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For Ex-F.B.I. Agent Accused in Murders, a Case of What Might Have Been

By [ALAN FEUER](#)

R. Lindley DeVecchio once stood atop the New York office of the [F.B.I.](#) as a legendary Mafia hunter, a storied agent who helped break the back of the mob in the celebrated Commission Case.

Now he stands accused of helping the mob commit murders, charged in a state indictment last month with feeding lethal secrets to a captain of organized crime.

Mr. DeVecchio has been hailed as a hero and tarnished as a scourge, and yet there was a moment in a Pennsylvania parking lot 30 years ago that almost caused him to be neither.

In 1976, as a young F.B.I. agent, Mr. DeVecchio sold old handguns to undercover officers, who later sought to charge him with a felony. Had he been convicted, the case might have led to prison or his dismissal as an agent. But Mr. DeVecchio, who said he acted legally and to benefit a widow, was neither jailed nor fired.

The case against him was ultimately discarded without an indictment by officials at the highest levels of the Justice Department, a decision that the federal prosecutor in the original case says was largely made by the top aide to the deputy United States attorney general, a 32-year-old attorney named [Rudolph W. Giuliani](#).

"Rudy expressed no other reason not to prosecute the guy except the guy was a cop," said the former prosecutor, Daniel M. Clements, who is now in private practice. "And he didn't want to embarrass the bureau."

Mr. Clements said last week that he recalled in detail his meetings 30 years ago with Mr. Giuliani, as well as his frustration that the case was dismissed as unimportant.

Mr. Giuliani, who built a reputation in part by prosecuting corrupt police officers, said through a spokeswoman, Sunny Mindel, that he had no recollection of the DeVecchio case.

Whatever the level, if any, of Mr. Giuliani's role, the case stands as a long-buried piece of law enforcement history, a fork in the road that, if traversed differently, may have led to an entirely different set of consequences. Indeed, from the vantage point of 1976, the gun case may have seemed a minor matter. There was no way to know that seven years later, according to the state indictment filed last month in Brooklyn, Mr. DeVecchio would step across the line, helping a Mafia informant kill at least four people.

But if Mr. DeVecchio had been pursued in 1976, would he have risen to lead the F.B.I. squad that hunted the Colombo crime family? Would he have had a role in some of the government's watershed cases against the mob? Would he now stand accused of second-degree murder?

His lawyer, Douglas E. Grover, said federal officials were right to never charge his client in the gun case because they were merely antiques that were peddled at a gun show. But he acknowledged that had that case been successfully pursued Mr. DeVecchio would probably have lost his job. "It also means that they may have not made the Commission Case," he said, referring to a 1986 trial at which top organized crime leaders in New York City were convicted.

The gun case began in early 1976 when Mr. DeVecchio traveled from New York to King of Prussia, Pa., to sell a Nazi-era Luger at the Valley Forge Gun Show, which promotes itself as "a gun show in the truest American tradition."

He was looking, according to his testimony in a later case, to sell the weapons "for the benefit of the widow" to whom they belonged.

Without a license, he moved through the stalls of the firearms bazaar, and was soon approached by Michael Flax, an undercover agent with the Federal Bureau of Alcohol, Tobacco and Firearms, Mr. Flax said. Mr. Flax's job was to troll the show in plainclothes looking for such illicit deals. That year alone, he said, several people he caught similarly selling guns without paperwork went to prison. "I was usually like, 'Gee I'd like to get this gun,' " he said in an interview from his retirement home in San Diego. "Do we have to go through all the paperwork?"

Mr. Flax recalled that he bought the Luger in a parking lot outside the show. Over several weeks, he said, he pursued an investigation of Mr. DeVecchio in which a second agent secretly recorded the F.B.I. man selling another gun. He said that Mr. DeVecchio, at one point, gave him a phone number at which he might be reached. It was, he said, an office of the New York F.B.I.

A few weeks later, Mr. Flax brought the case to Mr. Clements, then a young federal prosecutor in Baltimore. Mr. Clements is now in private practice and active in the Democratic Party, having given money to candidates like [John Kerry](#) and [Al Gore](#).

"Flax comes to me saying, 'You're not going to believe this,' " Mr. Clements said last week. "I have an F.B.I. agent selling guns illegally."

A few months later, Mr. Clements said he told the F.B.I. as a courtesy that he was investigating one of its agents. A few weeks passed, he said, with discussions back and forth with F.B.I. officials in Maryland and in Washington. "The next person I heard from," he went on, "was Rudolph Giuliani."

Mr. Giuliani was, at that point, an aide to Harold Tyler, the deputy attorney general, who reviewed such cases. Mr. Giuliani had joined his staff in 1975 after serving in the United States attorney's office in Manhattan where he had helped direct the prosecution in the Prince of the City police corruption case.

Over several weeks, Mr. Clements said, Mr. Giuliani asked him to write a pair of memoranda on the case in which he noted that Mr. DeVecchio had sold the guns without the proper paperwork, a crime, Mr. Clements said, for which he thought there was sufficient evidence to prosecute. Mr. Clements said he attended a pair of meetings about the case with Mr. Giuliani, including one in Mr. Giuliani's office also attended by Mr. Tyler and Jervis Finney, the United States attorney in Maryland who was then Mr. Clements's boss.

Mr. Finney, now the chief lawyer for the governor of Maryland, said last week he has no recollection of the meeting. But Mr. Clements produced a datebook he said he had saved that listed a meeting with Mr. Giuliani in June 1976.

At that meeting and a subsequent meeting in October, Mr. Clements said Mr. Giuliani repeated his desire not to prosecute the case, saying the guns were old and the sale of them without paperwork did not warrant prosecution.

Judge Tyler, who Mr. Clements said was at the second meeting, died last year. The bottom line, after both meetings, Mr. Clements said, was that the case would be dropped.

In the ensuing years, Mr. DeVecchio rose to lead the F.B.I.'s special unit that investigates the Colombo crime family, a position in which he had success in part because of his relationship with a captain in the family, Gregory Scarpa Sr., who became his informant.

The closeness of that relationship ultimately led to a two-year inquiry of Mr. DeVecchio by the F.B.I. that ended in 1996 with the decision to bring no charges against him. But Mr. DeVecchio soon retired.

In 1997, the old gun case briefly resurfaced. At a federal appeals hearing in Brooklyn. Mr. DeVecchio was called as a witness by a gangster, Victor J. Orena, who was trying to win his freedom by suggesting that Mr. DeVecchio was a corrupt agent who had lied about the facts in his case. Under questioning by Gerald Shargel, Mr. Orena's lawyer, Mr. DeVecchio acknowledged selling the guns to the federal agents.

Mr. Shargel then went on to ask him: "Do you remember agents of the A.T.F. reporting to the F.B.I. and Rudolph Giuliani — not yet the mayor — that you had lied to those agents who questioned you, that when confronted with the crimes that you committed, you gave them false exculpatory statements?"

Mr. DeVecchio said that he did not.

In the new indictment, announced last month by [Charles J. Hynes](#), the Brooklyn district attorney, Mr. DeVecchio is accused of helping Mr. Scarpa commit at least four murders in the 1980's and early 1990's in exchange for weekly payments. Most of the victims had been talking to the authorities, prosecutors said, and thus were a threat to Mr. Scarpa.

When Mr. Clements read of the indictment, he said he was surprised. At the same time, he recalled the words that he and Mr. Flax had swapped, years ago, when the gun case, as he put it, "went away."

It was an old-time adage on those who break the law, a general theory of recidivist crime. "If someone's a bad actor, we'll get him again," he remembered telling Mr. Flax.

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