Gupta's defense was premised in part on the argument that Rajaratnam's inside information could have come from any number of sources, or was not even true. The defense also focused on the dissolution of Gupta's once-close relationship with Rajaratnam. Among the defense's notable witnesses

was Ajit Jain, a possible successor to Warren Buffet at Berkshire Hathaway, who testified to the deterioration of Gupta's relationship with Rajaratnam by 2009. Gupta did not testify, but his daughter, a Harvard Law student, also testified to Gupta's falling out with Rajaratnam.

## **C. Conviction & Sentencing**

The jury found Gupta guilty on three counts of securities fraud for leaking confidential information to Rajaratnam regarding Goldman. Gupta was also convicted of conspiracy, but was acquitted on two other securities fraud counts pertaining to Procter and Gamble.

Prior to sentencing, Gupta submitted over 400 letters of support, including letters from Bill Gates and Kofi Annan. Gupta requested a sentence of probation, with community service to be performed in Rwanda. The government sought a sentence between eight and ten years, based on the sentencing guidelines. Judge Rakoff sentenced Gupta to two years in prison. Judge Rakoff stated "the court can say without exaggeration that it has never encountered a defendant whose prior history suggests such an extraordinary devotion, not only to humanity writ large, but also to individual human beings in their time of need." According to Judge Rakoff, however, "the proof of some of these tips was not only overwhelming, it was disgusting."

## **D. Appeal**

Following his conviction, Gupta added Seth Waxman, a former United States Solicitor General, to his defense team to pursue an appeal. Gupta won an initial victory when the Second Circuit ruled in December 2012 that he could remain free on bail pending appeal. Gupta filed his opening appellate brief in January 2013, arguing that the wiretap evidence was improperly admitted hearsay evidence. Gupta also argued that he was prevented from presenting testimony by his daughter regarding a conversation where Gupta told her of his anger at Rajaratnam. The government's brief is due on March 15, 2013.