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Federal Criminal Defense Lawyers Friday, March 30, 2012 www.McNabbAssociates.com

Maneuvering for an Immunity Deal

McNabb Associates, P.C. (Federal Criminal Defense Lawyers)

Submitted at 8:57 AM March 30, 2012

The New York Times on March 29, 2012 released the following:

"BY PETER J. HENNING

When a witness has valuable information and may be implicated in a violation, there are delicate maneuvers between prosecutors and defense lawyers. That is playing out behind the scenes for Edith O'Brien, an assistant treasurer at MF Global, who could have crucial information about how millions of dollars of customer money went missing in the firm's final days.

Ms. O'Brien asserted her Fifth Amendment privilege against self-incrimination at a House subcommittee investigating MF Global's collapse, but The Wall Street Journal reports that her lawyers are discussing with prosecutors her possible cooperation in the investigation. Until an agreement is reached with the Justice Department, however, she will maintain her silence.

Prosecutors can grant immunity in exchange for cooperation, or reach a plea bargain for a reduced sentence. Before that can happen, prosecutors need to know what the witness will say and how credible that testimony is. There is nothing worse than making a deal before knowing what you are getting in return.

In order to make a deal, prosecutors and defense lawyers engage in what is known as a "proffer" session, in which the witness is interviewed and the information being offered is gauged for its usefulness. Once someone talks with the government, however, the Fifth Amendment privilege is usually lost.

To deal with that issue, the Justice Department usually enters into an informal letter immunity agreement — sometimes called "Queen for a Day" immunity after the 1960s television game show. Such immunity is only good for the particular proffer session and ends as soon as the two sides are finished.

Under the letter agreement, the witness provides complete information to the government without waiving the protections of the Fifth Amendment.

Unlike immunity granted under the federal statute 18 U.S.C. § 6002, this is a more informal arrangement that is governed by the terms of the agreement worked out by the parties. Like any contract, it is subject to negotiation, and the leverage one party has will affect how much protection is afforded if there is not a resolution.

Prosecutors typically seek to use the statement to develop new leads and introduce new evidence gathered as a result of the information provided. This is not permissible when full statutory immunity is granted to a witness.

Another provision often sought by the government allows prosecutors to introduce the statements to impeach a defendant if the case proceeds to trial and the person testifies in a way that is contradicted by the statements made in the proffer session. This is included as a way to deter a witness from giving one story when seeking to resolve a case, and then saying something different at trial to avoid a conviction.

The federal evidence rules usually do not permit the introduction of statements made during negotiations related to a potential settlement of a case. The letter immunity is intended to get around that by having the witness waive the protection so that the statements can be used at a trial.

Some agreements go even further and allow the government to use the statements if the defendant takes any position that is inconsistent with what was said during the proffer session. That means the government could introduce the statement as direct evidence against the defendant, even if the person does not testify at trial. The United States Court of Appeals for the Seventh Circuit, in United States v. Krilich, upheld this type of provision.

The danger for a defense lawyer agreeing to letter immunity is that if the two parties cannot reach an agreement and the government files charges, the defendant is boxed in by the statements given during the proffer session. It is more difficult to testify because of the potential that the defendant will say something that contradicts a previous statement, opening up the defendant to cross-examination.

Thus, there is a powerful incentive to reach a resolution of the case after a proffer is made, giving the government significant leverage once the defense lawyer agrees to letter immunity.

The type of agreement an individual can negotiate will depend on how strong the government's evidence is, and how much it needs the information to push its investigation forward.

At this point, Ms. O'Brien has not made a proffer to the government, which makes this the crucial point in the process. She may be the one person who can explain how customer money was transferred out of MF Global, and what directions were given by the firm's senior management on the issue. That gives her significant leverage to work out an agreement that will not involve any criminal charges, either through a grant of immunity or informal assurances that she will not be prosecuted.

For the government, the key is whether it has enough evidence to credibly threaten Ms. O'Brien with criminal prosecution. If prosecutors do not, then the Justice Department may have to grant her immunity to get her to make a proffer.

By asserting her Fifth Amendment privilege before the subcommittee, Ms. O'Brien has maintained the ability to work out a deal with prosecutors. So the ball is now in the Justice Department's court to negotiate the terms of letter immunity and get the information it needs to determine the future direction of its MF Global investigation."

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Superseding Indictment Charges Former Owners of Delaware Trucking Company with Alleged Failure to File Taxes and with Conducting a $1.8 Million Fraud

McNabb Associates, P.C. (Federal Criminal Defense Lawyers)

Submitted at 11:07 AM March 30, 2012

The Federal Bureau of Investigation (FBI) on March 29, 2012 released the following:

"WILMINGTON, DE—Charles M. Oberly, III, United States Attorney for the District of Delaware, announced today that a superseding indictment was handed down yesterday by the federal grand jury charging Donald L. Dutton, Sr. and Vicki R. Dutton, of Ellendale, Delaware, with one count of conspiracy to defraud the Internal Revenue Service (IRS) by failing to file individual and corporate tax returns (18 U.S.C. § 371) and four counts of willful failure to file tax returns (26 U.S.C. § 7203). The federal grand jury had previously charged the defendants on September 6, 2011 with one count of conspiracy to commit mail fraud (18 U.S.C. § 1349) and five counts of mail fraud (18 U.S.C. § 1341).

According to the superseding indictment, the defendants conspired to defraud the IRS by failing to report approximately $1.8 million in taxable income that they earned between 2005 and 2008 as the owners and operators of trucking companies in Georgetown, Delaware called Little D. Trucking Co. Inc. and D. Dutton Trucking Co. Inc. In particular, the defendants' allegedly filed no individual tax returns (Form 1040s) and no corporate tax returns (Form 1120s) on behalf of Little D. Trucking Co. Inc. with the federal government during this timeframe.

To conceal the income generated by the trucking companies, the defendants allegedly directed office staff to prepare false spreadsheets that inflated their business deductions. For example, the superseding indictment lists personal expenses such as jewelry, clothing, and child support, which the defendants categorized as business expenses on these spreadsheets. The defendants allegedly presented these spreadsheets to their accountant for tax preparation purposes.

The superseding indictment further charges that, between 2005 and 2009, the defendants failed to report to the Internal Revenue Service wages paid to the 15-22 truck drivers and office staff employed by their trucking companies.

The superseding indictment added the tax-related charges to prior allegations of mail fraud conspiracy and mail fraud, which involved a $1.3 million scheme to defraud Allens Family Foods (Allens). Allens was a poultry processing company based in Seaford and Harbeson, Delaware that declared bankruptcy this past June due to financial woes largely unrelated to the alleged scheme. Dutton Trucking hauled loads for Allens as an outside vendor. The superseding indictment alleges that the defendants billed Allens for trucking loads that were not actually hauled by Dutton Trucking. The Duttons allegedly paid a former Allens dispatch clerk a substantial cash kickback for her assistance in the fraud.

If convicted of the pending charges, the defendants face up to 20 years in prison on each count of mail fraud and mail fraud conspiracy and up to five years in prison for the conspiracy to defraud the IRS, in addition to possible fines and restitution. The four counts of willful failure to file tax returns are misdemeanors, each punishable by up to one year in prison.

United States Attorney Oberly stated, "To function, our federal and state governments rely upon citizens' truly reporting their income to the Internal Revenue Service. Our office will vigorously prosecute those who seek to thwart their civic duties by failing to file returns or pay their just share."

"The license to run a business is not a license to avoid paying taxes," said Acting SAC Akeia Conner, IRS-Criminal Investigation, Philadelphia Field Office. "Mr. and Mrs. Dutton's alleged misconduct, hiding income and having their business pay their purely personal expenses, cheated all Americans, since we all have to pay our fair share for the government services and protections that we enjoy."

The case is the result of an investigation conducted by the Seaford, Delaware Police Department; the Federal Bureau of Investigation; and Internal Revenue Service-Criminal Investigation. The prosecution is being handled by Assistant United States Attorneys Ilana Eisenstein and Jamie McCall, District of Delaware. For further information, please contact AUSA Eisenstein at 302-573-6082 or AUSA McCall at 302-573-6079.

The charges in the indictment are only allegations, and the defendants are presumed innocent until and unless proven guilty beyond a reasonable doubt."

US v Donald Lee Dutton, Sr. and Vicki R Dutton – Federal Criminal Indictment

US v Donald Lee Dutton, Sr. and Vicki R Dutton – Federal Criminal Superseding Indictment

18 U.S.C. § 371
18 U.S.C. § 1341
18 U.S.C. § 1349
26 U.S.C. § 7203

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Florida Woman Pleads Guilty to Obstruction of Justice in Relation to Her Husband's Disappearance

(USDOJ: Justice News)

Submitted at 10:22 AM March 30, 2012

Abby Beard Hogan, 50, pleaded guilty yesterday in the Northern District of Florida for her role in the obstruction of a multinational investigation into the disappearance of her husband, James Hogan, then an employee in the U.S. Consulate in Curacao, announced Assistant Attorney General Lanny A. Breuer of the Criminal Division, U.S. Attorney Pamela Cothran Marsh for the Northern District of Florida, U.S. Department of State Assistant Secretary for Diplomatic Security Eric J. Boswell and John V. Gillies, Special Agent in Charge of the FBI's Miami Field Office.

Prison note details how priest allegedly conspired with mob hit man

McNabb Associates, P.C. (Federal Criminal Defense Lawyers)

Submitted at 10:36 AM March 30, 2012

Rev. Eugene Klein listens to his attorney talk to the news media after his first appearance in federal court last summer. (José M. Osorio, Chicago Tribune / June 22, 2011)

WSBT.com on March 30, 2012 released the following:

"By Annie Sweeney, Chicago Tribune reporter

For two years, vicious mob killer Frank Calabrese Sr. allegedly passed cupcakes, candy bars and a copy of a psalm through the food slot in his prison cell to a Roman Catholic priest who was there to give him Communion and counsel.

In a new court filing, federal prosecutors allege that Calabrese also slipped a note, tucked into religious reading materials, to the Rev. Eugene Klein, telling him how to find a valuable violin hidden in the mobster's former Wisconsin home.

The note, seized by federal investigators from Klein's home last year, read like a treasure trail for Klein, who was charged last summer with violating special restrictions on Calabrese that prohibited him from communicating with anyone outside the prison but his attorney and certain relatives.

"Be sure to have a little flashlight with you so you can see," it said. "Make a right when you go into that little pull out door. Go all the way to the wall. That is where the violin is."

Prosecutors contend that two confidants of Calabrese whose identities have not been made public schemed with Klein to gain control of the violin to prevent the government from seizing it and providing compensation to families of the mob hit man's victims.

According to the government filing, Klein even expressed interest in buying the house to enable him and the two associates to try to find the violin, which has never been recovered.

Calabrese, 75, is serving a life sentence for his conviction in the infamous Family Secrets trial. In sentencing him, a federal judge held him responsible for 13 gangland slayings decades ago.

Klein, who was the prison chaplain at the federal prison in Springfield, Mo., has denied the charges. He is scheduled to go to trial in September in federal court in Chicago. On Thursday, his attorney vowed a vigorous fight.

"It's all going to come down to whether this is a federal crime," said Thomas Anthony Durkin, who has filed a motion to dismiss the charges. "He is not charged with stealing the violin. He is charged with violating (the prison restrictions). … This is not a criminal case."

Klein, a priest for 40 years, first began meeting with Calabrese in 2009 at the federal prison as he administered Communion to him daily. But guards became concerned about the frequency of the visits given the severe restrictions on who could see Calabrese and restricted the meetings to 90 minutes on Saturdays, prosecutors said.

Klein, 63, who was twice interviewed by federal authorities before he was charged, insisted he was not "duped" by Calabrese. Nor did he deny that Calabrese passed him items while he was there, according to the government. One exchange was secretly captured on video, according to the government filing. Klein said it might have been a candy bar or a card for his ailing mother, prosecutors said.

Klein did not deny taking the note regarding the violin's location either, according to the filing. He also allegedly told investigators that he traveled to the Chicago area to meet with the two Calabrese associates to discuss how they might get their hands on the violin.

The three allegedly believed that the instrument was worth $26 million based on information one of the two confidants had learned from a program on the Discovery Channel. They believed that the violin once belonged to entertainer Liberace. Some of the proceeds from its sale, they figured, could pay for Calabrese's defense, Klein allegedly told the government. Klein also intended to keep some of the money for himself.

The three allegedly plotted to get inside the home, which was for sale, by asking to view the house. The plans, however, fell apart because the home had already been sold.

During the trip to the Chicago area, Klein had told prison officials that he was tending to his ill mother in St. Louis and took sick pay for that time off, prosecutors alleged."

US v Eugene Klein – Federal Criminal Indictment

18 U.S.C. § 371

18 U.S.C. § 2232

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U.S. appeals sentence of Michael Peppel, former MCSi executive

McNabb Associates, P.C. (Federal Criminal Defense Lawyers)

Submitted at 10:03 AM March 30, 2012

Dayton Daily News on March 29, 2012 released the following:
"By John Nolan, Staff Writer
Federal prosecutors are challenging the seven-day jail sentence given last year to Michael E. Peppel, former top executive of MCSi Inc., for his guilty pleas to felony crimes related to the company's 2003 collapse and insolvency.
Peppel's sentence failed to reflect the seriousness of his offenses, provide just punishment, promote respect for the law or send a message of deterrence for those who would commit similar crimes, U.S. Attorney Carter Stewart argued in his written arguments filed with the 6th U.S. Circuit Court of Appeals on Tuesday.
Stewart asked the Cincinnati-based appeals court to throw out the seven-day punishment and order resentencing by U.S. District Judge Sandra Beckwith, who sentenced Peppel on Oct. 24. Prosecutors in Ohio filed an initial notice in November of their intent to appeal, but didn't go ahead until now after obtaining approval from the U.S. solicitor general's office in Washington.
Peppel was also fined the legal maximum of $5 million, must disclose his criminal record to all employers, must submit to random drug testing and must do community service, according to his sentencing terms. He has already served his seven days behind bars.
His lawyer, Ralph Kohnen, said the defense will fight efforts to impose a longer term of incarceration on Peppel, who was MCSi's president and chief executive officer.
"The government's decision was unfortunate," Kohnen said Thursday. "Judge Beckwith's sentence was thoughtful and appropriate. Her sentence was just, proper and fair."
Under a court-approved agreement that took effect this month, Peppel has committed to pay $3,000 per month toward his $5 million fine. At that rate, it would take him 50 years to pay $1.8 million of the fine and 100 years to have paid $3.6 million of it.
Peppel, 44, avoided trial in August 2010 by pleading guilty to willful false certification of a financial report by a corporate officer; money laundering, and conspiracy to commit securities fraud. He could have faced up to 50 years in prison.
The government said his crimes helped sink MCSi, a Kettering-based computer and audiovisual equipment company. Its failure cost 1,300 employees their jobs, benefits and retirement income and left investors holding worthless stock.
Beckwith initially determined that, under federal sentencing guidelines, a prison term for Peppel of eight to 10 years would be appropriate.
But after the defense presented 113 letters of support from Peppel's family and friends, and argued that he had already been publicly humiliated and agreed to a lifetime ban on his ever serving again as a corporate chief executive, the judge imposed the seven-day jail term. Beckwith said she does not believe Peppel is likely to repeat his crimes and does not represent a threat to the public.
The defense will be allowed to respond to the government's appeal, and the government can file a counter-response, before the appeals court schedules oral arguments."

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West Virginia: Mine Official Pleads Guilty to Fraud Charge

McNabb Associates, P.C. (Federal Criminal Defense Lawyers)

Submitted at 9:01 AM March 30, 2012

The New York Times on March 29, 2012 released the following:
"By THE ASSOCIATED PRESS
The former superintendent of the Upper Big Branch mine, where an explosion killed 29 workers, pleaded guilty Thursday to a federal fraud charge. Gary May of Bloomingrose, the highest-ranking Massey Energy official charged in connection with the blast, faces up to five years in prison when sentenced Aug. 9. He pleaded guilty before Judge Irene Berger of Federal District Court to conspiracy to defraud the federal government. Prosecutors said he manipulated the mine ventilation system during inspections to fool safety officials and disabled a methane monitor on a cutting machine a few months before the explosion on April 5, 2010. Prosecutors have accused Massey of violating a host of safety laws out of a desire to put production and profits first."

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Feds bring more charges in mortgage fraud case

McNabb Associates, P.C. (Federal Criminal Defense Lawyers)

Submitted at 10:28 AM March 30, 2012

Boston Business Journal on March 30, 2012 released the following:
"by Eric Convey
Federal prosecutors Thursday charged a Roslindale paralegal with unlawful monetary transactions and bank fraud for her alleged role in a straw-buyer scheme involving residential properties in Boston.
Prosecutors allege Rebecca L. Kosnevick's and others caused hundreds of thousands of dollars in losses for a who's who of big name lenders during the height of 2006 and 2007 real estate boom by engineering fraudulently obtained mortgages that later went into default.
Alleged victims of the scheme include: BNC Mortgage; Citibank (NYSE: C); CitiMortgage; Countywide Bank (since purchased by Bank of America (NYSE:BAC)); Countrywide Home Loans; First Franklin Financial Corp.; First Franklin Financial Corp.; First Horizon Home Loans; Homecomings Financial LLC; IndyMac Bank; JP Morgan Chase Bank (NYSE: JPM); Long Beach Mortgage Corp.; Washington Mutual Bank; and Wells Fargo Bank (NYSE: WFC).
The government alleges Kosnevick helped arrange mortgages involving buyers who merely lent their names to deals so financing could be obtained. "Because the stray buyers lacked either the means or the intention of paying their mortgages, mortgage loans went into default and subsequently into foreclosure," the charging document states.
U.S. Attorney Carmen Ortiz's office brought the charnges via a criminal information — a document that serves as an indictment but often is filed when a defendant is cooperating with authorities. Kosnevick's lawyer did not immediately return a telephone call Thursday seeking comment.
The information describes Kosnevick's alleged dealings with two men who are defendants in criminal cases involving similar allegations and some of the same properties — Lord R. Allah, also known as Richard H. Matthews, who owned L.A. Properties and Management Corp.; and Sirewl R. Cox, who owned City Real Estate and Business Brokerage of Canton, Mass."

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There is nobody to represent Viktor Bout in Thailand

McNabb Associates, P.C. (Federal Criminal Defense Lawyers)

Submitted at 11:34 AM March 30, 2012

RAPSI on March 26, 2012 released the following:
"BANGKOK, March 26 – RAPSI. The Thai court that convened on Monday to reconsider alleged arms trafficker Viktor Bout's case has suspended the hearing for 60 days to allow the defense time to find a new attorney after lawyer Lak Nitivat Vichan died in January.
The court was expected to hear the witnesses for the defense on Monday in regards to Bout's extradition from Thailand to the United States in November 2010. However, the hearing was postponed due to Vichan's death as neither Bout nor his defense attorneys were able to attend.
Vichan, who was involved in Bout's case since he was arrested in March 2008 and led the defense team for most of the last four years, died at the age of 73 on January 8. Vichan contributed to the Thai Appeals Court's decision in 2011 to reconsider Bout's extradition case. The same court held for Bout's extradition after lower courts twice declined U.S. requests.
The court decided to review the case on the grounds that, first, new facts have been uncovered, according to the defense, and, second, Bout's extradition was illegal as he was still under the Thai court's jurisdiction. Under Thai law, the extradition order was not sufficient to extradite Bout as the court also needed to issue a permit for Bout's transfer from prison.
The 45-year-old former Russian military officer, known as the "Merchant of Death," was arrested in Thailand in March 2008 in a sting operation led by U.S. agents and extradited to the United States in November 2010 after spending more than two and a half years in Thai prisons.
On November 2, the jury of the Federal District Court of New York unanimously found Bout guilty of conspiring to kill U.S. officials and citizens, acquiring and intending to use anti-aircraft missiles and providing support to terrorists."

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Justice Department Reaches Americans with Disabilities Act Settlement with Trinity Health Systems in Iowa

(USDOJ: Justice News)

Submitted at 11:51 AM March 30, 2012

The Justice Department announced today a settlement under the Americans with Disabilities Act (ADA) with Trinity Health Systems to ensure that Trinity Regional Medical Center in Fort Dodge, Iowa, provides effective communication to individuals who are deaf or hard of hearing.