

The Boss Didn't Play Politics

Elliott Jacobson, New York Law Journal

December 16, 2016

It was the fall of 1984. I was a 29-year-old assistant district attorney in the storied Rackets Bureau of the Manhattan District Attorney's Office. And my docket included an undercover investigation of a low-level public official—let us call him "Richard Roe"—who had been soliciting and receiving petty bribes. As I stepped off the elevator and into the eighth floor lobby of 100 Center St. one morning, I was immediately buttonholed by my bureau chief. "What's happening with the Richard Roe case?" he demanded. "Who wants to know?" I asked. "The Boss," he replied, using the moniker by which all of his employees referred to the legendary Manhattan District Attorney Robert Morgenthau.

I was immediately ushered into the Boss's private office where he and all of his top lieutenants were seated around a large conference table. After drawing deeply on a large Cuban cigar, as was his wont, the Boss spoke. He had just come from an early morning breakfast with a top city official who had it on good authority that the very Richard Roe whom I had been investigating was involved in a major financial fraud with one John Zaccaro, a Manhattan Realtor who was married to Geraldine Ferraro, the first woman to be nominated by a major political party to be vice president of the United States and the running mate of Walter Mondale whose electoral bid sought to deny Ronald Reagan a second term in office.

By the end of the meeting my marching orders were clear. I was to use all lawful means to prosecute Roe and, if possible, to secure his cooperation against Zaccaro. And I did just that. Roe was arrested in the relatively minor corruption case I had been investigating; he agreed almost immediately to cooperate against Zaccaro in connection with the major financial fraud that the Boss had gotten wind of; and we were off to the races. Over the next few weeks, I was up to my neck in documents we had received in response to grand jury subpoenas issued to relevant financial institutions and interview notes from detectives and investigators who had spoken to numerous witnesses. And I was slowly, steadfastly building my case.

In the midst of all this, in late October, with the presidential election just over the horizon and looming large, my bureau chief and I were summoned to the Boss's office for another early morning meeting with him and his staff. The Boss wanted a status report: "Where were we with the Zaccaro investigation?" I informed him that in my view we had enough evidence to support "probable cause"—the standard for an indictment—but that the investigation, despite our best efforts, was far from complete. A discussion then ensued about what action, if any, we should take, and the standard arguments were exchanged among the Boss's aides. On the one hand the public had the right to know if Zaccaro was a crook. He was not running for high office, but his wife was and the evidence we had adduced showed that in seeking a sizable loan from a bank he had submitted a financial statement stating that he and she had a net worth of approximately \$21 million when, at the very same time, she had submitted a statement to the House of Representatives stating that their net worth was a small fraction of that; one way or another, something was clearly amiss. On the other hand, if we brought an indictment before the election, we risked

damaging the Mondale/Ferraro's ticket's chances of winning when, necessarily, there would be no resolution of the criminal case before voters went to the polls and no chance for Zaccaro, who was presumed to be innocent, to seek the vindication that comes with an acquittal.

The Boss listened intently to all of the back and forth, drew deeply again on his Cuban cigar, held up his hand to indicate that the discussion was at an end, and spoke. Our job, he said, was not to provide information to an electorate by way of an indictment just weeks before an election. Our job was to investigate thoroughly—"the vacuum cleaner approach," he called it—and to make charging decisions when, in due course, we had all available information before us. We didn't speak publicly, by indictment or otherwise, based on the election cycle. We did our job without regard to and apart from it. We would finish the investigation and make charging decisions and any public pronouncements about them at the appropriate time: when we were done.

As it turned out, Zaccaro was indicted and pleaded guilty to a charge of scheming to defraud months later. And, as it also turned out, indicting him before the election would have made no difference in the outcome; president Reagan won re-election by a landslide (without our help). But none of that really mattered insofar as our decision as to whether to indict pre-election was concerned. That decision was based on what I learned sitting at the foot of the great man: That we went where the evidence took us, that we investigated and prosecuted without fear or favor, without regard to politics and elections, having in mind only that "guilt shall not escape, nor innocence suffer." And, if we brought and announced charges, we did so at the conclusion of, not during, an investigation.

I left the Manhattan DA's Office just a few months after the Zaccaro case ended, and in the more than three decades since have been a federal prosecutor. But I am eternally indebted to the man who taught me what is most important about this job and whose values and ethos I proudly carry to work with me each day. Thank you, Boss.

Elliott Jacobson is an assistant U.S. attorney for the Southern District of New York. The views expressed here are not necessarily those of the U.S. Attorney's Office or the U.S. Department of Justice.

Reprinted with permission from the December 16, 2016 edition of the "New York Law Journal" © 2016 ALM Media Properties, LLC. All rights reserved. Further duplication without permission is prohibited. ALMReprints.com – 877-257-3382 – reprints@alm.com.