

U.S. Department of Justice
 Office of the Inspector General

REPORT OF INVESTIGATION

SUBJECT John Paul Kacavas ***-**-**** et al. United States Attorney (Former) District of New Hampshire Concord, New Hampshire		CASE NUMBER 2017-004104	
OFFICE CONDUCTING INVESTIGATION Boston Area Office		DOJ COMPONENT Executive Office for United States Attorneys	
DISTRIBUTION		STATUS	
<input checked="" type="checkbox"/> Field Office NYFO <input checked="" type="checkbox"/> AIGINV <input checked="" type="checkbox"/> Component EUSA <input type="checkbox"/> USA <input type="checkbox"/> Other		<input type="checkbox"/> OPEN <input type="checkbox"/> OPEN PENDING PROSECUTION <input checked="" type="checkbox"/> CLOSED PREVIOUS REPORT SUBMITTED: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO Date of Previous Report:	

SYNOPSIS

The Office of the Inspector General (OIG) initiated this investigation upon the receipt from the Department of Justice (DOJ) Office of Professional Responsibility (OPR) of information [REDACTED]

[REDACTED] Information obtained [REDACTED] suggested that John Kacavas, the former United States Attorney (USA) for the District of New Hampshire, violated DOJ policies regarding conflicts of interest when he directly participated in the 2013 drug investigation and subsequent criminal prosecution of Alkis Nakos and Kosmas Koustas. The information obtained during the investigation indicated that, while Kacavas was in private practice before he became USA, Kacavas had testified as a fact witness on behalf of Nakos in a parole revocation hearing and had represented Koustas in a criminal case. The information further indicated that Kacavas failed to properly follow DOJ procedures regarding the possible conflicts of interest these prior relationships created in the USAO-NH prosecution of Nakos and Koustas. During the course of its investigation, the OIG learned that, while Kacavas purported to “informally recuse” himself from the Nakos-Koustas matter, he actively participated in that criminal investigation and prosecution. The OIG also learned that USAO-NH First Assistant U.S. Attorney [REDACTED], USAO-NH Criminal Chief Robert Veiga, and [REDACTED] each exercised poor judgement or failed to properly follow DOJ policy after becoming aware of Kacavas’s potential conflict of interest.

The OIG investigation concluded that Kacavas and [REDACTED] violated DOJ policy when they failed to consult with the General Counsel for the Executive Office for United States Attorneys (EOUSA) about the possible conflict that Kacavas’s prior relationships with Nakos and Koustas created, in violation of the United States

DATE	April 29, 2020	SIGNATURE	[REDACTED]
PREPARED BY SPECIAL AGENT	[REDACTED]		
DATE	April 29, 2020	SIGNATURE	 Digitally signed by GUIDO MODANO Date: 2020.04.29 13:01:35 -04'00'
APPROVED BY SPECIAL AGENT IN CHARGE	Guido Modano		

Attorneys' Manual (USAM),¹ Section 3-2.170. The OIG further found that Kacavas violated DOJ policy when he "informally recused" himself from the Nakos-Kouostas matter, but nevertheless actively participated in the Nakos-Kouostas criminal investigation and prosecution by (1) agreeing to provide a real-time Greek-English interpretation of a conversation between the two men that was intercepted via wiretap, (2) requesting that his office hold a news conference to announce charges against them and their co-defendants, and (3) authorizing the dismissal of one of two indictments against Kouostas as part of plea negotiations, all in violation of USAM Section 3-2.171. The OIG found no specific DOJ policy addressing whether a DOJ attorney may participate in the investigation or prosecution of a former client. In light of the concerns identified by the OIG regarding this circumstance, the OIG will be recommending to the Department that it issue guidance concerning any such participation.

The OIG investigation also substantiated the allegations that ██████ Veiga, and ██████ exercised poor judgment when they failed to appropriately handle Kacavas's undisclosed potential conflicts in the Nakos-Kouostas prosecution after they became aware of them.

Kacavas resigned as USA in April 2015; Veiga retired from DOJ in January 2017 and died in July 2019; and ██████ retired from DOJ in ██████ 2018.

The United States Attorney's Office, District of New Hampshire, recused itself from this matter. The Department of Justice, Public Integrity Section, declined criminal prosecution.

The OIG has completed its investigation and is providing this report to the Office of the Deputy Attorney General, EOUSA, and DOJ's Office of Professional Responsibility for appropriate action.

Unless otherwise noted, the OIG applies the preponderance of the evidence standard in determining whether DOJ personnel have committed misconduct. The Merit Systems Protection Board applies this same standard when reviewing a federal agency's decision to take adverse action against an employee based on such misconduct. See 5 U.S.C. § 7701(c)(1)(B); 5 C.F.R. § 1201.56(b)(1)(ii).

¹ In 2018, after the alleged misconduct in this case occurred, the USAM was comprehensively revised and renamed the Justice Manual. This report analyzes violations of USAM provisions that were in place at the time of the alleged misconduct.

ADDITIONAL SUBJECTS

[REDACTED]
Former Assistant U.S. Attorney

Robert Veiga [REDACTED]
Former Assistant U.S. Attorney
District of New Hampshire
Manchester, NH

[REDACTED]

DETAILS OF INVESTIGATION

Predication

The Office of the Inspector General (OIG) initiated this investigation upon the receipt from the Department of Justice (DOJ) Office of Professional Responsibility (OPR) of information [REDACTED]

[REDACTED] Information obtained [REDACTED] suggested that John Kacavas, the former United States Attorney (USA) for the District of New Hampshire, violated DOJ policies regarding conflicts of interest when he directly participated in the 2013 drug investigation and subsequent criminal prosecution of Alkis Nakos and Kosmas Koustas. The information obtained during the investigation indicated that, while Kacavas was in private practice before he became USA, Kacavas had testified as a fact witness on behalf of Nakos in a parole revocation hearing and had represented Koustas in a criminal case. The information further indicated that Kacavas failed to properly follow DOJ procedures regarding the possible conflicts of interest these prior relationships created in the USAO-NH prosecution of Nakos and Koustas. During the course of its investigation, the OIG learned that, while Kacavas purported to “informally recuse” himself from the Nakos-Koustas matter, he actively participated in that criminal investigation and prosecution. The OIG also learned that USAO-NH First Assistant U.S. Attorney [REDACTED] USAO-NH Criminal Chief Robert Veiga, and [REDACTED] each exercised poor judgement or failed to properly follow DOJ policy after becoming aware of Kacavas’s potential conflict of interest.

Investigative Process

The OIG’s investigative efforts consisted of the following:

Interviews of the following:

- [REDACTED]
- AUSA [REDACTED] previously First Assistant U.S. Attorney under Kacavas
- [REDACTED]
- [REDACTED]
- Attorney Michael Iacopino, defense counsel for Kosmas Koustas
- Former USA John Kacavas
- [REDACTED]
- [REDACTED]

Review of the following:

- DOJ [REDACTED] report on [REDACTED]
- [REDACTED] Recorded Interview with Robert Veiga, Criminal Chief of USAO-NH
- Numerous court documents related to Nakos and Koustas 2010 drug investigation
- Numerous documents related to Nakos and Koustas criminal histories
- Numerous Documents from the EOUSA
- Notes taken by [REDACTED]
- Emails from the following:

[REDACTED]
○ John Kacavas

[REDACTED]
○ Robert Veiga

[REDACTED]

Background

Applicable Authorities

At all relevant times, the United States Attorneys' Manual (USAM) required United States Attorneys Offices (USAO) to consult with the Executive Office for the United States Attorneys (EOUSA) whenever a USAO had a question about a potential conflict of interest. USAM Section 3-2.170 stated:

When United States Attorneys, or their offices, become aware of an issue that could require a recusal in a criminal or civil matter or case as a result of a personal interest or professional relationship with parties involved in the matter, they must contact General Counsel's Office (GCO), EOUSA. The requirement of recusal does not arise in every instance, but only where a conflict of interest exists or there is an appearance of a conflict of interest or loss of impartiality.²

Further, USAM Section 3-2.171 stated:

Any recusal by a United States Attorney must be complete. Once it has been determined that a United States Attorney must be recused from a particular matter, he or she should not only be recused from decision-making responsibility in that matter, but also should not review any status reports on the progress of the matter.

To ensure effectiveness of the recusal, the file should be marked in a distinguishing manner and an entry made within the case management system. Should the case enter a grand jury phase, the judge supervising the grand jury should be notified of the recusal. When the case reaches court, the assigned judge should also be notified.

[REDACTED] told the OIG that in addition to the USAM provisions regarding conflicts of interest, new USAs receive training that emphasizes the point that a USA is not authorized to decide for himself or herself if the USA has a personal conflict, but rather must consult with EOUSA when these questions arise.

At all relevant times, the USAM required DOJ employees to report any evidence of misconduct. USAM Section 1-4.100 stated:

² The OIG notes that USAM Section 3-2.170 provided the mechanism for USAs and/or USAO personnel to obtain a determination about whether to participate in a particular matter that could raise a question regarding their impartiality, consistent with the guidance in the federal ethics regulations. *See* 5 C.F.R. § 2635.502. The OIG further notes that Kacavas was a member of the New Hampshire Bar, and that the New Hampshire Rules of Professional Conduct (NHRPC) Rule 1.9 (Duties to Former Clients) states: "A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent confirmed in writing."

Department employees shall report to their United States Attorney or Assistant Attorney General, or other appropriate supervisor, any evidence or non-frivolous allegation of misconduct that may be in violation of any law, rule, regulation, order, or applicable professional standard. . . . The supervisor shall evaluate whether the misconduct at issue is serious, and if so shall report the evidence or non-frivolous allegation to the Office of the Inspector General (OIG) or to the Office of Professional Responsibility (OPR), and to EOUSA, as set forth below.

If the supervisor was involved in the alleged violation, the supervisor must bring the evidence or allegation to the attention of a higher-ranking official. An employee who wishes to report directly to OPR or OIG may do so.

In addition, Section B of USAM 1-4.100 stated,

Evidence and non-frivolous allegations of serious misconduct by Department attorneys that relate to the exercise of their authority to investigate, litigate, or provide legal advice shall be reported to OPR. In addition, allegations of misconduct by a Department law enforcement officer that are related to an allegation of misconduct by a Department attorney that relates to the exercise of the attorney's authority to investigate, litigate, or provide legal advice shall be reported to OPR.

Kacavas's prior relationships with Nakos and Koustas

John Kacavas was the United States Attorney (USA) for the District of New Hampshire (USAO-NH) from August 2009 through April 2015. Prior to becoming USA, Kacavas worked as an attorney in private practice in New Hampshire for several different law firms.

Alkis Nakos

During his OIG interview, Kacavas stated that [REDACTED] Alkis Nakos's mother, retained him as her attorney in the early 2000s. Kacavas stated that he could not recall the reason she retained him, but he believed it had something to do with a New Hampshire state case involving asset forfeiture. Kacavas said that his best recollection was that [REDACTED] had hired him to see if he could legally win the return of her car, which had been seized as part of her son's state court drug case.

Through a review of documents related to Nakos's criminal history, the OIG learned that in June 2003, when Nakos was on parole for a 1997 state drug conviction, he was stopped by his parole officer and found to be in possession of cocaine and marijuana. The State of New Hampshire moved to revoke Nakos's parole and held a series of parole revocation hearings in 2007. Based on its review of documents related to these parole revocation hearings, the OIG learned that Nakos claimed that the drugs found in his possession did not belong to him, but instead belonged to his friend, [REDACTED]. Over the State's objection, the Court allowed Kacavas to testify as a fact witness for the defense in one of the parole revocation hearings. In substance, Kacavas testified that he had had a meeting with [REDACTED] and Nakos's mother regarding the drugs found on Nakos, and that [REDACTED] had stated that the drugs found in Nakos's possession actually belonged to [REDACTED].

Kacavas told the OIG that he never represented Nakos in any criminal or civil matters, but that he did recall testifying as a witness on his behalf in a New Hampshire state court case. Kacavas told the OIG that he could not initially recall any specific details of the case, but believed he testified at the request of his client, [REDACTED]. The OIG provided Kacavas with a copy of a court order related to Nakos's parole revocation hearings to refresh Kacavas's memory regarding the substance of his testimony. After reading the order, Kacavas told the OIG that he had no recollection of ever meeting with or speaking to [REDACTED]. Additionally, Kacavas could not recall if [REDACTED] was a former client of his. Kacavas was able to recall

that, "...the gravamen of the testimony had to do something with who owned certain drugs" and that he was not an eyewitness regarding drug transactions but rather a fact witness regarding what someone told him about the incident. Kacavas was unable to recall any additional or specific details regarding his testimony during the hearing, which had occurred 10 years earlier.

Kosmas Koustas

The OIG's review of documents related to Koustas's criminal history indicated that Kacavas represented Koustas in a state drug related case in 2003, prior to Kacavas becoming USA. Kacavas told the OIG that he believed he was originally contacted in the early 2000s by Koustas's father after the younger Koustas was arrested for a criminal offense. Kacavas said that he believed [REDACTED] and Koustas's [REDACTED] and he suspected that was why he was contacted to represent Koustas. Kacavas stated that he believed Koustas's case was resolved by a plea agreement, but he could not recall any specific details about the facts of the case. Kacavas acknowledged to the OIG that he was listed as the attorney of record for Koustas in Koustas's 2003 state prosecution, and that the signature on the attorney of record form was his.

USAO-NH investigation of Nakos and Koustas

In 2009, a large-scale drug investigation conducted by federal and local law enforcement agencies, known as Operation Brown Shirt, culminated in the arrest and federal prosecution of over 50 individuals in Massachusetts, New York, and New Hampshire. The drug operation involved the distribution of drugs throughout the United States and Canada. [REDACTED] was the assigned USAO-NH prosecutor for Operation Brown Shirt.

Based on its review of documents related to Nakos, the OIG learned that in January 2010, five months after Kacavas became USA, Walsh drafted a prosecution memo seeking approval from then Deputy Criminal Chief Veiga to indict Nakos for conspiracy to distribute marijuana.³ Veiga rejected Walsh's proposal, writing in a February 20, 2010, email: "Since identification of target is a crucial issue, in the interest of caution, further evidence should be developed in support of the anticipated testimony of alleged co-conspirator."

In April 2010, [REDACTED] again submitted a prosecution memo seeking approval to indict Nakos. [REDACTED] proposal was rejected by [REDACTED] who sent an email to Veiga and then [REDACTED] on June 14, 2010, explaining that he would "not approve an indictment based on the evidence as I understand it." The OIG was not able to determine whether Kacavas was consulted prior to Veiga's February 2010 decision or [REDACTED] June 2010 decision to reject [REDACTED] proposed indictment of Nakos.

Based on its review of documents related to Nakos and Koustas, the OIG further learned that in 2012, Drug Task Force Officers from the New Hampshire State Police (NHSP) started a new, spinoff investigation that targeted individuals associated with the 2009 drug operation who had not been prosecuted and who were still allegedly involved in the distribution of marijuana throughout the Northeast. Nakos and Koustas were identified as two main targets of this spinoff investigation. In March 2013, the case was presented by the NHSP to the USAO-NH. [REDACTED] told the OIG that she was unable to work on the new investigation because she was still involved in prosecuting numerous Operation Brown Shirt defendants, and she did not feel that the new information developed by the NHSP directly related to her investigation. [REDACTED] stated that [REDACTED] was assigned to the new investigation.

³ Veiga became Criminal Chief in 2012.

During his OIG interview, Kacavas said he recalled that the USAO-NH oversaw a drug investigation involving Nakos and Koustas. Kacavas told the OIG that he recalled that Nakos was a main target of the investigation, but that he was not initially aware of Koustas's involvement in the case. Kacavas said he knew right away that Nakos was the son of [REDACTED], his former client, and he recalled that Nakos was constantly getting himself into trouble. Kacavas told the OIG that at the time the USAO-NH opened its investigation of Nakos, he had forgotten the fact that he had previously testified as a fact witness on behalf of Nakos. In response to the OIG's questions regarding whether he was concerned that there might be an appearance of a conflict due to his prior relationship with Nakos and his mother, Kacavas stated, "It didn't even occur to me to have that concern." Kacavas emphasized to the OIG that he had never represented Nakos, only his mother, so in his mind there was no conflict.

Kacavas further stated that at some point in the early stages of the investigation, he became aware of the fact that Koustas was another main target of the NHSP drug investigation. Kacavas told the OIG that after becoming aware of Koustas's involvement, he believed he contacted [REDACTED] to discuss this potential conflict. Kacavas recalled that he wanted to "stay away" from the case internally because of his previous relationship with both the Nakos and Koustas families. Kacavas stated that he and [REDACTED] mutually agreed that [REDACTED] would maintain general oversight of the entire investigation, including approving all memos, plea agreements, 5K letters, and complaints. Kacavas referred to this agreement as an "informal recusal." Kacavas did not offer any explanation regarding why he did not formally recuse himself or at least consult with the EOUSA General Counsel about the potential conflict, as required by USAM 3-2.170. The OIG found no memo, email, or other record reflecting that Kacavas asked [REDACTED] about the potential conflict or that the two had agreed to the "informal recusal" described by Kacavas.

The OIG's review of Kacavas's emails showed that with other potential conflicts involving his prior clients, as well as with potential conflicts involving other AUSAs in the office, Kacavas did consult with EOUSA. Kacavas nevertheless told the OIG that he was not aware of the USAM provision requiring consultation with EOUSA if there were merely questions about an attorney's "personal interest or professional relationship with parties involved in the matter." Kacavas admitted during his OIG interview that he could "see from an appearance standpoint" that his failure to formally recuse himself and his playing any role in the case involving Nakos and Koustas could be viewed as "problematic."

In his 2017 interview with the OIG, [REDACTED] told the OIG that he did not recall having a conversation with Kacavas about Kacavas's possible conflict with the Nakos-Koustas investigation. [REDACTED] told the OIG: "No. There was never any conversation. I mean I think if, it probably would have gone to [REDACTED] in the first instance. He was handling that area." Regarding Kacavas's statement to the OIG that he and [REDACTED] had agreed upon an "informal recusal," [REDACTED] said, "I don't remember that conversation. It could have, it could have occurred as a practical matter. John [Kacavas] wasn't involved substantively in cases that he didn't try. That was left to the Criminal Chief and, if necessary, to me. So I mean it's entirely possible."

However, shortly before this investigation was concluded, handwritten notes were discovered that showed [REDACTED] was aware of the possible Kacavas-Koustas conflict as early as February 25, 2013. The notes, contained in an unmarked binder left behind in [REDACTED] office after he retired in [REDACTED] 2018, were discovered by [REDACTED] on March 6, 2020. [REDACTED] said when he realized that the notes might be relevant to the OIG's investigation, he immediately provided them to the OIG. In a brief telephone call with the OIG in which the notes were described to him, [REDACTED] [REDACTED] The notes, [REDACTED] [REDACTED], contained this notation on the last line, "John K recused in Cosmo [sic] Koustas (prior client)." After reviewing them, [REDACTED] acknowledged via email that they were his notes, but in response to an OIG request for a follow-up interview, he replied, "Please note that I decline any further interview because I have retired from [DOJ] and have told you I have no recollection of the

It was alleged that, without consulting with EOUSA's Office of General Counsel as required, Kacavas "informally recuse[d]" himself from the Nakos-Koustas investigation and then actively participated in the investigation.

Kacavas Provided Greek-English Interpretation [REDACTED]

Based on its review of documents related to the Nakos-Koustas investigation, the OIG learned that during the investigation, the NHSP [REDACTED] Koustas and Nakos. The NHSP learned that when Koustas and Nakos spoke to each other on the phone, they spoke to each other in Greek. As a result, the NHSP requested the services of a certified Greek interpreter from the DEA.

[REDACTED] said that on or about March 6, 2014, the NHSP developed information which led them to believe that Koustas and Nakos were planning to obtain a large shipment of marijuana. At the time they developed this information, the DEA Greek interpreter had not yet arrived in the District of New Hampshire. Because the NHSP was aware that Kacavas was fluent in Greek, [REDACTED] and [REDACTED] discussed the possibility of having Kacavas assist investigators by interpreting a portion of an intercepted communication. According to an email sent from [REDACTED] to [REDACTED] and Kacavas, dated March 6, 2014, [REDACTED] wrote that Kacavas had agreed to assist in the investigation by listening to the Koustas-Nakos conversation. In this email, [REDACTED] wrote that Kacavas was informed that his interpretation would not be utilized in any way in the case, and was only needed to provide a "guidepost" regarding the conversation. [REDACTED] said Kacavas interpreted a portion of the intercepted communication between Nakos and Koustas.

Kacavas initially told the OIG that he did not recall playing any role in the Nakos-Koustas investigation. When asked if he ever assisted in any investigation by listening to intercepted communications, Kacavas stated that he recalled a time that he was asked to assist an investigation by interpreting a small portion of a recorded conversation in Greek, his native language. Kacavas stated that he could not recall the specific case or the substance of the recorded conversation that he interpreted, but that the conversation was innocuous and not important to the overall investigation. When the OIG informed Kacavas that the conversation he had interpreted was part of the Nakos-Koustas investigation, Kacavas appeared to be surprised. After being reminded that the matter involved Nakos and Koustas, Kacavas stated that he could not recall if the recorded conversation he listened to was between Nakos and Koustas, but acknowledged that, based on his previous conversations with Koustas, he "probably" would have recognized Koustas's voice.

[REDACTED] told the OIG that she recalled asking Kacavas if he was willing to assist with the Nakos-Koustas investigation by interpreting some of the intercepted conversations. [REDACTED] stated that at the time she requested Kacavas's assistance, she had no idea that Kacavas had a potential conflict with either Koustas or Nakos. [REDACTED] further stated that she was never told by any of her supervisors that Kacavas had been recused from the case.

[REDACTED] told the OIG that he was aware that Kacavas was asked to, and ultimately did, assist in the Nakos-Koustas investigation by interpreting a portion of an intercepted communication. [REDACTED] stated that he was not aware that Kacavas had any potential conflict in the case at that time. [REDACTED] further stated that, even if there were a conflict, "I'm not sure I would have said, 'No. Don't do that.'" [REDACTED] told the OIG that he believed Kacavas was asked to help interpret the wiretap communication in order to assist law enforcement so that they could immediately learn the substance of the intercepted communications, without having to wait for a Greek interpreter. [REDACTED] said that if the interpreted information was relevant to the case, the USAO-NH would have later used a certified interpreter, not Kacavas, to testify as to the interpretation. [REDACTED] said any concern about a potential conflict would be mitigated by the fact that all of the intercepted

communications were recorded and could have been independently reviewed at a later time. The OIG notes that neither [REDACTED] nor [REDACTED] expressed any concern that having Kacavas interpret a portion of the intercepted communication could result in the USA having to testify as a witness in one of his office's criminal cases.

The USAO-NH was not able to locate a recording of the intercepted conversation at issue or its transcription for the OIG's review. [REDACTED] told the OIG that if the conversation was insignificant, it was likely that investigators never requested that it be transcribed and translated. As a result, the OIG was unable to confirm whether the two subjects discussed anything significant on the portion that Kacavas interpreted for the NHSP.

Kacavas Received a Copy of the Nakos-Kouostas Draft Criminal Complaint

Based on its review of USAO emails, the OIG learned that on May 16, 2014, [REDACTED] emailed a draft criminal complaint and supporting affidavit, charging 13 individuals, including Nakos and Kouostas, to [REDACTED] Veiga. [REDACTED] copied Kacavas on this email. In response to [REDACTED] email, [REDACTED] emailed Veiga, with a copy to Kacavas, asking about the wisdom of using a complaint if arrests were not planned for a month. Veiga responded directly to [REDACTED] with no copy to Kacavas. [REDACTED] told the OIG that it was not uncommon for her to email a courtesy copy of a draft criminal complaint of a large scale investigation to the USA. The OIG's review of USAO emails found no evidence that Kacavas reviewed the draft complaint or commented on it. Neither [REDACTED] nor Veiga recalled discussing the draft complaint with Kacavas. When asked by the OIG about his failure to inform [REDACTED] of his conflict with the case, Kacavas was not able to explain why, if he had "informally recused" himself from the matter, he failed to at least mention the potential conflict after both [REDACTED] and [REDACTED] copied him on email discussions regarding the draft complaint.

Kacavas Requested a News Conference to Announce the Nakos-Kouostas Charges

The OIG asked Kacavas if he recalled whether there was a press conference at any stage of the Nakos-Kouostas case. Kacavas stated that he could not recall any press conferences, and that he would be "stunned" to find out that he had attended any news conference regarding the investigation. The OIG provided Kacavas with a copy of an email dated June 25, 2014, which [REDACTED] sent to [REDACTED] and Veiga. [REDACTED] email referenced the Nakos-Kouostas case and stated in part, "The U.S. Attorney would like to do a press conference on Monday June 30. [REDACTED]" [REDACTED] After reading the email, Kacavas reiterated to the OIG that he was certain that he did not attend a news conference related to the Nakos-Kouostas case. The OIG notes that Kacavas was unable to explain why it appeared that he had requested a press conference for a date when he could be present, but for whatever reason did not attend.

Evidence reviewed by the OIG shows that the USAO-NH held a news conference on Monday June 30, 2014, to announce arrests in the Nakos-Kouostas case. In a press release issued the same day, the USAO-NH reported, "United States Attorney John P. Kacavas today announced that nine individuals were arrested by federal, state and local authorities." Video coverage of the news conference by WMUR, a Manchester television station, showed that [REDACTED] was the lead speaker announcing the charges. News stories about the arrests included quotes from [REDACTED] but none from Kacavas. The OIG asked [REDACTED] to review the WMUR video and identify all of the law enforcement leaders standing behind [REDACTED] at the news conference. [REDACTED] confirmed to the OIG that Kacavas was not among them.

The OIG showed [REDACTED] a copy of his June 24, 2014 email, which reflected Kacavas's request for a press conference. [REDACTED] told the OIG that he could not recall the referenced press conference, but that he assumed it had taken place. [REDACTED] further stated that he recalled being part of five or six press conferences during his career, but he was only able to recall one specific news conference and he was uncertain if it involved the

Nakos-Kouostas investigation. [REDACTED] was also unable to recall his understanding at the time regarding why Kacavas did not handle the Nakos-Kouostas news conference, as the USA typically did.

Calls to Kacavas from [REDACTED], His Former Client, Regarding Her Defendant Son

Based on its review of USAO emails, the OIG learned that, on July 3, 2014, [REDACTED] sent an email to [REDACTED] advising her that [REDACTED] had called the USAO and asked to speak with Kacavas regarding the process of retrieving her vehicle, which she said was seized by the government during Nakos's most recent arrest. [REDACTED] told the OIG that she recalled that [REDACTED] had made about four or five calls to the USAO-NH after Nakos was arrested on federal charges, in hopes of speaking with Kacavas. [REDACTED] stated that after the first call on July 3, 2014, she told Kacavas that [REDACTED] had called and wished to speak with him. [REDACTED] stated that Kacavas told her that he was not involved in the case and [REDACTED] should forward all of [REDACTED] future calls to [REDACTED] who was handling the case. [REDACTED] told the OIG that to her knowledge, Kacavas and [REDACTED] never spoke to each other at any point during the investigation.

In response to [REDACTED] July 3, 2014 email regarding [REDACTED] call, [REDACTED] responded to [REDACTED] with the following email:

Thanks, [REDACTED]

When you sent this email, I was in a debriefing with a cooperator who said that Alkis Nakos was bragging at Strafford County Jail that his mother knew, and was close to, John Kacavas and that his family would be able to have direct contact with the USA. The clear inference, which we laughed at, was that Nakos believed the USA could help him with the case. It doesn't surprise me that his mother, who was pretty vocal at Nakos's detention hearing, is now trying to have contact with John and using the car issue [as] the reason.

[REDACTED] told the OIG that when she first learned that Nakos was bragging in jail about having a personal connection with Kacavas, she "laughed it off" because at the time she was not aware of Kacavas's prior connection to Nakos and his representation of Nakos's mother. [REDACTED] told the OIG that she never had a conversation with Kacavas about [REDACTED].

Kacavas Authorized Dismissal of Kouostas Indictment

[REDACTED] told the OIG that, as the plea negotiations in the Nakos-Kouostas case continued, it became clear that the USAO-NH would likely dismiss one of the two indictments against Kouostas.

On September 29, 2014, [REDACTED] emailed [REDACTED] and Veiga, requesting permission to dismiss one of the two indictments against Kouostas. The next day, Veiga emailed Kacavas, with a copy to [REDACTED], requesting Kacavas's permission to dismiss the Kouostas indictment. The email read:

[REDACTED] and I discussed this last night and agree there is merit in the request to dismiss the indictment described below. As you may recall, the cocaine was never recovered and the supplier never arrested. Dismissal of this subsidiary indictment will likely enhance our prospects at trial of the main conspiracy indictment.

Two hours later, at 1:48 p.m., Kacavas sent an email to Veiga, with a copy to [REDACTED], approving the dismissal of the indictment against Kouostas, saying "Good by me, [REDACTED]." Subsequently, [REDACTED] filed a motion to dismiss the secondary indictment against Kouostas.

Kacavas told the OIG that the USAO-NH policy required that the USA approve any motion to dismiss an indictment. Kacavas further stated that he did not specifically recall [REDACTED] request, but that based on the email, it appeared to have been “a breakdown in the informal recusal” that he and [REDACTED] had previously arranged for the case.

OIG’s Conclusion

The OIG substantiated the allegation that Kacavas actively participated in the Nakos-Koustas criminal investigation after purporting to “informally recuse” himself, in violation of USAM Section 3-2.171 (requiring any recusal by a United States Attorney to be complete).

[REDACTED]

However, Kacavas’s failure to follow Department policy contributed to substantial post-conviction sentencing reductions for both defendants, thereby affecting their prosecutions and negatively impacting the Department’s operations (discussed below).

The OIG also concludes that Kacavas, [REDACTED], and [REDACTED] exhibited poor judgment in failing to recognize that having the USA interpret communications intercepted during the course of an investigation could result in the USA becoming a witness in one of the USAO’s criminal cases.

Allegations that [REDACTED] and Veiga Failed to Follow DOJ Policies Upon Becoming Aware of Kacavas’s Potential Conflict with Koustas

During the course of its investigation, the OIG learned that [REDACTED] and Veiga failed to make appropriate notifications after becoming aware of Kacavas’s potential conflict with Koustas.

[REDACTED]

Iacopino said [REDACTED] was aware of Kacavas's potential conflict with Koustas

The OIG asked [REDACTED] whether he recalled having a conversation with Iacopino about Kacavas being recused from the Nakos-Kouostas investigation. [REDACTED] stated that he had no recollection of any conversation with Iacopino regarding the matter. The OIG provided [REDACTED] with a copy of the September 11, 2014, email from Iacopino to [REDACTED] and asked [REDACTED] if he thought Iacopino would have written in an email that he had a conversation with [REDACTED] if the conversation had never taken place. [REDACTED] responded:

I, I'm, I'm guessing that I probably had some form of conversation with him [Iacopino]. Whether it went, whether it went to the extent of, of recusal or whether he just told me that John [Kacavas] had represented Kouostas in the past, I don't know. I don't have any recollection of what the conversation was.

The OIG asked Iacopino if he recalled being told by anyone at the USAO-NH that there was a potential conflict between his client and Kacavas. Iacopino stated that [REDACTED] had definitely made him aware of the potential conflict, but Iacopino could not specifically recall if he spoke to [REDACTED] in person or if he was notified by some other means. Iacopino said he never had a conversation with Kacavas regarding the matter. Iacopino said it was his understanding that Kacavas had nothing to do with the case. Iacopino further told the OIG that he was aware of the prior relationship between Kacavas and Kouostas before [REDACTED] informed him, although he said he could not provide any details regarding how he first became aware of the relationship.

Veiga's failure to make notifications after becoming aware of Kacavas's potential conflict with Koustas

Veiga stated [REDACTED] that he learned about the potential conflict directly from Kacavas in early 2015, sometime after Kacavas approved the dismissal of one of the two indictments against Koustas. On February 5, 2015, Veiga sent an email to Kacavas asking: "John - Do you recall if you are recused from Koustas and Nakos? I'd like to run something by you but won't if you're walled off." The OIG's review of USAO-NH records found no evidence that Kacavas responded to this email. Veiga further stated [REDACTED] that he recalled discussing the recusal issue with Kacavas in person shortly before Kacavas resigned as USA in April 2015. Veiga stated:

John had come in to my office to discuss some other business. I don't recall what it was, and I said, 'While you're here I want to talk to you about a proposed plea in the Koustas case' and he held up his hand. And I vividly remember this, he said, 'I can't talk to you about the case. I am recused from it.' And he left.

The OIG found no indication that Veiga took any action after he discussed the Koustas conflict with Kacavas in early 2015 to determine if (a) anyone in the USAO-NH had brought this potential conflict to the attention of EOUSA, (b) a formal recusal had been put in place, (c) if Kacavas had actually participated in the investigation despite the potential conflict, perhaps requiring that remedial action be taken, or (d) if [REDACTED] or anyone else had notified counsel for the Koustas co-defendants about the potential conflict. [REDACTED] Veiga was not asked, nor did he offer any explanation, why he did not take any of these actions.

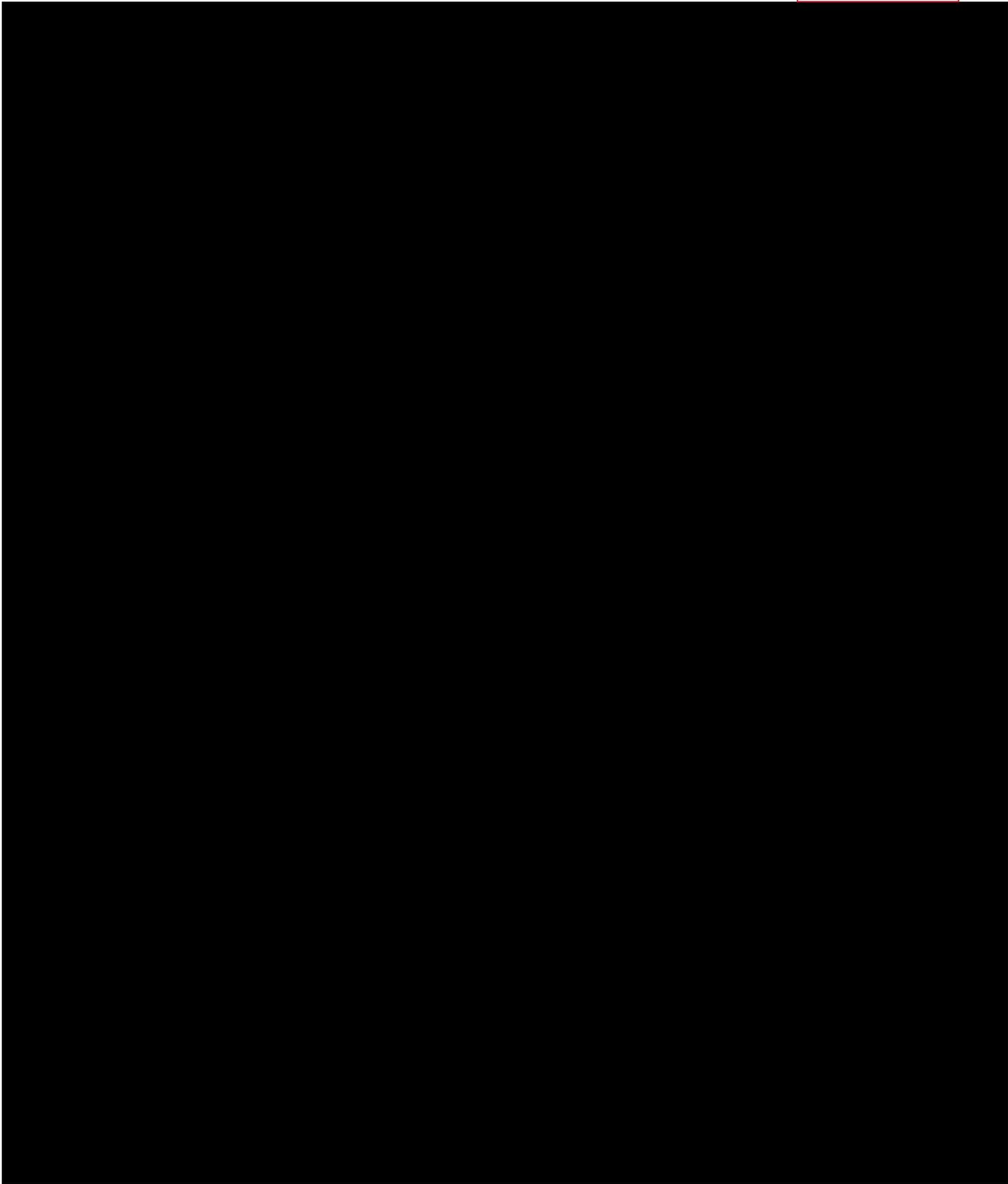
Veiga retired from DOJ in January 2017, shortly before the OIG began this investigation. The OIG attempted to conduct a voluntary interview of Veiga, who was in poor health, and he declined. The OIG does not have authority to compel the testimony of individuals who are not employees of the Department. Veiga died in July 2019 after a long illness.

OIG's Conclusion

[REDACTED]

The OIG further finds that Veiga exhibited poor judgment by failing to appropriately handle Kacavas's potential conflict after learning of it in early 2015 and by failing to inquire whether the court had been notified of Kacavas's "recusal." As Criminal Chief, Veiga should have recognized that if an attorney in the office had a conflict that had been ignored or overlooked, it needed to be addressed.

Allegations that [REDACTED] Veiga, and [REDACTED] Failed to Follow DOJ Policies Upon Becoming Aware of Kacavas's Potential Conflict with Nakos



Veiga's failure to make notifications after becoming aware of Kacavas's potential conflict with Nakos

As part of ██████ asked Veiga if he recalled speaking with ██████ about Kacavas's potential conflict with Nakos and whether he recalled telling her not to notify Nakos's defense counsel about it. Veiga said that he would never have told ██████ not to disclose the information to defense counsel. Veiga said he recalled that ██████ came to his office and was "fairly animated" when she provided him with a copy of some sort of court order regarding testimony that Kacavas had given on behalf of Nakos years earlier. Veiga said he recalled that he had previously spoken with Kacavas around the time of the Koustas plea and recalled that Kacavas had said he was recused. Veiga stated that he relayed that story to ██████ and told her that he believed that in Kacavas's mind, Kacavas was recused from the case. Veiga further stated that he told ██████ that, because Kacavas was now no longer working at the USAO-NH, Veiga was not sure if the potential conflict was still significant or was now a matter of "no harm no foul." Veiga told ██████ that, to the best of his recollection, after Kacavas told him he was recused from the case, Veiga never discussed the case with Kacavas again. In his statement to ██████ Veiga did not explain why, after Kacavas told Veiga he was recused from the matter, Veiga made no attempt to (a) inquire whether Kacavas actually was formally recused from the case, (b) ensure that the files were marked accordingly or (c) inquire whether Kacavas's previous participation in the case required some kind of remediation by the USAO-NH. Veiga was also asked by ██████ if he was aware of Kacavas ever being involved in any part of the Nakos investigation, including whether he was aware of Kacavas's role interpreting an intercepted communication, or reviewing the draft complaint against Nakos and the other defendants. Veiga replied, "As I sit here today, I don't know that." Veiga further stated that he had never heard about Kacavas participating in any interpretation of intercepted wiretap communications and said, "The interpretation thing, that's news to me." Veiga also told ██████ that although he has no specific recollection of it, he believes it is possible that Kacavas could have reviewed the draft complaint.

██████ failure to make notifications after becoming aware of Kacavas's potential conflict with Nakos

The OIG asked ██████ if he recalled having any conversations with ██████ about a potential conflict regarding Kacavas in the Nakos case. ██████ provided the following statement:

██████: "I know in the past she's referred to some sort of a hallway conversation. My memory of that is, it related to the Nakos thing. I read what the state documents were on that. To this day I don't think it's an issue, so, you know?"

OIG: "You don't think what's an issue?"

██████: "His appearing as a witness, being called as a witness to testify in a state proceeding created any sort of issues since he [Kacavas] had been gone [from the USAO] for four months or five months."

The OIG asked ██████ whether the fact that Kacavas may have been overseeing the case while he was still the USA raised any concerns. ██████ told the OIG that he did not believe that Kacavas oversaw the case. ██████ stated that because Kacavas was the USA, according to an organizational chart, it may have appeared as though he was overseeing the case, but as a practical matter, Kacavas was not intimately involved in the case. ██████ told the OIG that he and Veiga oversaw the Nakos-Koustas case. ██████ further stated that, with the exception of the few cases that Kacavas tried in court himself, Kacavas typically left the handling of the cases up to ██████ and Veiga and let them "run the office." ██████ stated that Kacavas instructed him and Veiga to bring to his attention matters that were going to "blow up," or may appear as a story in the news media, but otherwise ██████ described Kacavas as being "very hands off" with the exception of the cases Kacavas personally tried. ██████ said that Kacavas was not the type of USA who needed to go over every case and know exactly what was going on with each and every investigation.

The OIG asked [REDACTED] if he thought that the other defendants in the case should have been notified that there were two potential conflicts based on the fact that the USA previously represented one of the defendants in the case and previously testified on behalf of another one. [REDACTED] told the OIG that he was not sure if that needed to be disclosed to attorneys for the other defendants and that he did not know that area of the law.

The OIG then asked [REDACTED] if he thought the AUSA prosecuting the case should be made aware of any potential conflicts between any of the defendants and the USA. [REDACTED] replied:

OIG: “. . . in your mind is it problematic if there are potential conflicts and the prosecutor doesn’t know about it, but the defense-”

[REDACTED]: “Sure.”

OIG: “-- lawyers do?”

[REDACTED]: “Sure, of course, in theory that’s a problem.”

OIG: “. . . is it your view that there’s no harm done?”

[REDACTED]: “Right.”

OIG: “And, and why is that?”

[REDACTED]: “Because all the defendants were prosecuted appropriately. For the most part, the relief that the prosecutor sought for individual defendants in that case was granted and her handling of the individual defendants was, was allowed by the Criminal Chief and, you know, it was only after the Nakos trial was over that we found out there were problems.”

[REDACTED] was interviewed by the OIG prior to both defendants receiving a significant reduction in their sentences.

OIG’s Conclusion

The OIG finds that [REDACTED] and Veiga exhibited poor judgment by failing to appropriately handle Kacavas’s potential conflict regarding Nakos upon learning of it in August 2015 by, for example, consulting with [REDACTED], seeking guidance from DOJ officials outside the office at PRAO, EOUSA or [REDACTED], or otherwise determining whether any remedial action was necessary. The OIG notes that [REDACTED] eventually did disclose the Kacavas-Nakos conflict to Nakos’s defense counsel in December 2015 (see discussion below), but only as part of a separate post-trial disclosure.

Consequences of Kacavas's Undisclosed Potential Conflicts on the Nakos and Koustas Prosecutions

The OIG notes that both of the Nakos and Koustas prosecutions were ultimately compromised by Kacavas's undisclosed potential conflicts.

Nakos

On August 26, 2015, after a jury trial in the District of New Hampshire, Nakos was found guilty of participating in a Continuing Criminal Enterprise and numerous other drug and weapons offenses and was sentenced on August 15, 2016, to 240 months in prison.

Prior to the sentencing, on December 3, 2015, [REDACTED], wrote a letter to Nakos's defense attorney and advised him of numerous issues regarding the Nakos trial and investigation, including alleged *Brady* violations [REDACTED] that led to [REDACTED] disclosure of Kacavas's potential conflict) and the fact that information regarding Kacavas's role as a fact witness on Nakos's behalf in 2003 was never disclosed to defense counsel. The OIG review of the records in this case indicated that this was the first official notification from the USAO-NH to any defense counsel regarding a potential conflict of interest between Kacavas and either Nakos or Koustas. However, the USAO did not notify the remaining co-defendants in the case about the potential conflicts until June 2017, five months after the OIG investigation began.

On June 13, 2017, [REDACTED], wrote letters to the attorneys for all of the defendants in the Nakos-Koustas investigation, disclosing the fact that Kacavas represented Koustas in New Hampshire State Court proceedings in 2003 and testified as a fact witness for Nakos in 2007.

On July 20, 2017, Nakos's attorney filed a motion for a new trial based in part on the belated disclosure to defense counsel of Kacavas's potential conflicts with Nakos and Koustas. On November 21, 2017, the parties reached a new plea agreement in which Nakos agreed to a sentence of 92 months in prison. Nakos was resentenced to that term on August 17, 2018.

Koustas

Following Koustas's guilty plea in the USAO-NH investigation, he was sentenced to 138 months in prison. In August 2018, Koustas filed a *pro se* motion pursuant to 28 U.S.C. § 2255 in which Koustas argued, among other things, that Kacavas had a conflict of interest that violated Koustas's due process rights, and that his attorney's failure to raise the conflict issue during the prosecution of the case constituted ineffective assistance of counsel.

In September 2019, the court ruled on Koustas's § 2255 motion by entering an order vacating Koustas's conviction and accepting Koustas's plea to a Superseding Information with an agreed-upon sentence of time served. On January 16, 2020, Koustas was sentenced to the agreed-upon sentence of time served, amounting to approximately 63 months in prison.

The U.S. Attorney's Office, District of New Hampshire, recused itself from this matter. The Department of Justice, Public Integrity Section, declined criminal prosecution.

The OIG has completed its investigation and is providing this report to the Office of the Deputy Attorney General, EOUSA, and DOJ's Office of Professional Responsibility for appropriate action.