



Tom Mills (left) and Dapheny Fain enter the federal courthouse.

Brian Maschino

Lawyers for Price Cost a Fortune, but That Fortune Was Well Spent

Jim Schutze | July 14, 2017 | 4:00am

Maybe for once I will try to exercise the better part of valor and not wade knee-deep into the El Paso public school cheating scandal, about which I know not one thing except for this: A federal district court judge in El Paso recently tossed federal prosecutors and the FBI out of court, declaring a mistrial because of government misconduct, and one of the defense lawyers who got that done was Dallas' Tom Mills.

You remember Mills. He was part of the team that won federal district court acquittals for Dallas County Commissioner John Wiley Price and his assistant Dapheny Fain in April. If you have a really good memory or access to Google, then you may know Mills also won a federal court acquittal in 1996 for the late Dan Peavy, a Dallas school board member accused of taking bribes.

The street wisdom is that once the federal government loads up against you; calls in hundreds of FBI and IRS agents for a high-profile, media-intense, multiyear investigation; and then commits the infinite resources of the Justice Department to the goal of taking you down, you aren't even toast any more. You're charcoal.

The El Paso school cheating case isn't over. In declaring a mistrial two weeks ago, U.S. District Judge David Briones said he would schedule a retrial. But his reasons for killing the current trial were strikingly parallel to problems that beset the federal prosecution of Price and Fain — especially a failure by federal prosecutors to obey the basic laws of evidence.

In any event, although a new trial will follow, the El Paso federal mistrial was a significant dragon-slaying belt-notch for Mills. Not too many lawyers can claim three significant wins against the feds in high-profile public corruption trials.

This all comes to mind in the context of some fresh local chatter this week concerning the Price trial. A federal magistrate judge has recommended that Price and Fain be required to pay almost half a million dollars toward much larger fees that the federal government paid on their behalf to their defense team.

We can say this for sure about the lawyers who won acquittals for Price and Fain: That kind of talent is not easy to find, and it can't be cheap. That leaves open a legitimate question about who should pay, and we'll circle back to that in a minute. This much really isn't up for debate: The only way to dodge a juggernaut like what Price and Fain faced is to hire some really good lawyers.

The federal government always has two powerful forms of leverage it can hold over the heads of defendants, one of which is the sheer mass of evidence it has the ability to gather in a decadelong investigation. In this case, the evidence was expressed in terabytes, meaning it was supposed to be beyond comprehension.

But it was not beyond the comprehension of defense lawyer Chris Knox, who lived and breathed the case for a year, used volunteer law students to mine the government's evidence and finally came to court more the master than the government was of its terabytes.

That was one of several enormous advantages the defendants gained from sheer lawyering. Knox's mastery of the government's trove of evidence allowed him to spot instance after instance in which the government had failed to turn over evidence to the defense as required by law. That created a dismal pageant, some of which was glimpsed by the jury, in which federal prosecutors had to come trudging back into court again and again with boxes of evidence they should have turned over sooner while U.S. District Judge Barbara Lynn chastised them as if they were naughty schoolchildren.

A case the feds took 10 years to build — Cadeddu took it apart like it was toilet paper some kids had hung in a tree.

Defense lawyer Marlo P. Cadeddu, who has a resume to singe your eyebrows, delivered another great break for the defendants. After earning a master's degree in strategic studies and international economics from the Johns Hopkins School of Advanced International Studies, Cadeddu went to work for Chase Manhattan Bank, where she soon was named a second vice president in the bank's international private banking division. But, you know, she got bored.

So Cadeddu enrolled in Georgetown Law School, where she graduated magna cum laude. Some years later, she became the lawyer whose job it was to shoot down a mind-numbingly complicated federal accusation of bribery against Price and Fain.

Blam blam blam. A case the feds took 10 years to build, a case that filled multiple white boards with inscrutable scribbles — Cadeddu took it apart like it was toilet paper some kids had hung in a tree.

An enormous advantage the feds bring with them, no matter what's going on with the evidence, is their name, especially FBI. When a sober-faced, dark-suited, white-shirted, cinched-up FBI agent takes the stand and calls the defendant a crook, that often is the only thing the jury needs to hear.

These are strange times, indeed, and maybe all of that is changing, but the lead investigator in the Price/Fain case, retired FBI agent Don Sherman, is pretty much the Wyatt Earp of North Texas. Sherman has public corruption scalps on his wall going back to the 1997 conviction of Dallas City Councilman Paul Fielding, the only white man ever not acquitted for corruption in Dallas history. It is not a coincidence that Mills did the cross-examination of Sherman in the Price/Fain trial.

Maybe the most unfairly unsung member of the Price/Fain team was its leader, Shirley Baccus-Lobel, the first one appointed and the one who talked the judge into letting her hire the rest of them. In a case like this, a stitched-together defense team is sort of an instant law firm.

I am certain that I have seen teams like this go down in defeat, even when the individual members were brilliant, because the head of the team couldn't keep all the egos corralled. As soon as the lawyers start competing with each other instead of pulling together for acquittal, the defendant is crispy all over again. In the Price/Fain case, every report I got from behind the scenes and all of the indications in the courtroom were that Baccus-Lobel was a wise and firm ship's captain, heeding her crew but holding them to a stiff course.



Dallas County Commissioner John Wiley Price reports for trial.

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So, no. It wasn't cheap. Magistrate Judge Renee H. Toliver is recommending that Lynn, the trial judge, turn over to the government \$360,000 in funds and assets seized from Price and Fain as a down payment on a total of \$460,000 the defendants will be required to pay toward their defense. Even that amount is only a partial payment toward the full amount, which has not yet been determined, because the lawyers, almost three months after the verdict, still haven't finished toting up their bills. That total is expected to be in the millions.

In making her recommendation, Toliver observed that nobody made the defendants hire such an expensive team. And that's true. My own two bits worth, based on no authority or expertise whatsoever except what I have seen over the years with my own two eyeballs, is that if Price and Fain had tried to save a few bucks on lawyers, they would both be taking lanyard-weaving classes in federal correctional institutions instead of running around free. If it were me, I would say, "Hire the lawyers. We'll talk later about a payment plan."

But all of that leaves a deeply troubling and unanswered question. I said before that the sheer mass of evidence the government can afford to gather is one form of leverage it can always bring, maybe even intimidating an innocent defendant into a plea bargain. If we think the defense lawyers in this case cost a lot of money, try to imagine what the feds must have spent.

That's the other leverage. Unless you are Warren Buffet or Donald Trump, once the feds have loaded their guns against you — no matter how utterly innocent you may know yourself to be — you can kiss goodbye every cent you have to your name, assuming you want to win.

Does anybody ever look at that and take an 18-month sentence instead of leaving the family bankrupt and bereft? I don't know. It's hard to imagine. It's not hard to imagine.

I know my strategy: If you ever run into anybody from the federal government, please tell them you know me and I love them and I am doing everything they want me to do always.

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