

RUTHLESSNESS

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..."Even if Giuliani gets his convictions, his methods and those of other prosecutors like him cast a **dark shadow** over their achievements. If we believe that a balanced adversarial process is the best way of discovering the truth, then prosecutorial discretion and respect for the rights of the accused are indispensable."

Richard Emery op-ed, Newsday,
11/4/86



RUTHLESSNESS

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RUTHLESS CHARGE: GIULIANI IS THE MACHIAVELLI OF THE LEGAL COMMUNITY -- AS A PROSECUTOR HE TRAMPLED THE CONSTITUTION IN ORDER TO WIN CONVICTIONS. HE WILL DO WHATEVER IT TAKES TO WIN. THERE ARE NO LIMITS TO HIS RUTHLESSNESS.

CONTEXT:

Rudy Giuliani was one of the most high-profile and aggressive prosecutors in American history. Giuliani took his oath of office to fight crime very, very seriously. Many argue Giuliani went too far. In his attempt to win convictions, he abused the Constitutional protections all Americans enjoy.

Critics claim Giuliani's ruthlessness knew no bounds -- and there's lots of evidence demonstrating that the federal prosecutor certainly pushed the envelope of the permissible.

In practical political terms, the ruthlessness charge against Giuliani becomes a question about his temperament. Can such a ruthless guy govern New York?

Against any other candidate than David Dinkins, the classic soft-spoken nice guy, this charge might prove pesky at best. However, Rudy's ruthlessness is extraordinarily damaging when contrasted with Dinkins' cultivated image as a racial healer.

Dinkins exploited this issue effectively four years ago. Look for Dinkins to go back to the "ruthlessness" well once again in '93.

REBUTTAL STRATEGY:

Once upon a time, there was a former high-ranking Justice Department official with a nasty reputation for ruthlessness. No matter what he did, there always seemed to be critics carping, "Oh, there he goes again. That man is so ruthless." He paid no mind. He rolled up his sleeves and got to work. He went into the inner-city. He championed the concerns of the poor.

His name: Robert Kennedy.

Rudy Giuliani claims Kennedy was one of his early political heroes. Like Kennedy, Giuliani is viewed as ruthless by many New Yorkers. A subtle Kennedy emulation strategy might provide a roadmap for Giuliani to get out of the ruthlessness wilderness.

Besides these style accommodations, the campaign should inoculate against the ruthlessness charges with substance, facts.

A review of the Giuliani record provides several examples of where Giuliani's actions run counter to his ruthless reputation. These cases provide excellent rebuttal material to the ruthless criticism.

The following work-up outlines these episodes completely.

RUTHLESSNESS

GIULIANI AS THE RUTHLESS PROSECUTOR

A prosecutor with a disregard for individual rights.

"In part because he has been so successful, Mr. Giuliani's tactics have come under fire from the defense bar and civil libertarians. They claim his passion for law and order has led him to infringe on the rights of his targets."

Wall Street Journal, 12/22/88

"It's not to say people are dishonest, but one has a strong sense that decisions are not made on the merits as they used to be," said Manhattan defense attorney Judd Burstein. "That, I think, is a distasteful aspect of Giuliani's tenure."

"In a lot of ways he has been a one-man crime deterrent," said defense attorney Stanley Arkin, "but, at some cost, being over-aggressive. It is as important as punishing crime, to give people the benefit of the doubt."

Newsday, 1/29/89

Giuliani bugged the trial preparations of an opposing counsel.

"Giuliani asked Judge Whitman Knapp in the Parking Violations Bureau case to remove Thomas Puccio, a former Giuliani colleague, as opposing counsel. Two weeks after the judge rebuffed this attempt, Giuliani bugged Puccio's private trial preparations. Such conduct is shocking and unprecedented.

"On Oct. 31, Giuliani went to the extreme of subpoenaing audio tapes in the possession of Gerald Lefcourt, attorney for defendant Marvin Kaplan. Though it is up to the judge to assent to the subpoena, this unprecedented attempt to obtain materials opposing counsel has used to help prepare its case is equally shocking."

... "Even if Giuliani gets his convictions, his methods and those of other prosecutors like him cast a **dark shadow** over their achievements. If we believe that a balanced adversarial process is the best way of discovering the truth, then prosecutorial discretion and respect for the rights of the accused are indispensable."

Richard Emery, emphasis added, Newsday,
11/4/86

Not surprisingly, opponents from Giuliani's overturned cases have voiced a similar complaint -- Giuliani is a ruthless prosecutor, driven by political motivation.

From Wedtech ...

"London, the only other defendant to issue a statement, said, 'The indictment is outlandish...The real tragedy of this prosecution is that individual rights must be sacrificed to an overzealous prosecution, motivated by political consideration rather than the facts in the case,' he said, apparently referring to Giuliani, who is considering a run for the U.S. Senate seat of Daniel Patrick Moynihan."

Newsday, 1/15/88

"A man with the same name as a defendant in the Wedtech case has filed suit against U.S. Attorney Rudolph Giuliani, charging that his \$200,000 stock account was incorrectly frozen for several months during the probe.

"Bernard H. Ehrlich, a lawyer from Falls Church, Va., charged in the suit filed in U.S. District Court here that Giuliani, the U.S. attorney for the Southern District of New York, violated his constitutional rights by freezing his account with Merrill Lynch, Fenner and Smith.

"According to the suit, Giuliani's office incorrectly identified Ehrlich as a defendant in a federal racketeering case against Wedtech Corp., a South Bronx defense contracting firm, and recommended in February 1987, to a federal grand jury investigating the case that Ehrlich's stock account could be frozen.

"The intended target of the investigation was Bernard G. Ehrlich, a law partner of former Rep. Mario Biaggi (D-Bronx), the suit said. Bernard G. Ehrlich, like Biaggi, was convicted on racketeering charges.

"The Virginia Ehrlich said he never received a copy of the order. The account was not unfrozen until January, 1988 when the error was discovered. Ehrlich continued to get account statements from Merrill Lynch that gave no clue the account had been frozen, according to the suit.

"Ehrlich charged in the suit filed last week that by freezing his account Giuliani and his office violated his 'right to be secure in his papers and effects against unreasonable searches and seizures' under the Fourth Amendment, and that they violated his "Fifth Amendment rights by depriving him of his property without due process of law.'"

Newsday, 12/20/88

... to *Princeton/Newport* ...

"'The government need not have destroyed Princeton/Newport,' the statement said. 'It did so to punish those partners who rejected the government's demand that they offer evidence against Michael Milken ... in order to avoid an indictment under [the Racketeer Influenced and Corrupt Organizations law].'

"Fears about the effect a RICO indictment might have on its business already has Drexel discussing a possible settlement with Giuliani's office before it is indicted on charges that reportedly focus on its dealings with Boesky. But one reliable source said yesterday that the Drexel grand jury is now also probing additional charges that involve illegal parking of so-called 'hot issues' of junk bonds. Drexel refused comment on that report."

Newsday, 12/8/88

... and in *Wigton, Tabor and Freeman cases*.

"Perhaps most damaging were the February 1987 arrests of top financial executives Robert Freeman, Richard Wigton and Timothy Tabor...Mr. Wigton of Kidder, Peabody & Co. was placed against a wall in full view of the firm's stunned traders, frisked, handcuffed and led away in tears.

"Mr. Giuliani later dropped the charges against the three, while indicating that a new indictment was likely later. To date, it hasn't come. And the case remains one of the biggest pieces of unfinished business - and potentially one of the biggest embarrassments - that Mr. Giuliani will leave behind.

Wall Street Journal, 1/11/89

"'It was a mistake to move with that case at the time that I did and to that extent I should apologize to them,' Giuliani said yesterday.

"'I should have slowed that case down at the very beginning,' he said. 'I should have checked it more carefully so that things we found out later we would have found out earlier.'"

"'Here's Rudy Giuliani, big prosecutor, who goes in, over a year ago, and handcuffs people, drags them out in chains, destroys their reputation, causes pain to their families and the indictments don't happen or are dismissed,' said Mayor Edward I. Koch.

"Doesn't it reduce your admiration for the guy, who touted how terrific he was as a prosecutor, [that] he destroyed their lives?' Koch said."

Newsday, 8/18/89

Complaints of ruthlessness even permeate Giuliani's victories.

In Marc Rich ...

"In demanding evidence in Switzerland to build a tax fraud case against Marc Rich, a multimillionaire commodities trader, the Justice Department has pursued its quarry aggressively at the risk of damaging relations with Switzerland. It has chosen to play legal hardball rather than diplomatic slow pitch."

"The approach of going as aggressively as possible in court and not taking advantage of diplomatic communications at all may be counterproductive,' said Andreas Lowenfeld, a New York University law professor and international law expert."

"But Donald C. Alexander, a Washington lawyer who headed the Internal Revenue Service from 1973 to 1977, said: 'I have some reason to believe that this operation was a bit heavy-handed.'"

Stuart Taylor Jr., New York Times, 10/4/83

... going after rogue CIA agents ...

"Former CIA agent Edwin Wilson was found guilty yesterday of attempting to murder two federal prosecutors, a business associate and five government witnesses who linked him to the sale of explosives to Libya."

"A defense lawyer said the prosecution's case was the creation of 'three desperate men' -- prison inmates who, he said, had framed Wilson."

Daily News, 10/21/83

... in the Mafia cases ...

"All of these trials [the organized crime cases] have anonymous juries -- a measure Giuliani says provides extra security as some of the defendants have been involved in jury tampering in the past. However, Richard Emery, staff counsel of the New York

Civil Liberties Union, and some other attorneys have criticized the withholding of the jurors' names as 'extreme.'

Washington Post, 11/18/85

... *Giuliani as Scrooge.*

"On the other hand, he will have to fight a reputation for zealotry that some consider excessive, even cruel. Commenting on Mr. Giuliani's announcement just four days before Christmas that Florida businessman Paul Bilzerian had been indicted on charges of securities and tax fraud, Mr. Bilzerian's lawyer accuses Mr. Giuliani of being a bit short on kindness. The lawyer, Arthur F. Matthews, said Mr. Giuliani, 'would have been an even better public servant than he's been if had a little more compassion and flexibility.'"

Wall Street Journal, 1/11/89

In general, Giuliani was a nightmare to defense lawyers.

"The lawyer [William Kunstler] also had unkind words for U.S. Attorney Rudy Giuliani, who had Joe sent to jail for contempt last month. Rudy, says the defense lawyer, is a 'dangerous' man. Kunstler said Rudy is running for governor."

Daily News, 10/16/85

"Mr. Guiliani[sic] tough approach [on asset forfeiture] has inflamed many bar-associations and civil-liberties groups, several of which filed amicus curiae briefs in a case earlier this year involving Robert Simels, a New York attorney."

"Mr. Simels and other attorneys fear that actions against them, such as Mr. Guiliani's[sic], will prove popular with a public already scornful of lawyers. 'A prosecutor who engages in such conduct,' Mr. Simels says, 'will look like a white knight.'"

Wall Street Journal, 8/12/85

"Giuliani's combative approach was clear in late March, during a hearing at the New York City bar association. A committee composed mainly of defense attorneys and civil libertarians was questioning whether new Federal anticrime laws could lead to abuses by overzealous prosecutors - particularly in organized-crime cases."

"Several prosecutors testified, but plainly Giuliani made the committee angriest. he called them 'provincial' and told them they were acting like a 'trade association.' The other prosecutors who spoke took a low-key tone, agreeing that serious constitutional questions were raised and promising to show restraint."

New York Times Magazine, 6/9/85

RUTHLESSNESS CHARGE

DEFENSE: GIULIANI WAS A HIGHLY EFFECTIVE, AGGRESSIVE PROSECUTOR WHO TOOK ON THE TOUGH CASES.

Giuliani also can be compassionate.

"Federal prosecutors had threatened to indict Mr. Manes on extortion charges, but his lawyer, Michael F. Armstrong, urged them to wait because his mental state was so fragile that he might not have been able to stand trial. Mr. Armstrong said he was 'extremely impressed' with the understanding of Mr. Manes's condition shown by Rudolph W. Giuliani, the United States Attorney in Manhattan."

New York Times, 3/15/86

"Donald Manes' lawyer said he has been informed by U.S. Attorney Rudolph Giuliani that federal prosecutors were not taking any steps to seize Manes' estate for back taxes and penalties.

"Attorney Michael Armstrong said Giuliani 'took the trouble to call me [to say] his office was doing nothing of the sort as far as going after Donald Manes' assets.'"

New York Post, 3/17/86

... "Yet, Lawrence Pedowitz, former chief of the criminal division under Giuliani and now a partner of Wachtel, Lipton, Rosen & Katz, says, 'Rudy is an aggressive prosecutor who makes every effort to be fair. Occasionally, he makes a mistake, but it is not for the lack of trying to be fair.'"

Syracuse Herald American, 8/9/87

Giuliani defends his use of asset forfeiture laws. Since when is abiding by the law called ruthlessness?

"Giuliani says that if the clients [drug dealers, etc.] cannot afford their own defense counsels then the courts will appoint public defenders. 'The Sixth Amendment says a person is entitled to a defense counsel -- not which one,' says Giuliani."

Newsday, 3/20/85

Giuliani bristles at such interpretations. 'If there's a law that I can use to get money for the U.S. government rather than a mob lawyer, until somebody tells me that the law is unconstitutional, I'm gonna use it.'

Miami Herald, 4/19/85

"In all of our cases whether they involve alleged leaders of organized crime or street-level drug dealers, multimillion-dollar tax evaders or Social Security claimants, we operate within the proper limitations of our role in the system. Where there is no responsible support for the Government's position, we have demonstrated in criminal and civil cases that we will refuse to go forward.

"Where there is a dispute about our views on the facts or law, we do not try to resolve the dispute secretly and unilaterally but openly, either by agreement with opposing counsel or ultimate decision by the court. Of course, we do then abide by that court decision until and unless it is reversed."

Rudolph W. Giuliani, letter to the editor, New York Times, 4/9/85

Giuliani explains his enthusiasm for life and work.

"Enforcing the law is an important thing to do. I try to do it effectively. If I'm not fair, it's only because I've made a mistake, because I want to be fair. Everything I do I have to go to court to prove. We can't just decide so-and-so's a criminal and that's it. If someone thinks I'm enthusiastic about my cases, they should watch me play softball or watch a football game. I'm enthusiastic about everything ... about going to the opera, or dinner at a restaurant. That's just the way I approach life."

Rudolph Giuliani, New York, 5/25/87

WALL STREET CASES LOST

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WALL STREET CASES LOST

WIGTON, TABOR, FREEMAN

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"Wigton appeared to be a victim of the Giuliani crusade: an innocent pawn used to make a political statement. And with the Wall Street cases, where the law was complex and relatively untested, grand statements were sure to lead to mistakes."

Jeff Traub, The New Republic,
9/9/91



WIGTON, TABOR, FREEMAN

WIGTON, TABOR AND FREEMAN

WIGTON AND TABOR

CHARGE: AFTER DRAGGING RICHARD WIGTON OUT OF HIS OFFICE IN HANDCUFFS AND ARRESTING TIMOTHY TABOR, THE U.S. ATTORNEY'S OFFICE PROMISED A MASSIVE INSIDER TRADING CASE AGAINST THE TWO INVESTMENT BANKERS. WHEN A JUDGE REFUSED THE PROSECUTION'S ATTEMPT AT DELAY, THE GOVERNMENT DROPPED THE INDICTMENTS BUT PROMISED TO BRING NEW CHARGES AGAINST THE TWO QUICKLY. TWO-AND-A-HALF YEARS LATER, THE GOVERNMENT FINALLY ANNOUNCED IT HAD DROPPED ITS INVESTIGATION INTO THE MATTER.

CONTEXT:

Rudy Giuliani has called his handling of the Richard Wigton, Timothy Tabor and Robert Freeman cases the biggest mistake of his career.

Giuliani ordered the arrest of Wigton and Tabor on insider trading charges. Wigton was dragged out of his office in handcuffs. After being unable to make an indictment against the two, Giuliani promised new charges and a speedy indictment. Although the two were not indicted, Giuliani promise to continue the investigation and bring new charges kept them under a black cloud for more than two years. Fully 2 1/2 years later, the United States attorney's office announced it had ended the investigation.

REBUTTAL STRATEGY:

The rebuttal to an attack on Wigton, Tabor and Freeman should be short and concise. First, the rebuttal should acknowledge that the arrests of Wigton and Tabor were mistakes. Freeman pleaded guilty to one felony charge. Second, it should be noted that guidelines for arrest are determined by postal inspector procedure, not the United States attorney. Therefore, Giuliani did not demand Wigton be taken out of his office in handcuffs.

FREEMAN

CHARGE: THE GOVERNMENT ACTED IRRESPONSIBLY BY BRINGING AN INDICTMENT AGAINST FREEMAN, WIGTON, AND TABOR. THE ENTIRE BASIS OF THE CASE WAS THE INFORMATION OF ONE INFORMER, MARTY SIEGEL, WHO PROBABLY WAS SEEKING A BETTER PLEA BARGAIN AGREEMENT.

CONTEXT:

When Robert Freeman was arrested, along with Richard Wigton and Timothy Tabor, Rudy Giuliani promised to bring a massive insider trading case against the three. Quickly, Giuliani's case began to fall apart. Eventually, Freeman pleaded guilty to only one count of wire fraud.

Giuliani did not get his massive insider trading case. His aggressiveness in prosecuting this case was unwarranted and unnecessary.

REBUTTAL STRATEGY:

To paraphrase Gertrude Stein, a conviction, is a conviction, is a conviction. Yes, the government could not make a big case against the three traders. But, Freeman's criminal activity was uncovered and prosecuted successfully.

WIGTON, TABOR AND FREEMAN

GIULIANI GOES AFTER THE BAD GUYS

In an unnecessary show of force, Giuliani had the three investment bankers handcuffed and humiliated.

"In particular, he has been criticized for the February 1987 arrests of three top financial executives. One, Richard Wigton of Kidder, Peabody & Co., was placed against the wall, in full view of the firm's stunned traders, frisked, handcuffed and led away in tears. Mr. Giuliani later dropped the charges against the three, while indicating that a new indictment would follow later. To date, it has not."

Wall Street Journal, 12/22/88

"Siegel's quick capitulation led to the probe's most spectacular show of police power when Manhattan U.S. Attorney Rudolph Giuliani had two prominent Wall Street traders dragged out of their elite merchant banks and a third arrested at home.

"But there the resistance stiffened. The three traders refused to plead guilty and an embarrassed Giuliani was forced to drop their indictments with a pledge -- still unfulfilled more than 18 months later -- that he would quickly reindict them on broader charges."

Newsday, 12/22/88

"Mr. [Ira Lee] Sorkin [the former head of the SEC's New York office] argued that this was the key area where self-regulation broke down. 'Self-policing is effective in some areas of the industry, but the scope of the mergers and acquisition business, where you have billions of dollars floating around, means there is no way to self-police that,' he said. That is a harsh message for Wall Street's deal makers, used to operating by their own code.

"Million-dollar-a-year investment bankers have been complaining indignantly for more than a year that the Government was employing vicious tactics in its investigation, like handcuffing suspects or using rough negotiating techniques.

"Prosecutors have responded by saying that those are standard practices in dealing with common criminals. That is the toughest notion for Wall Street to accept."

New York Times, 12/22/88

"The problem was, he didn't have the goods on Wigton. The initial indictment was dropped, a new and more comprehensive one promised, months passed, then a year, and finally the office announced that Wigton would not be charged. Wigton appeared to be a victim of the Giuliani crusade: an innocent pawn used to make a political statement. And with the Wall Street cases, where the law was complex and relatively untested, grand statements were sure to lead to mistakes."

James Traub, The New Republic, 9/9/91

Freeman is indicted and later pleads guilty.

"Mr. Siegel has said that he received insider tips from a senior Goldman official, Robert M. Freeman, and the United States Attorney has said that he will seek an indictment against Mr. Freeman.

"An earlier indictment against him was dismissed when the Government said it had found evidence of a far broader conspiracy and needed more time to prepare a new indictment.

"Mr. Freeman has insisted that he is innocent, and Goldman released a statement yesterday saying that it still believed he did not break the law and that Kidder's settlement would not affect any subsequent trial of Mr. Freeman."

New York Times, 6/5/87

WIGTON AND TABOR

DEFENSE: THE DECISION TO HANDCUFF OR NOT TO HANDCUFF A SUSPECT IS NOT UNDER THE PURVIEW OF THE U.S. ATTORNEY BUT THE U.S. POSTAL INSPECTORS WHO DID THE ACTUAL ARRESTING. THERE WAS NO DUPLICITY IN THE STATEMENTS MADE AFTER THE WITHDRAWAL OF THE INDICTMENT. PROSECUTORS HONESTLY BELIEVED THAT THEY WOULD REINDICT. GIULIANI'S POLITICAL VIABILITY WAS NOT A SERIOUS ISSUE BECAUSE THE MAYORAL ELECTION WAS TWENTY MONTHS AWAY.

FREEMAN

DEFENSE: FREEMAN PLED GUILTY TO TRADING ON INSIDE INFORMATION IN THE 1986 LEVERAGED BUYOUT OF BEATRICE. HE WAS SENTENCED TO FOUR MONTHS AND FINED \$1 MILLION. IN PLEADING GUILTY THE U.S. ATTORNEY DEFEATED THE POWERFUL INVESTMENT BANK GOLDMAN SACHS, WHO HAD PAID FOR FREEMAN'S LEGAL EXPENSES.

GIULIANI ADMITS HIS MISTAKE

Giuliani's mea culpa:

"I should have gotten more of the facts before we acted. Eventually, I got involved and realized that we didn't have the kind of case we should have, and hadn't investigated the case to the extent that we should have. And it was my mistake."

"And the best evidence of that, and the thing that gets confused all the time, is that I have had people say to me how come you had him photographed when he was arrested in handcuffs? he wasn't photographed in handcuffs. There were no photographers there. There was no one alerted to the arrest beforehand."

Barron's, 11/26/90

Giuliani had no control over the handcuffing of the three brokers, that was standard procedure for the postal authorities who made the arrest.

"If that [the arrests of Wigton, Tabor and Freeman] had been planned as a media circus, there would've been camera there. And I would've made a big deal out of it at the February 12 press conference that followed. [The handcuffing issue came up] the next day, when their lawyers criticized what we'd done. Their clients were so important they didn't believe they should've been arrested. Almost everyone who gets charged with a complaint involving postal crimes, mail fraud, and the postal authorities gets arrested. And when they do, they're handcuffed. It is an unvarying rule of the U.S. postal authorities. There's no way I would've said change the rules for these people. If we're going to change any rules, we're not going to change them for guys who make a million dollars a year because they're going to be a little offended about having handcuffs on them."

Rudolph Giuliani, New York, 5/25/87

Giuliani needed more time to expand the indictment against Freeman.

"We'd requested three more weeks to prepare a superseding indictment because the case had expanded considerably, involving more transactions than were originally involved. It's a matter of practice in this court that a judge grants us one, usually two opportunities to file an expanded indictment, because a substantial case has a tendency to expand. But here the judge said we'd have to make a choice: Go to trial on truncated charges or dismiss the indictment. We thought it was irresponsible to go to trial on one fifth of the case, so we asked for a dismissal, making clear that we are seeking an indictment on expanded charges."

Rudolph Giuliani, New York, 5/25/87

PRINCETON/NEWPORT

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"The Princeton Newport defendants claimed that prosecutors had inflated a case that belonged in the tax courts into a federal crime, and then amplified it, in a manner 'grossly disproportionate to the conduct alleged,' into a racketeering conspiracy. The appeals court did not decide the merits of the claim, but it's hard to disagree with. The RICO charge had the same vindictive feel as the Wigton handcuffs."

Jeff Traub, The New Republic,
9/9/91



PRINCETON/NEWPORT

PRINCETON/NEWPORT CASE

CHARGE: THE U.S. ATTORNEY WAS NEGLIGENTLY OVERZEALOUS IN HIS PROSECUTION OF THIS SMALL SECURITIES FIRM. GIULIANI USED THE RICO LAW TO PUT A LEGITIMATE COMPANY OUT OF BUSINESS BEFORE THE TRIAL EVEN TOOK PLACE. LATER, THE PRINCETON/NEWPORT CONVICTION WAS OVERTURNED.

CONTEXT:

Rudy Giuliani's "sentence-first, verdict-later" approach was created by his use of the RICO statute's provision calling for pre-trial seizure of assets in this case. The negative publicity caused by a RICO indictment proved to be a death penalty scaring off potential clients. Such prosecutorial power essentially gave Giuliani the power to put the company, unwilling to cooperate with the government, out of business.

Giuliani won his conviction in the Princeton/Newport case, but lost the appeal.

The Second Circuit's reversal of the Princeton/Newport conviction questioned Giuliani's use of the RICO law in tax cases. The Second Circuit's view of RICO use in this case was backed up by the Justice Department's own 1989 guidelines discouraging the use of RICO in tax cases.

The then-new U.S. attorney, Otto Obermaier, did not bring a new trial.

The legal victory for the defendants was bitter-sweet. As a result of RICO, Princeton/Newport was destroyed.

REBUTTAL STRATEGY:

The defense of the Princeton/Newport case is really a defense of Giuliani's use of the RICO statute. Giuliani has lots of supporters of his use of RICO. When attacked on Princeton/Newport, the campaign should rely on there on-the-record for rebuttal.

Support for Giuliani's use of the RICO statute is contained in this work-up.

PRINCETON/NEWPORT

ATTACKS ON GIULIANI

The government used RICO to destroy Princeton/Newport.

"A federal grand jury indicted five partners of Princeton/Newport Partners and a former Drexel Burnham Lambert Inc. official on charges of racketeering, conspiracy, and mail and fraud.

"The case, which was expected, marks the first time officials of securities firms have been charged with violations of the Racketeer Influenced and Corrupt Organizations Act, or RICO. The charges demonstrate the government's resolve to prosecute those accused in the current Wall Street insider-trading scandal with the strongest weapons in its arsenal, usually reserved for organized crime and drug cases."

Wall Street Journal, 8/5/88

"Defense lawyers in the case have bitterly criticized the Government, saying that the liquidation was a direct result of abuse of prosecutorial discretion.

"The lawyers said that prosecutors have delayed a new indictment that was promised, leaving the partnership in a precarious business situation.

"Moreover, the lawyers said the Government inappropriately used the Federal racketeering law in an indictment against four officers of the firm, another employee and a former trader with Drexel, Burnham, Lambert Inc.

..."Princeton/Newport as an entity has been charged with no wrongdoing. The firm, which employs more than 80 people, has been in business for about 20 years. Princeton/Newport and Drexel did a good deal of business together.

"In a sharply worded statement released yesterday, Paul R. Grand and Theodore V. Wells, the lawyers for two defendants, said, 'The Government has now accomplished the goal it stated when it commenced this investigation -- co-operate or be destroyed.'

..."Because of the severe sanctions under RICO, defense lawyers in the Princeton/Newport case have criticized its use, saying that it could lead to a potentially devastating collapse in confidence among the firm's limited partners.

"Mr. Grand and Mr. Wells contended in their statement that the fate of Princeton/Newport should demonstrate that prosecutors in the case went too far.

"The presumption of innocence will be small comfort to those who operate legitimate businesses which prosecutors can destroy long before the individuals selected for prosecution have had their day in court,' the lawyers said."

New York Times, 12/8/88

"[Princeton-Newport L.P.], which employs 80 people at offices in Princeton, N.J., and Newport Beach, Calif., has been the focus of new legal ground being broken on government seizures in racketeering cases.

"Courts earlier had said the government had the right to seize all \$1.3 billion in assets of innocent investors of the firm, but that was overturned.

"Subsequent rulings in the case went in favor of the firm, when the firm's bond was sharply reduced from about \$30 million to about \$16 million."

New York Post, 12/8/88

"The Princeton Newport defendants claimed that prosecutors had inflated a case that belonged in the tax courts into a federal crime, and then amplified it, in a manner 'grossly disproportionate to the conduct alleged,' into a racketeering conspiracy. The appeals court did not decide the merits of the claim, but it's hard to disagree with. The RICO charge had the same vindictive feel as the Wigton handcuffs."

Jeff Traub, The New Republic, 9/9/91

Since undertaken in good faith, the defendants could not be found guilty.

"The appeals court noted that the defendants had cited a particular section of tax law as justifying the trades. 'If this belief was held in good faith, they could not be held criminally liable for proceeding on that basis,' the court wrote.

"The court also noted that shortly after the Princeton/Newport case was brought, the Justice Department in Washington changed its internal guidelines to ban RICO cases based on the same type of tax law violations."

Los Angeles Times, 6/29/91

Giuliani continued to promise a new indictment that never came and ultimately destroyed the company.

... "The Government has said that it expects to bring a broader, superseding indictment in the case, but this move has been repeatedly postponed. As a result, defense lawyers said, partners in the firm had begun to pull out their money, leading to liquidation.

"The Government originally said it would bring the broader indictment the week of Nov. 21. That week, the date was postponed to Dec. 5. At the end of business that day, the Government again postponed, saying it would not issue the new indictment until Jan. 9.

"The final postponement was a significant event for the continuing operations of the business, the defense lawyers said. Since limited partners are allowed to withdraw their vested funds only near the end of each year, the uncertainty of what the new indictment would bring created added incentive for the limited partners to take out their money now."

"It may be, however, that the new indictment has become unnecessary, because of an agreement reached between the Government and Cary J. Maultasch, a senior equity trader at Drexel, one person familiar with the case said last night.

"The new indictment was expected to name Mr. Maultasch as a defendant in the Princeton/Newport case. But on Tuesday, he agreed to cooperate with the Government, making the necessity of the broader indictment uncertain.

New York Times, 12/8/88

The appeals court eventually reversed this.

"The appeals court reversal was one of several last year that were seen by some as a repudiation of former Manhattan U.S. Attorney Rudolph Giuliani's zealous and flashy prosecutions of white-collar cases. Defense attorneys claimed that Mr. Giuliani improperly used the Racketeer Influenced and Corrupt Organizations law, and the law's threat of stiff forfeitures, as a club to pressure defendants into cooperating or settling."

Wall Street Journal, 1/9/92

Obermaier decided not to pursue the matter ...

"In announcing that it is dropping the charges in the Princeton/Newport case, the U.S. attorney's office said it didn't believe a retrial would be worth the effort. 'The government has already devoted substantial resources to this prosecution,' the office said. 'The government has determined that its prosecutorial resources should be spent investigating and prosecuting more recent activity.'"

Wall Street Journal, 1/9/92

... and then criticized Giuliani for using criminal charges in securities cases.

"...Mr. Obermaier sharply criticized Mr. Giuliani and his assistants for seeking criminal sanctions for securities-law violations rather than leaving enforcement to the SEC."

"'It's back to the old days of corralling shady operators of boiler rooms pitching Florida land deals, instead of pillars of the community in blue-chip firms,' says a former federal prosecutor in Manhattan now in private practice. Few big Wall Street cases are 'in the pipeline, and there's no incentive to make them,' he adds."

Wall Street Journal, 7/25/91

General allegations of prosecutorial abuse:

"New Attorney General Richard Thornburgh should put RICO reform at the top of his five-month agenda. He should order Mr. Giuliani to cool it. He should also urge Congress to reform the law so that once again only organized crime has to worry about RICO's enormous consequences."

editorial, Wall Street Journal, 8/23/88

"Under RICO, a defendant's assets can be seized immediately upon indictment, even though a defendant is supposed to be presumed innocent until proven guilty. The government's ability to tie up assets prior to a trial -- to hold as security for assets that the government is entitled to seize if it gains a conviction -- puts enormous pressure on defendants to plead guilty to lesser charges in order to regain use of their funds. For a securities firm such as Drexel, the pressure may be nearly irresistible."

Wall Street Journal, 12/22/88

Looking at the intent of the law this seems unfounded...

"Critics of the law focus on its low burden of proof and its harsh sanctions. If prosecutors show a 'pattern' of racketeering activity -- at a minimum, two felonies in 10 years -- then the enterprise faces forfeiture of tainted assets, and individuals face up to 20 years in jail.

"Those harsh standards, defense lawyers maintain, were not meant to cover the sort of technical tax and securities violations involved in the Princeton/Newport case and other Wall Street probes.

"'It's sort of appalling,' said Joseph F. Lawless, a Philadelphia defense lawyer who specializes in corporate crime. 'RICO was simply not meant for this kind of indictment.'

"'It's hard to conclude that a stock brokerage is a criminal enterprise,' said New York's Robert Fogelnest, a defense lawyer in the recent 'Pizza Connection' RICO drug prosecution. 'It appears to me to be another example of [Manhattan U.S. Attorney] Giuliani overreaching.'

Newsday, 8/5/88

"It has been widely used in prosecutions ranging from pirating musical records to cocaine smuggling. Many on Wall Street have suggested that it is misapplied to charges such as those in the Drexel case, but the original law specifically enumerated stock fraud, and the framers did not appear to exempt matters like insider trading."

Chicago Tribune, 11/23/88

PRINCETON/NEWPORT

DEFENSE: THE PRINCETON/NEWPORT CASE WAS REVERSED BECAUSE OF THE JUDGE'S TECHNICAL ERRORS. THE REVERSAL IS NOT ATTRIBUTABLE TO MISTAKES ON THE PART OF THE PROSECUTORS.

Despite the complexity of the case, the jury took two days to vote for conviction on 63 of the 64 counts brought against the firm. According to William Hale, a former Princeton/Newport employee, the firm engaged in 'tax parks' and had a list of stocks under its control called the 'parking lot.' The RICO law was used in this case because Princeton/Newport was a shell company, one of many interlocking entities, and its assets could simply be shifted out of the partnership. The decision not to retry the case made by Giuliani's successor at the Southern District.

RICO's author, Robert Blakey, supports its application to the Princeton/Newport case.

"Blakey, on the other hand, says he agrees that prosecutors' forfeiture claims in the Princeton/Newport case 'went beyond the statute,' but notes that they were all subject to court review. He says it's folly link Princeton/Newport's collapse to an intentional misuse of RICO rather than the natural effect any criminal indictment has on investor confidence in a business.

"'You know what happens to most small businesses when they're indicted?' Blakey says. 'They go out of business. It has nothing to do with RICO ... The market did in Princeton/Newport, not the government.' The adverse impact, he adds, is no different than when an individual defendant can't make bail and must sit in jail awaiting trial."

Newsday, 1/11/89

Giuliani defends using RICO in white-collar crime cases.

"Yesterday Giuliani said the case merited RICO charges. Not to use them would be to treat white-collar defendants charged with multimillion-dollar schemes more leniently than others, he said.

"Other legal experts saw no problems with RICO's use in a securities case. University of Notre Dame law professor G. Robert Blakey, one of the law's drafters, said securities fraud is specified in RICO as one of the underlying felonies that can form the basis for an indictment. 'Every court that has looked at it has said that it was designed for organized crime, but not only organized crime,' he said.

"Blakey said that while the charges against a securities firm were new, RICO has been used in bankruptcy fraud and bank fraud and in an insider-trading indictment against a Chicago lawyer last month."

Newsday, 8/5/88

"If RICO evened things out so that Giuliani could take measure of a company involved in massive fraud like this, I think that's the greatest thing that's ever happened to the country,' said Notre Dame University law professor Robert Blakey, a principal author of the RICO law."

Newsday, 1/11/89

"Blakey, however, said the risks of coercion were minimal because every RICO indictment must be approved by the Justice Department's organized crime chief, and the department's standards prohibit using RICO for purposes of plea bargaining."

Newsday, 8/5/88

Other federal officials defend the use of RICO:

"Robert S. Mueller III, assistant attorney general for the Justice Department's criminal division, says, 'A reversal of a RICO conviction on a non-RICO issue is often mistaken as a judicial criticism of RICO when it is actually no such criticism at all.' He adds that reversals related solely to the RICO law have been extremely rare. He said RICO convictions over a broad range of crimes have recently been upheld by federal appeals courts in Boston, Chicago and Philadelphia.

"Michael Chertoff, chief federal prosecutor in Newark, N.J., adds, 'The argument that RICO is an unfair statute is belied by the fact that you do see some mixed verdicts. If it were an unfair law, we would win every case, and if it were unworkable we'd lose every case.' In the past 18 months, the Newark U.S. Attorney's office has won RICO convictions in a broad range of cases, including insurance fraud, pension fraud, political corruption and penny stock fraud."

emphasis added, Wall Street Journal, 7/12/91

It's no wonder defense attorneys attack RICO, it puts their clients in jail -- and is cautiously used.

"Mr. Giuliani defended the use of the RICO statute in the case. 'Lawyers criticized our use of racketeering charges in the mafia cases,' he said. 'Every single lawyer criticized our use of racketeering in the Wedtech case. What do you expect them to say? That's what they get paid for.'"

New York Times, 8/5/88

"I am convinced that the criminal application of it by the Justice Department is very effective and very carefully done. In fact, it is probably the most carefully handled procedure that I can think of in the Justice Department."

Barron's, 11/26/90

GAF/SHERWIN

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"Judge Roger J. Miner turned down GAF chief attorney Arthur Liman's request for a stay and an expedition of the appeal. Then, turning to the prosecutor, he astonished the courtroom by saying, 'See to it, Mr. Loewenson, that you don't withhold any more evidence.'"

New York Post, 1/13/89



GAF/SHERWIN

GAF/SHERWIN CASE

CHARGE: AFTER TWO MISTRIALS -- THE FIRST BECAUSE PROSECUTORS INADVERTENTLY WITHHELD A DOCUMENT FROM DEFENSE ATTORNEYS, THE SECOND DUE TO A HUNG JURY -- THE GOVERNMENT'S CONVICTION OF GAF AND JAMES SHERWIN WAS OVERTURNED BY THE APPEALS COURT. THE HIGHER COURT REVERSED THIS CONVICTION BECAUSE OF THE TRIAL JUDGE'S ERROR. GIULIANI NEVER SHOULD HAVE BROUGHT THIS CASE IN THE FIRST PLACE. HIS SUCCESSOR AS U.S. ATTORNEY REFUSED TO BRING A FOURTH GAF TRIAL.

CONTEXT:

Rudy Giuliani's brought an unprecedented case against the GAF Corporation and a senior executive, James Sherwin, alleging the corporation illegally manipulated the price of stock. The case was not an easy one to bring to trial, but Giuliani's office won convictions in the third trial. The first two trials ended with mistrials. The first mistrial was caused by an error by the prosecution. The second mistrial resulted from a hung jury.

The Appeals Court overturned the conviction in March 1991 because of the trial judge's error. Otto Obermaier, Giuliani's successor at the Southern District, refused to bring a new trial.

REBUTTAL STRATEGY:

Giuliani, as U.S. attorney, brought tough cases to trial. He broke new ground in the area of criminal law. When a conviction is overturned because of the judge's error, Giuliani cannot be blamed. Giuliani also should not be held responsible for the actions of his successor, Otto Obermaier. Obermaier holds a different view of white-collar crime than Giuliani does. When Obermaier refuses to retry the case, Giuliani had no control over the outcome of this conviction.

THE GAF SHERWIN CASE

Giuliani brings a landmark case against GAF and James Sherwin.

"The indictment obtained by Manhattan U.S. Attorney Rudolph W. Giuliani charges that GAF and Sherwin conspired with the brokerage firm Jefferies & Co. to manipulate the price of Union Carbide stock upward at a time when GAF was seeking to unload five million Union Carbide shares following its unsuccessful -- but, in the end, highly profitable -- takeover attempt.

"The government alleges that GAF earned \$115 million in profits when it eventually sold its shares to Salomon Brothers on Nov. 10, 1986. But the indictment did not specify how much of that profit resulted from the alleged price manipulation, and Giuliani declined to elaborate on the matter."

Washington Post, 7/7/88

The first Boesky-related case to go to trial.

"As a harbinger of Giuliani's prowess in dealing with a hostile target, many observers are closely watching the stock-manipulation trial of GAF Corp., now in its early stages in a New York courtroom. The only Boesky-related case so far to go to trial, it will be the first court test of the quality of Giuliani's evidence and the credibility of his witnesses. Giuliani's star witness will be Boyd L. Jefferies, former head of Jefferies & Co., who as part of a plea agreement with the government has implicated several other current and possible defendants. GAF, a Drexel client, is being defended by Arthur Liman, former counsel to the congressional committee that probed the Iran-contra affair, who is also representing Milken."

Business Week, 1/9/89

A rare criminal charge against a corporation...

"Criminal defense lawyers said yesterday that it was rare for the Government to bring criminal charges of stock manipulation against a corporation, and they predicted an uphill battle for Federal prosecutors. The last criminal case of stock manipulation known to have been brought against a company was in the 1970's against Underwriters Consultants Inc. The company and a senior executive were convicted."

New York Times, 7/7/88

...the first against an industrial corporation for securities fraud.

"The charges against GAF mark the first time during the investigation that an industrial corporation has been charged with securities fraud. The decision by prosecutors to seek criminal charges in the case -- not simply civil charges -- also reaffirms the government's publicly stated commitment to pursue violations of securities laws in connection with corporate takeovers. The GAF cases arose out of its unsuccessful attempt to take over Union Carbide in 1985 and 1986.

"GAF denied the government's charges and vowed to fight the case in court. The specialty-chemicals and building-products company said its board had expressed 'full confidence' in Sherwin."

"'These criminal charges without precedent and with no victim, injury, motive, payment of money, or personal or corporate gain,' said Stuart J. Baskin, an attorney with the New York law firm Kramer Levin Nessen Kamin & Frankel, which is representing GAF. Baskin added that he expected that GAF and Sherwin 'will be acquitted of charges and vindicated at trial.'"

Washington Post, 7/7/88

An appeals judge criticizes the prosecution -- a mistrial is in the winds.

"Judge Roger J. Miner turned down GAF chief attorney Arthur Liman's request for a stay and an expedition of the appeal. Then, turning to the prosecutor, he astonished the courtroom by saying, 'See to it, Mr. Loewenson, that you don't withhold any more evidence.'"

New York Post, 1/13/89

"The focus of GAF's drive for a mistrial is its contention that federal prosecutors illegally withheld an expert's report regarding the authenticity of the trial's key document: a \$40,000 invoice from Jefferies & Co. to GAF that prosecutors allege was sent to cover up the pair's scheme to inflate the price of Union Carbide Corp. stock in October 1986. Attorneys for GAF and Mr. Sherwin contend that the prosecutors' failure to turn over the report before opening arguments led them to make false suggestions to the jury that the document was tampered."

Wall Street Journal, 1/6/89

After getting off, Sherwin commented:

"Sherwin says he was moved by the steadfast support of family and friends during his ordeal. 'I feel very biessed actually and none the worse for the experience,' he says. 'If you believe you are innocent, you go through the process and eventually you come out all right. That's what I did.'"

Newsday, 2/9/92

GAF/SHERWIN

DEFENSE: THE APPEALS COURT REVERSED THE CONVICTION DUE TO AN UNUSUAL TECHNICALITY BASED ON THE TRIAL JUDGE'S ERROR. THERE IS NO EVIDENCE THAT PROSECUTORS KNEW THAT THEIR WITNESS MAY HAVE COMMITTED PERJURY. THE DECISION TO RETRY GAF IS THAT OF THE CURRENT U.S. ATTORNEY.

The highly technical nature of the GAF prosecution made the case difficult to prosecute.

"For Giuliani's office, the case represented a long-awaited dropping of the next shoe in the Wall Street scandals. It was the first criminal charge to come out of his probe in nearly 14 months, ever since [Boyd] Jefferies himself pleaded guilty to two securities felonies in April, 1987, and began cooperating with the government.

"But it ended the dry spell, the indictment also provided grist for skeptics who have suggested that the long delay reflected the difficulties of crafting successful criminal indictments around highly technical and ambiguous securities violations. GAF and [GAF executive James] Sherwin, scheduled to be arraigned Thursday, have pledged to fight the charges, and legal experts say Giuliani appears likely to face a tough battle if the case goes to trial."

Newsday, 7/12/88

"One Federal prosecutor insisted, however, that the Government need not show that GAF had profited from the deal, only that there was manipulation that caused a price rise for the purpose of inducing others to buy the shares. The indictment does not charge that GAF actually made a profit from the purported scheme."

New York Times, 7/7/88

MULHEREN

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"It seems obvious from the events themselves that Mulheren was manipulated by Boesky and not that Mulheren manipulated the market...prosecutors overreached."

James B. Stewart, Den of Thieves



MULHEREN

MULHEREN CASE

CHARGE: THE OVERTURN OF THE MULHEREN CASE DEMONSTRATES THE OVERZEALOUSNESS OF RUDY GIULIANI'S OFFICE. THE APPEALS COURT OPINION OVERTURNING THE CASE WAS ESPECIALLY HASH TOWARD THE PROSECUTORS. ACCORDING TO THE APPEALS COURT, THE PROSECUTION "DEFIES REASON AND A SENSE OF FAIR PLAY."

CONTEXT:

Ivan Boesky implicated John Mulheren as a conspirator in some of his insider trading schemes. Mulheren was convicted of manipulating the price of Gulf & Western stock for Boesky. Boesky's testimony against Mulheren produced the conviction. Boesky said the phrase, "It would be great if it traded at 45," served as the signal for Mulheren to drive the price upward. In overturning the conviction, the appeals court attacked bringing a case on such a thin piece of evidence.

REBUTTAL STRATEGY:

Rudy Giuliani prosecuted Mulheren earlier on a gun possession charge. Mulheren, a manic depressive, was arrested on a weapons charge in his car. He intended to use the weapons to kill Boesky.

The later Mulheren insider trading case is not a Giuliani case. Actually, it was brought by acting U.S. Attorney Benito Romano.

Giuliani should not be required to defend cases he did not bring to trial. An attack on Giuliani for this case should backfire as evidence of shoddy research.

THE MULHEREN CASE

"We are convinced that no rational trier of fact could have found the elements of the crimes charged here beyond a reasonable doubt,' the court wrote."

Wall Street Journal, 7/11/91

"It seems obvious from the events themselves that Mulheren was manipulated by Boesky and not that Mulheren manipulated the market ... prosecutors overreached."

James B. Stewart, Den of Thieves

"Government prosecutors have been anxious to delay Mr. Mulheren's case to avoid exposing Mr. Boesky -- expected to be the star witness in several major cases besides Mr. Mulheren's -- to premature cross examination. The government now appears ready to proceed in those cases within in six months, people familiar with the Mulheren case said, since it has agreed to the six-month deadline for Mr. Mulheren."

Wall Street Journal, 8/11/88

Giuliani is unfairly blamed for the reversal.

"The recent appellate reversals of the securities fraud convictions in the Mulheren, GAF, and Princeton/Newport cases have elicited a predictable response from some of the new media: the federal courts are repudiating Rudy Giuliani; this is their delayed reaction to the arrest and handcuffing of Messrs. Wigton, Tabor, et al. Of course, this is over-simple and borders on patent nonsense."

"The Second Circuit does not act in this conspiratorial fashion and probably shares no consensus about the nature of Mr. Giuliani's contributions to law enforcement. Still, when the Chestman case (also involving securities fraud) and the reversals in the Wallach and Garcia prosecutions growing out of the Wedtech scandal are added to the picture, a pattern does seem to emerge: the Second Circuit appears to be reviewing recent 'white collar' convictions with a level of attention and skepticism that historically it has not shown. Only in the Bilzerian case has the conviction in a major securities case recently survived appellate review (and even there the court divided 2-1). To believe that this is all coincidental requires that one also believe in the Tooth Fairy."

"'But to hang a conviction on the threadbare phrase "It would be great if it traded at \$45,," particularly when the government does not suggest that the words were some sort of sinister code, defies reason and a sense of fair play.'"

"In such a world, the ancient precept that no one should be punished for 'evil thoughts' is at risk, and it is appropriate that courts should require a more exacting demonstration of criminal intent (as they seem to be doing)."

"To reach this conclusion, one need not believe Mr. Mulheren to be an innocent lamb or a victim of prosecutorial overreaching. Neither characterization would ring true. But if juries are allowed to infer 'evil thoughts' based on a 'threadbare' phrase corroborated only by innocuous conduct, then few are safe."

New York Law Journal, 7/25/91

SHAMELESS PUBLICITY SEEKER

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**SHAMELESS
PUBLICITY SEEKER**

"He has a penchant, critics contend, for seeking publicity at defendants' expense, for staging dramatic arrests when his case might not yet be solid, for turning the screws a bit too hard and a little too fast."

Wall Street Journal, 1/11/89

SHAMELESS PUBLICITY SEEKER

CHARGE: GIULIANI IS A SHAMELESS PUBLICITY SEEKER, MORE CONCERNED ABOUT FRONT PAGE STORIES THAN CONVICTIONS OR DEFENDANTS RIGHTS.

CONTEXT:

Rudy Giuliani made dozens of big cases as U.S. attorney for the Southern District of New York. He put many powerful and important people behind bars. They didn't like it and often they fought back. Giuliani's ability to get media coverage provided an easy target. Giuliani was labeled a "shameless publicity seeker" by many of his legal adversaries. Now, Giuliani's political opponents attempt to make the same charge. (See Appendix F-14).

REBUTTAL STRATEGY:

The Giuliani record is the best rebuttal to the shameless publicity seeker charge. Giuliani got press because he made big cases and got convictions. Did Giuliani occasionally make mistakes? Sure. But, by any objective measure, Giuliani was one the best federal prosecutors ever.

Ed Koch provided a good rebuttal of the publicity seeker charge during an interview in 1987. The former mayor's defense of Giuliani should be part of any public response to this attack in 1993.

SHAMELESS PUBLICITY SEEKER

For most of his career, Giuliani has been dogged by the charge of shameless publicity seeker. Countless times he has been accused of trying his cases on the courtroom steps in press conferences.

"He has a penchant, critics contend, for seeking publicity at defendants' expense, for staging dramatic arrests when his case might not yet be solid, for turning the screws a bit too hard and a little too fast."

Wall Street Journal, 1/11/89

Despite the ethical questions it raised, Giuliani used the press often in his cases against the mob and political corruption.

"From the outset in the mob and political corruption cases he has pursued, Giuliani has used the press to discredit his targets. In news conferences Giuliani has luridly described crimes and the accused and revealed specific evidence of guilt, though he knows that the cannons of ethics compel prosecutors to limit public disclosures to the essential facts of the formal charges and bare-bones biographical information about defendants.

"Nevertheless, Giuliani's office has repeatedly released to the press unproven stories about accused mobsters and politicians and selectively leaked secret grand jury testimony to reporters, for the dual purpose of currying favor with the press and tarring the defendants. Because the prejudice created by the disclosures from his office poisoned the New York City jury pool, the Parking Violations Bureau case had to be moved to New Haven. In fact, so much of the prosecution's case was revealed prior to the trial that reporters are searching for new revelations.

"During the investigation of the now infamous Geoffrey Lindenauer, Giuliani went even further. He made a mockery of a grand jury's independence by telling the press, well before the grand jury considered the case, that Lindenauer was to be indicted. His tactic was to coerce cooperation from Lindenauer by threatening him publicly and isolating him from his supporters. Ultimately, it worked: Lindenauer cooperated with the prosecution. But at what cost to the integrity and fairness of the system?"

Richard Emery, Newsday, 11/4/86

"Mr. Giuliani is also accused of seeking publicity at the expense of defendants, particularly at the news conferences he holds to read from his often colorfully written indictments. 'He gives out too much information. He goes beyond what is appropriate to reveal, poison the well for someone presumably innocent,' says New York criminal defense attorney Ivan Fisher, voicing the view of many in the defense bar."

Wall Street Journal, 12/22/88

"'The strong belief of Mr. Giuliani in the use of publicity, which he says helps in criminal prosecution, in my view has tended to undercut seriously vital prosecutions in our system,' Marvin E. Frankel, a former United States District judge in Manhattan, said yesterday. Mr. Frankel is now a private lawyer who is representing some clients charged by Mr. Giuliani's office."

New York Times, 1/11/89

"I've heard {his} assistants complain, 'We spend more time on the press releases than we do on the indictments.'"

Gerald Lynch, a professor at Columbia Law School, "Spy, November 1988

"'He violated more civil liberties than anyone in public office since A. Mitchell Palmer,' says one prominent New York businessman, referring to Woodrow Wilson's fanatic, anti-Communist Attorney General."

New York, 3/6/89

Even in the high-profile mafia cases, Giuliani received criticism for his handling of the cases:

"Three members of the President's Commission on Organized Crime on Monday criticized the fanfare that surrounded the government's announcement last month of the indictment of five reputed Mafia leaders in New York, contending that it could jeopardize their trial."

Los Angeles Times, 3/12/85

"Commissioner Barbara A. Rowan, speaking at a commission symposium on mob lawyers, said U.S. Atty. Rudolph W. Giuliani, who will prosecute the case, had turned the indictment into a 'media event' with a press conference and subsequent television appearances.

"I don't think such behavior would have been tolerated a few years ago,' said Rowan, a former prosecutor in the U.S. attorney's office now headed by Giuliani.

"Commission Chairman Irving R. Kaufman and retired Supreme Court Justice Potter Stewart, a panel member, also criticized the post-indictment press conference but did not single out Giuliani.

"Kaufman, a federal appeals court judge, ... The committee, he recalled, said 'nothing doing' to actions that would jeopardize a case by making it difficult to pick an impartial jury.

"Stewart contended that a post-indictment press conference by prosecutors violates Justice Department rules.

... "Giuliani's press conference was also attended by FBI Director William H. Webster and Stephen Trott, assistant attorney general in charge of the Justice Department's Criminal Division. Referring to their participation, Rowan said: 'That whole package makes it difficult to have a fair trial.'"

Los Angeles Times, 3/12/85

Rudy "The mediahound" Giuliani:

"Most damaging of all, probably, was Giuliani's media exposure. His becoming engaged to a television personality was, some felt, simply one indication of what they considered Giuliani's obsession with the media. Since coming to Washington, he had indeed become a tireless spokesman for the Justice Department and the Reagan administration's policies, whatever the subject at hand. He appeared on the MacNeal/Lehrer Report (whose producer was a friend of Giuliani's secretary) so often that some staffers called it the 'Giuliani Report.' He was a regular on ABC's Nightline. 'Rudy is a mediahound, and that didn't sit well in the department,' recalls one lawyer there at the time."

James B. Stewart, The Prosecutors, p.132

PUBLICITY SEEKER

DEFENSE: GIULIANI IS GENUINELY COMMITTED TO THE BELIEF THAT THE GOVERNMENT MUST BE HELD ACCOUNTABLE TO THE PEOPLE. THIS COULD ONLY BE ACCOMPLISHED BY RAISING THE LEVEL OF OPENNESS AND PUBLIC AWARENESS ABOUT THE ACTIVITIES OF THE U.S. ATTORNEY'S OFFICE.

"In five years as United States Attorney in Manhattan, he raised the visibility of an office long known for effectiveness and professionalism. He recognized an important part of his job: tell the public what you're doing."

New York Times, 1/11/89

On many occasions, Giuliani has pointed out that the effectiveness of his office has not been sacrificed in any way by the openness he achieved:

"Giuliani denies that prosecution takes a back seat to publicity in his office. He points to the bottom line: prosecutors in the Southern District of New York have won 90 percent of their cases during his watch."

Gannett Westchester Newspapers, 1/3/89

"'I've tried to view the U.S. Attorney's office as an institution.' He said frequent news conferences and headlines had two rewards for the Government: encouraging potential witnesses and deterring potential criminals. 'I prefer to err on the side of being open,' he added. 'You've got to communicate with the public. You can't just sit behind a desk and hope things work out all right.'"

New York Times, 11/8/87

"'I don't seek publicity, but I don't run away from it either,' Giuliani said, insisting that it helps bring potential witnesses forward and engenders voluntary compliance with the law."

Gannett Westchester Newspapers, 6/16/87

"Giuliani replies: 'I have never talked about a single thing that I shouldn't have, legally or ethically. People assume I must be doing this because I want to run for office. It's very hard to convince them that I do it because I feel a Government office should be open, and I have an obligation to maximize public education and public knowledge.'"

New York Times Magazine, 6/9/85

"The criticism is not well-founded or fair. Because, in fact, there was little or nothing that we did to create publicity. The cases themselves generated much more attention than we thought they would."

Rudolph Giuliani, Barron's, 11/26/90

"I see it as a criticism because I wouldn't step on anybody or [do] anything improper or unethical to further myself or my career. The things I've achieved, I've achieved on the merits of doing a good job. I've no family connections, no wealth. I didn't end up getting appointed to the jobs I did because I knew the right people. I got appointed because I work very hard. And if I never hold another public office in my life, I can look back on this public office and say, 'I did a really good job. My son would be proud of me.'"

Rudolph Giuliani, New York, 5/25/87

To many non-criminals, Giuliani's conduct seemed very appropriate:

"Skeptics accuse Giuliani of showboating to set up his future political career. A close look at this reformer reveals much grander ambitions. On a crusade to change the face of crime, to break the back of the Mafia, to reclaim young people from drugs, to force a new ethic on Wall Street, to smoke out corrupt public officials even if they happen to be his boss - all this is part of his drive to redeem the decency in our society. Rudolph Giuliani's ambition, I submit, is to be no less than a messenger of God."

Gail Sheehy, Vanity Fair, August 1987

"But David Margolis, chief of the department's organized crime and racketeering section, told the commission that there are no such rules and contended that Giuliani had not gone beyond the language of the detailed indictment in discussing the case."

Los Angeles Times, 3/12/85

Former Mayor Koch had these kind words on the subject:

"John McLaughlin: You don't think [Giuliani] is a shameless publicity seeker?"

"Mayor Koch: Oh, I don't know what that really means. Obviously, you like people to approve of your work. They might say you or I (sic) are publicity seekers. I think he conducts himself very professionally. And he is quotable, and if that's to be attacked, I guess I --"

"John McLaughlin's 'One on One'", 6/13/87

"He's a crimebuster in the image of Dewey ..."

Ed Koch, "Evans and Novak", 1/2/88

"He's been a splendid U.S. Attorney. I have only good things to say about him...I happen to have a very high regard for Rudy Giuliani..."

Ed Koch, "John McLaughlin's 'One on One'",
1/6/89

"Well I think [Giuliani] has been a first-rate prosecutor. ... I think he was first-rate as the U.S. Attorney here."

Ed Koch, "Evans and Novak", 3/25/89

POOR MANAGER

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POOR MANAGER

"As for not knowing what's going on under your nose, when Rudy Giuliani was U.S. attorney, one of his assistants stole \$500,000 in drugs and money from Rudy's office safe,' the mayor said later in a statement. 'Rudy's never managed to explain what he was doing while this was going on.'"

Newsday, 8/9/89

POOR MANAGER

CHARGE: GIULIANI WAS A POOR MANAGER OF THE U.S. ATTORNEY'S OFFICE. UNDER HIS NOSE, AN ASSISTANT U.S. ATTORNEY, DAN PERLMUTTER, STOLE \$500,000 WORTH OF COCAINE AND HEROIN.

CONTEXT:

How does \$500,000 dollars worth of evidence simply disappear? Don't ask Rudy Giuliani, because he doesn't know. Right in front of Giuliani, Assistant U.S. attorney Daniel Perlmutter repeatedly stole cocaine and heroin from the office's evidence safe. It was months before he was discovered.

The length of time it took Giuliani to recognize there was a problem with one of his attorneys is troubling. While Giuliani looked the other way, Perlmutter underwent dramatic behavioral changes, appeared haggard and frequently missed work. All of this seemed to go unnoticed by the boss.

Can New York City, with over 220,000 public employees, afford a manager who could not effectively manage the 125-attorney U.S. attorney's office?

Expect David Dinkins to raise the Perlmutter issue as an attack on Giuliani's management abilities.

REBUTTAL STRATEGY:

The Perlmutter criticism runs counter to other Giuliani vulnerabilities.

Usually, the more salient charge against Giuliani is that he was a ruthless prosecutor. Giuliani's tendency toward arrogance often can make him appear mean-spirited and cold.

In the Perlmutter case, Giuliani got burned because of his compassion for a young assistant. Giuliani's attempt to help Perlmutter get his life back together, demonstrates Giuliani's sensitivity. Unfortunately, Perlmutter's destructiveness made all attempts to help worthless.

In response to Perlmutter charges, the campaign should point out Giuliani's involvement in the investigation and prosecution of the affair. When Perlmutter was caught, Giuliani urged the court to throw the book at him.

In Giuliani's five-and-one-half years at the Southern District, Perlmutter was the only problem staffer.

A successful rebuttal of the poor manager charge should contain some of the following ingredients:

- o General information on the success of the office;
- o Examples of Giuliani's ability to cut through bureaucratic red tape (good examples of this abound from Justice Department days);
- o Statistics detailing Giuliani's success in convicting criminals and recovering fines and fees from offenders.

The facts demonstrate Giuliani's ability to get things done.

POOR MANAGER

Koch raised the Perlmutter issue several times.

"As for not knowing what's going on under your nose, when Rudy Giuliani was U.S. attorney, one of his assistants stole \$500,000 in drugs and money from Rudy's office safe,' the mayor said later in a statement. 'Rudy's never managed to explain what he was doing while this was going on.'"

Newsday, 8/9/89

Giuliani acknowledges this was the most damaging episode that ever occurred during his tenure.

"This is probably the single most distressing incident in my experience as a U.S. attorney,' said a somber Giuliani. 'It has had a devastating impact on the morale and sensibilities and feelings in this office.'"

Daily News, 5/31/85

Perlmutter was a workaholic, yet no one noticed he only worked 25 days during in a five month period.

"He [Perlmutter] regularly worked seven days a week, sometimes 18 hours a day. That, plus a commute to his home in South Orange (not a mile from his parents' place), made a grueling schedule. Complaints to his supervisor were unavailing. He was told to weather it."

"By Christmas week, he was at the Southern District only sporadically. Indeed, over the next five months leading to his arrest, he would spend about 25 days in the office."

National Law Journal, 12/8/86

"The lawyer for federal prosecutor Daniel Perlmutter -- accused of stealing drugs that had been seized as evidence -- charged yesterday that Manhattan U.S. Attorney Rudolph Giuliani knew Perlmutter had drug-related problems but allowed him to continue handling narcotics cases.

"Giuliani immediately denied the allegation but would not discuss the case further.

"The lawyer, Ronald Fischetti, said Perlmutter 'has a coke habit. They (the U.S. attorney's office) knew about this.'

"He also said in February Perlmutter 'disappeared for three weeks' from the U.S. attorney's office and co-workers 'had to get him.' At that time, according to Fischetti, Giuliani met with Perlmutter to discuss his drug-use problems.

"In response, Giuliani said: 'Nobody in the U.S. attorney's office was aware of the fact of an alleged drug problem.'"

Daily News, 6/4/85

Just as remarkable, no one noticed the large amounts of drugs Perlmutter was stealing. Apparently, losing evidence was a common occurrence at the Southern District.

"While some of the early thefts had been noticed, none was linked to him. According to Mr. Giuliani, disappearances from the safe of old evidence, usually due to accounting blunders, were nothing new and rarely prompted inquiries."

National Law Journal, 12/8/86

"In late May [Perlmutter's] name hit the headlines when he was charged by his own office with stealing an estimated \$500,000 worth of heroin and cocaine from the office evidence safe."

National Law Journal, 6/17/85

"Their bargaining chip was clear: To save the government a complicated and publicized trial at which the Southern District itself, because it failed to recognize a time bomb in its office and was negligent about its evidence safe, would be under fire."

National Law Journal, 12/8/86

Shocked that this could happen in his office, Giuliani decided he would try the case personally.

"In fact, Giuliani said he considers the case important enough to personally prosecute it."

Newsday, 6/4/85

"But one Justice Department official called Giuliani's decision 'bonkers,' saying that there are so many possible conflicts of interest that an outside prosecutor should handle the case."

Newsday, 6/4/85

Giuliani flip-flopped on this issue and gave the case to the Justice Department.

"Giuliani said that he has asked a lawyer in the Public Integrity Section of the Justice Department in Washington to assist him in the case and to be ready to take over if conflict of interest should arise."

Newsday, 6/4/85

"Rudolph W. Giuliani announced he was withdrawing from the case shortly after former assistant U.S. attorney Daniel N. Perlmutter, 29, was allowed, at his own expense, to enter a private East Side hospital for psychiatric treatment.

"Yesterday he said: 'I have decided that the litigation should be handled by the Justice Department.' The Perlmutter case, Giuliani explained, has created problems both inside and outside the office.

"'There is just too much feeling and emotion about this case cutting both ways' in the office, he said. Outside, the office's actions could be perceived as 'too tough or too lenient,' he said, no matter what the outcome.

"Giuliani said that he hoped to end 'the distractions' the case was causing in his office by turning it over to the Justice Department."

Newsday, 6/6/85

PERLMUTTER

DEFENSE: UPON LEARNING OF THIS SITUATION, GIULIANI TOOK IMMEDIATE STEPS TO CORRECT IT. WHEN PERLMUTTER WAS FOUND GUILTY, HE ASKED FOR THE MAXIMUM SENTENCE.

At the time, newspaper stories inaccurately reported that Giuliani knew about Perlmutter's problems.

"Attorney Ronald Fischetti, who represents former prosecutor Daniel Perlmutter in a federal drug case, was incorrectly quoted in yesterday's Daily News as saying that U.S. Attorney Rudolph Giuliani knew Perlmutter had drug problems but allowed him to continue handling narcotics cases.

"Giuliani vehemently denied that he knew about any drug-related problems and the Daily News apologizes for the error."

Daily News, 6/5/85

Once Giuliani learned of the problem his instinct was to try and help Perlmutter.

"Some in the Southern District wanted him fired, but U.S. Attorney Rudolph W. Giuliani, urged by Mr. Perlmutter's co-workers, stood by him.

In January, 1985, his wife kicked him out and he moved out in with friend, Laura Smith, where Bart Schwartz found him. "Bart and I talked for a while and he then suggested we go someplace above zero degrees. We walked to a bar [and] talked for another hour. Then Rudy [Giuliani] showed up. It was clearly well-orchestrated. They all were telling me that I hadn't burned any bridges yet and they were making every attempt to figure out my problem."

National Law Journal, 12/8/86

Perlmutter was hired by U.S. Attorney John Martin, Giuliani's predecessor, in March 1983.

"The office's response was to try to give Mr. Perlmutter some breathing room to solve his personal problems. He was gradually relieved of responsibility for what had

been an unusually heavy load of complex cases. 'The judgement was that we should work with him and try to get him to relax,' Mr. Giuliani says.

"Bart M. Schwartz, chief of the office's criminal division, and Mr. Giuliani had dinner with Mr. Perlmutter on one occasion in January or February when concerns about his condition were peaking. 'He was a guy who at his age was going through his second divorce and was just terribly, terribly depressed about it. We tried to be supportive,' Mr. Schwartz recalls.

"But despite the problems, Mr. Giuliani says, there was no suspicion of drug use. There were 'other reasonable explanations' -- the marriage and symptoms of a physical illness -- for his behavior, Mr. Giuliani notes, and in several personal meetings he had with Mr. Perlmutter, both inside and outside the office, drugs were never discussed.

"If there had been knowledge of any drug use, Mr. Giuliani maintains, Mr. Perlmutter would have been dismissed immediately."

National Law Journal, 6/17/85

When this didn't work and suspicion of drug use grew, Giuliani sent federal agents to follow Perlmutter:

"Giuliani then did something he had never done before in his life. He assigned his own agents to tail Perlmutter for two days. Picture it: the feds chasing another fed.

"At about 2 o'clock in the morning on Thursday, May 30, Giuliani struck. He roused a magistrate out of bed and secured an emergency search warrant over the phone.

"An hour later, as Perlmutter and his girlfriend, Stacy Honeycutt, ate breakfast in an all-night diner on Third Avenue while under surveillance, Giuliani sent two men and a drug-sniffing dog to Perlmutter's Park Avenue apartment."

New York Post, 6/10/85

Perlmutter is fired.

"At a press conference, Southern District U.S. Attorney Rudolph W. Giuliani said it was the first time such a 'serious charge' had been lodged against a Southern District assistant. He immediately fired Mr. Perlmutter, and indicated that the missing evidence might involve 'four or five' of the office's cases -- including one that Mr.

Perlmutter was trying at the time of his arrest. Not all of the missing drugs were recovered, he said."

National Law Journal, 6/17/85

And despite all his problems, none of Perlmutter's cases had to be dismissed or reversed.

"Mr. Perlmutter's lawyers also emphasized to the government that he never peddled sensitive information from his office or committed any crimes out of avarice, despite access to material about informants, wiretaps and pending undercover operations."

"...Hendricks III, deputy chief of the Public Integrity Section, said, 'The real tragedy is that this man has single-handedly brought into question untold hours of fine work and dedication by generations of assistant United States attorneys who have occupied the office.' (That statement notwithstanding, to date none of the cases in which Mr. Perlmutter stole evidence has been dismissed or reversed on appeal.) Mr. Hendricks demanded a 12-year sentence."

National Law Journal, 12/8/86

Giuliani worried about how people would view the office.

"'This is an appearance problem,' Mr. Giuliani said. 'If we prosecuted him, some might perceive us as being vindictive and only interested in getting a pound of flesh out of him, while if he did not get a substantial sentence, others would think we were being too soft.'"

New York Times, 6/6/85

"'The Assistant U.S. Attorneys in this office and around the country and the agents with whom they work are exceptionally talented and are among the most honest and dedicated public servants,' Mr. Giuliani said.

"'I hope the public will be reassured by the actions we are taking today that the law-enforcement community will not shrink from its commitment to insist on the highest integrity from all its officials.'"

New York Law Journal, 5/31/85

GENERAL POOR MANAGER CHARGE

DEFENSE: THERE IS NO EVIDENCE TO PROVE AN ASSERTION THAT GIULIANI IS A POOR MANAGER. TO JUDGE GIULIANI'S ADMINISTRATION OF THE SDNY BY ONE TRAGIC CASE IS UNFAIR. GIULIANI, BY ALL OBJECTIVE ACCOUNTS, WAS ONE OF THE GREATEST FEDERAL PROSECUTORS EVER.

With his D.C. experience, Giuliani is able to cut through red tape and get the job done. In the process, he compiles great statistics.

"An F.B.I. agent has a tip that an overseas telephone call between the Sicilian and American Mafias will come within eight hours. He wants a tap, but approval from the Justice Department usually takes days to process. Giuliani, a master at cutting red tape, makes calls to Washington for an emergency go-ahead. The O.K. comes through in time."

"Giuliani presses his young assistants to get more indictments, and he praises them when they do. He is the first United States Attorney in years to brag about indictment totals. In 1984, his first full year, indictments were 1,038 up from 843 in 1983. For a decade, law-enforcement officials discouraged such counting, saying it fostered small, unimportant cases."

"Giuliani disagrees. 'Before I came, young assistants were spending too much time on long, fancy cases and not getting enough trial experience. They didn't know how to find their way to the goal line quickly. I energized this office.'"

"Giuliani, like most Federal prosecutors, has a conviction of better than 90 percent."

New York Times Magazine, 6/9/85

Giuliani pledged to end U.S. attorney's office tradition of secret pleas and make the office more open.

"The United States Attorney's office in Manhattan has 'extensively used closed proceedings' for accepting guilty pleas and sentences, according to a Federal audit."

"The audit, by the General Accounting Office, analyzed the plea practices over the last four years of 12 of the 93 United States Attorney's offices and found the Office

of the Federal prosecutor for the Southern District of New York, in Manhattan, to have the most closed proceedings. The offices covered were chosen because they had either the highest criminal caseload or the lowest."

"John S. Martin Jr., who stepped down last month as the United States Attorney for the Southern District of New York, permitted secret pleas."

"On the other hand, Rudolph W. Giuliani who succeeded Mr. Martin last month, said he deplored the practice of taking pleas or sentences in secret."

"'It offends me to have a good deal of what went on in this court be secret,' Mr. Giuliani said in an interview. 'It's offends me philosophically and personally.'"

"Mr. Giuliani said he agreed with the audit's recommendation that secret pleas and sentences taken in past years by the office be unsealed as soon as possible."

New York Times, 7/4/83

Giuliani expanded prosecutions in the northern part of the district.

"What we have done is, we've established a northern office in the Southern District for the first time, in White Plains. We've prosecuted and handled more cases in the northern counties of this district than probably ever before in the history of the U.S. attorney's office, including major prosecutions of political corruption in Sullivan County, and the execution of Double Steel investigation probably the most prominent."

Giuliani interview, Poughkeepsie Journal,
10/18/87