



S.E.C. Told to Share Notes in Insider Trading Case

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

Submitted at 9:51 AM March 28, 2012

The New York Times on March 27, 2012 released the following:

“BY PETER LATTMAN

A federal judge has ordered Securities and Exchange Commission lawyers to turn over their notes to federal prosecutors handling the criminal case against Rajat K. Gupta, a former director of Goldman Sachs.

The ruling was part of a flurry of pretrial orders from Judge Jed S. Rakoff, who is presiding over the case.

Mr. Gupta, who is charged with leaking Goldman's boardroom secrets to his friend, the convicted hedge fund manager Raj Rajaratnam, is scheduled to go on trial May 21.

Among the more significant orders, Judge Rakoff said federal prosecutors must review the S.E.C.'s notes about 44 interviews of witnesses during its investigation of Mr. Gupta and disclose any exculpatory evidence to the defense. Federal prosecutors in the United States attorney's office in Manhattan, who jointly conducted the 44 interviews with the S.E.C., argued that they had no obligation to review the S.E.C.'s notes because the two investigations were separate.

Judge Rakoff disagreed with the government's position.

“That separate government agencies having overlapping jurisdiction will cooperate in the factual investigation of the same alleged misconduct makes perfect sense; but that they can then disclaim such cooperation to avoid their respective discovery obligations makes no sense at all,” Judge Rakoff wrote.

The S.E.C. and the Justice Department

have long run parallel investigations, but the line between them can often become blurred. Judge Rakoff noted that there was a constitutional duty for prosecutors to disclose any exculpatory evidence — called Brady material — to the defense, regardless of whether the notes came from the S.E.C.

“To hold that these memoranda were not created as part of a joint factual investigation would make a mockery of the ‘joint investigation’ standard as applied to the defendant's constitutional right to receive all information the government has available to it that tends to show his innocence,” Judge Rakoff wrote.

In other rulings, Judge Rakoff ordered that Lloyd C. Blankfein, the chief executive of Goldman Sachs, must sit for an additional two hours of depositions to be taken by Mr. Gupta's lawyers. Mr. Blankfein was deposed for seven hours last month, and is expected to be a witness at Mr. Gupta's trial.

The dispute over Mr. Blankfein's testimony arose when, during the February deposition, Mr. Gupta's lawyer asked Mr. Blankfein whom he had met with to prepare for the deposition. He responded that he had met with both federal prosecutors, S.E.C. lawyers and an F.B.I. agent. When Mr. Gupta's lawyer asked Mr. Blankfein what the government asked at these meetings, the S.E.C. objected, citing work product protections.

Judge Rakoff ruled that Mr. Blankfein must answer these questions.

“By asking Blankfein what topics he recalls were discussed, what questions he was asked and what documents he was shown, defendants seek to discover how the preparation sessions affected Blankfein's testimony, and do not

demonstrate a mere naked attempt to obtain the S.E.C.'s and the U.S.A.O.'s legal opinions and strategy,” the judge wrote.

Judge Rakoff also issued several rulings that went against Mr. Gupta. He denied his lawyers' motion to suppress the use of wiretaps at trial and to dismiss three of the counts in the government's complaint that were claimed to be either vague or duplicative.

On the wiretap issue, Judge Rakoff said: “The simple truth is that, in both this and numerous other cases, insider trading cannot often be detected, let alone successfully prosecuted, without the aid of wiretaps.”

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The author of this blog is Douglas C. McNabb. Please feel free to contact him directly at mcnabb@mcnabbassociates.com or at one of the offices listed above.

Honolulu Firearms Business Owner Sentenced to 51 Months in Prison for Federal Tax Offenses

(USDOJ: Justice News)

Submitted at 9:55 AM March 28, 2012

Arthur Lee Ong of Honolulu was sentenced Tuesday to 51 months in prison and ordered to pay \$1 million in

restitution to the Internal Revenue Service (IRS) by District Court Judge Leslie Kobayashi today, the Justice Department and IRS announced today.

Justice Department Seeks to Shut Down Texas Tax Return Preparer

(USDOJ: Justice News)

Submitted at 10:01 AM March 28, 2012

The United States has sued tax preparer Joseph Rivas, seeking to bar him from preparing any federal tax returns for others, the Justice Department announced today.



FBI Top Cyber Cop: U.S. Outgunned in Hacker War

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

Submitted at 9:59 AM March 28, 2012

The Wall Street Journal on March 27, 2012 released the following:

“U.S. Outgunned in Hacker War

By DEVLIN BARRETT

WASHINGTON—The Federal Bureau of Investigation’s top cyber cop offered a grim appraisal of the nation’s efforts to keep computer hackers from plundering corporate data networks: “We’re not winning,” he said.

Shawn Henry, who is preparing to leave the FBI after more than two decades with the bureau, said in an interview that the current public and private approach to fending off hackers is “unsustainable.” Computer criminals are simply too talented and defensive measures too weak to stop them, he said.

His comments weren’t directed at specific legislation but came as Congress considers two competing measures designed to buttress the networks for critical U.S. infrastructure, such as electrical-power plants and nuclear reactors. Though few cybersecurity experts disagree on the need for security improvements, business advocates have argued that the new regulations called for in one of the bills aren’t likely to better protect computer networks.

Mr. Henry, who is leaving government to take a cybersecurity job with an undisclosed firm in Washington, said companies need to make major changes in the way they use computer networks to avoid further damage to national security and the economy. Too many companies, from major multinationals to small start-ups, fail to recognize the financial and legal risks they are taking—or the costs they may have already suffered unknowingly—by operating vulnerable networks, he said.

“I don’t see how we ever come out of this without changes in technology or changes in behavior, because with the status quo, it’s an unsustainable model. Unsustainable in that you never get ahead, never become secure, never have a reasonable expectation of privacy or security,” Mr. Henry said.

James A. Lewis, a senior fellow on cybersecurity at the Center for Strategic and International Studies, said that as gloomy as Mr. Henry’s assessment may sound, “I am actually a little bit gloomier. I think we’ve lost the opening battle [with hackers].” Mr. Lewis said he didn’t believe there was a single secure, unclassified computer network in the U.S.

“There’s a kind of willful desire not to admit how bad things are, both in government and certainly in the private sector, so I could see how [Mr. Henry] would be frustrated,” he added.

High-profile hacking victims have included Sony Corp., SNE +2.05% which said last year that hackers had accessed personal information on 24.6 million customers on one of its online game services as part of a broader attack on the company that compromised data on more than 100 million accounts. Nasdaq OMX Group Inc., NDAQ -0.04% which operates the Nasdaq Stock Market, also acknowledged last year that hackers had breached a part of its network called Directors Desk, a service for company boards to communicate and share documents. HBGary Federal, a cybersecurity firm, was infiltrated by the hacking collective called Anonymous, which stole tens of thousands of internal emails from the company.

Mr. Henry has played a key role in expanding the FBI’s cybersecurity capabilities. In 2002, when the FBI reorganized to put more of its resources toward protecting computer networks, it handled nearly 1,500 hacking cases. Eight years later, that caseload had grown to more than 2,500.

Mr. Henry said FBI agents are increasingly coming across data stolen from companies whose executives had no idea their systems had been accessed. “We have found their data in the middle of other investigations,” he said. “They are shocked and, in many cases, they’ve been breached for many months, in some cases years, which means that an adversary had full visibility into everything occurring on that network, potentially.”

Mr. Henry said that while many company executives recognize the severity of the problem, many others do not, and that has frustrated him. But even when companies build up their defenses, their systems are still penetrated, he said. “We’ve been playing defense for a long time. ... You can only build a fence so high, and what we’ve found is that the offense outpaces the defense, and the offense is better than the defense,” he said.

Testimony Monday before a government commission assessing Chinese computer capabilities underscored the dangers. Richard Bejtlich, chief security officer at Mandiant, a computer-security company, said that in cases handled by his firm where intrusions were traced back to Chinese hackers, 94% of the targeted

companies didn’t realize they had been breached until someone else told them. The median number of days between the start of an intrusion and its detection was 416, or more than a year, he added.

In one such incident in 2010, a group of Chinese hackers breached the computer defenses of the U.S. Chamber of Commerce, a major business lobbying group, and gained access to everything stored on its systems, including information about its three million members, according to several people familiar with the matter.

In the congressional debate over cybersecurity legislation, the Chamber of Commerce has argued for a voluntary, non-regulatory approach to cybersecurity that would encourage more cooperation and information-sharing between government and business.

Matthew Eggers, a senior director at the Chamber, said the group “is urging policy makers to change the ‘status quo’ by rallying our efforts around a targeted and effective information-sharing bill that would get the support of multiple stakeholders and come equipped with ample protections for the business community.”

The FBI’s Mr. Henry said there are some things companies need to change to create more secure computer networks. He said their most valuable data should be kept off the network altogether. He cited the recent case of a hack on an unidentified company in which he said 10 years worth of research and development, valued at more than \$1 billion, was stolen by hackers.

He added that companies need to do more than just react to intrusions. “In many cases, the skills of the adversaries are so substantial that they just leap right over the fence, and you don’t ever hear an alarm go off,” he said. Companies “need to be hunting inside the perimeter of their network,” he added.

Companies also need to get their entire leadership, from the chief executive to the general counsel to the chief financial officer, involved in developing a cybersecurity strategy, Mr. Henry said. “If leadership doesn’t say, ‘This is important, let’s sit down and come up with a plan right now in our organization; let’s have a strategy,’ then it’s never going to happen, and that is a frustrating thing for me,” he said.”

Douglas McNabb – McNabb Associates,



FBI Taught Agents They Could ‘Bend or Suspend the Law’

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

Submitted at 9:33 AM March 28, 2012

Wired on March 28, 2012 released the following:

“By Spencer Ackerman

The FBI taught its agents that they could sometimes “bend or suspend the law” in their hunt for terrorists and criminals.

Other FBI instructional material, discovered during a months-long review of FBI counterterrorism training, warned agents against shaking hands with “Asians” and said Arabs were prone to “Jekyll & Hyde temper tantrums.”

These are just some of the disturbing results of the FBI’s six-month review into how the Bureau trained its counterterrorism agents. That review, now complete, did not result in a single disciplinary action for any instructor. Nor did it mandate the retraining of any FBI agent exposed to what the Bureau concedes was inappropriate material. Nor did it look at any intelligence reports that might have been influenced by the training. All that has a powerful senator saying that the review represents a “failure to adequately address” the problem.

“This is not an effective way to protect the United States,” Sen. Richard Durbin, a member of the Senate Judiciary Committee overseeing the FBI, tells Danger Room about the inappropriate FBI counterterrorism training. “It’s stunning that these things could be said to members of our FBI in training. It will not make them more effective in their work and won’t make America safer.”

At the least, Durbin adds, “those responsible for some of the worst parts of this should be reassigned. I want FBI agents who were exposed to some of these comments to at least have a chance to be spoken to and given valid, positive information that can help them.”

One FBI PowerPoint — disclosed in a letter Durbin sent to FBI Director Robert Mueller on Tuesday and shared with Danger Room — stated: “Under certain circumstances, the FBI has the ability to bend or suspend the law to impinge on the freedom of others.” An incredulous Durbin told Danger Room, “Time and time again when that is done, it has not made us safer.” Like other excerpts from FBI documents Danger Room reviewed for this story, it was not dated and did not include additional context explaining what those “circumstances” might be.

FBI spokesman Christopher Allen did not dispute the documents’ authenticity. He said he would not share the full

documents with Danger Room, and was “unable to provide” additional information about their context, including any indication of how many FBI agents were exposed to them.

“Of the approximately 160,000 pages of training material reviewed, less than one percent contained factually inaccurate or imprecise information or used stereotypes,” Allen told Danger Room. “But mistakes were made, and we are correcting those mistakes. Through this review process, we recognized that we lacked a centralized process to ensure all training materials were reviewed and validated. We are addressing that gap so this does not happen again.”

The FBI’s counterterrorism training review was prompted by a Danger Room series revealing the Bureau taught agents that “mainstream” Muslims were “violent”; that Islam made its followers want to commit “genocide”; and that an FBI intelligence analyst compared Islam to the Death Star from Star Wars. The review led the bureau to remove hundreds of pages of documents from its training course.

On Friday, the FBI announced the results of its internal review. After six months of internal inquiry, it released a statement instructing that “training would conform to constitutional principles” and “emphasize the protection of civil rights and civil liberties.” Written materials “must be reviewed carefully by supervisory-level personnel possessing an appropriate level of understanding of relevant topics.”

No one who prepared any of the “factually inaccurate or imprecise” instructional material faced disciplinary action. “All FBI employees who prepared inaccurate, imprecise, or stereotyped materials were interviewed,” Allen said. “It was made clear to them what was wrong with the materials and why they were not acceptable for FBI training.”

That’s left Sen. Durbin dissatisfied. On Tuesday, Durbin wrote to FBI Director Mueller objecting to the FBI’s plans not to disclose the results of the inquiry; not to discipline those responsible for the offending documents; to exclude “FBI intelligence analyses of Islam and American Muslims” from the inquiry’s purview; and not to retrain agents who were exposed to the shoddy instructional material.

“If the FBI does not identify agents who received inaccurate information and take steps to retrain them, there is a real risk that agents will be operating on false

assumptions about Arab Americans and American Muslims,” Durbin wrote to Mueller. “This could harm counterterrorism efforts by leading FBI agents to target individuals based on their religion or ethnicity, rather than suspicion of wrongdoing.”

A sample of that possibly harmful training comes from a document on “Establishing Relationships,” which instructed: “Never attempt to shake hands with an Asian. Never stare at an Asian. Never try to speak to an Arab female prior to approaching the Arab male first.”

Another document, titled “Control and Temper,” contrasted the “Western Mind” with that of the “Arab World.” The “Western” mind possessed an “even keel” and “outbursts” of emotion were “exceptional.” In the “Arab World,” by contrast, “Outburst and Loss of Control [is] Expected.” A bullet point below asked, “What’s wrong with frequent Jekyll & Hyde temper tantrums?”

Many U.S. Muslims have been under government surveillance since 9/11, even without suspicion of a crime. The FBI has created “geo-maps” of where Muslims around the U.S. congregate and do business, untethered to specific criminal investigations. The New York Police Department has performed similar surveillance on Muslim communities in New York City, as an extensive Associated Press inquiry has revealed.

Durbin said he wants to give Mueller, with whom he has a “positive working relationship,” a chance to respond to his letter before taking any further steps with the Judiciary Committee to compel additional FBI action. But he expressed surprise that the FBI could have taught its agents that “bending or suspending” the law was sometimes acceptable.

“I cannot imagine that was actually said,” Durbin said, adding that the FBI provided him no context as to what circumstances might justify acting outside the law. “It creates a license for activity that could on its face be illegal, and certainly inconsistent with our values.””

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Polish Ex-Official Charged With Aiding C.I.A.

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

Submitted at 9:45 AM March 28, 2012

The New York Times on March 27, 2012 released the following:

“By JOANNA BERENDT and NICHOLAS KULISH

WARSAW — The former head of Poland’s intelligence service has been charged with aiding the Central Intelligence Agency in setting up a secret prison to detain suspected members of Al Qaeda, a leading newspaper here reported on Tuesday, the first high-profile case in which a former senior official of any government has been prosecuted in connection with the agency’s program.

The daily newspaper *Gazeta Wyborcza* reported that the former intelligence chief, Zbigniew Siemiatkowski, told the paper that he faced charges of violating international law by “unlawfully depriving prisoners of their liberty,” in connection with the secret C.I.A. prison where Qaeda suspects were subjected to brutal interrogation methods.

When President Obama took office in 2009, he said he wanted to “look forward, as opposed to looking backward” and rejected calls for a broad investigation of C.I.A. interrogations and other Bush administration counterterrorism programs. In sharp contrast, the Poles see the case as a crucial test for rule of law and the investigation by prosecutors here has reached the highest levels of Polish politics.

One of Poland’s prime ministers during the period when terrorism suspects were alleged to have been subjected to torture in Poland, Leszek Miller, could be charged before Poland’s State Tribunal, the newspaper said.

“We try to treat our Constitution seriously and try not to forget the fact that there was a manifest violation of the Polish Constitution within the country’s borders,” said Adam Bodnar, vice president of the Helsinki Foundation for Human Rights, based in Warsaw.

The effect, Mr. Bodnar said, is not simply a matter of looking back, as Mr. Obama said, but also of warning future leaders and officials that they can not operate with impunity. “This case is a huge threat to any Polish official that he will know in the future that such things cannot happen,” Mr. Bodnar said.

C.I.A. officers have been distressed by the public controversies that have broken out over the interrogation program in Poland and other countries, where foreign

officials were assured that their assistance would always remain secret. But human rights advocates have applauded the inquiries overseas into what they believe was torture and illegal detention.

While successive American governments have chosen to avoid accusations of abuses, in Poland, where memories of the Communist era and its repressions remain sharp, prosecutors have moved aggressively to tackle the issue. Although pro-American sentiments run high in Poland, there is also great unease after decades of Soviet domination that the country is giving too much influence to a powerful ally.

Gazeta Wyborcza reported that Mr. Siemiatkowski had been charged in January but the matter had been kept secret until now. Prosecutors refused to confirm the reports, which cited an anonymous source in the prosecutor’s office as well as Mr. Siemiatkowski himself. “The investigation will remain confidential until further notice,” said Piotr Kosmaty, a spokesman for the prosecutor’s office in Krakow, which has been handling the inquiry.

A C.I.A. spokesman declined to comment.

The C.I.A. has never formally revealed the location of the overseas “black site” prisons, but intelligence officials, aviation records and news reports have placed them in Afghanistan, Thailand, Romania and Jordan, as well as Poland and other countries. Out of fewer than 100 prisoners held in the facilities, roughly 30 were subjected to what the C.I.A. called “enhanced” interrogation techniques, according to agency officials.

In Poland, detainees were held in a makeshift prison at a secret base near Szymany Airport, about 100 miles north of Warsaw. All three of the C.I.A. prisoners who were waterboarded are believed to have been held in Poland, including Khalid Shaikh Mohammed, the architect of the Sept. 11 attacks; Abd al-Rahim al-Nashiri, who is charged in the 2000 bombing of the American destroyer Cole; and Abu Zubaydah, who ran a terrorist camp and facilitated militants’ travel.

But all three of the men spent time at other black sites as well, and it is not certain which interrogation methods were used where. Lawyers for Abu Zubaydah and Mr. Nashiri in 2010 filed a formal request with Polish authorities asking them to take criminal action in connection with the C.I.A. program.

Joseph Margulies, a lawyer for Abu Zubaydah, said that he was pleased by the news of charges, which he said were the first to be brought anywhere as a result of the black site program.

Attorney General Eric H. Holder Jr. did order a limited investigation of the interrogation program. Mr. Holder announced in July that no charges would be filed in connection with interrogations at the black sites but that the deaths of two prisoners in American custody, one in Iraq and one in Afghanistan, remained under investigation.

Polish officials have long denied charges by human rights groups that the country hosted one of the black sites employed by the C.I.A. in the campaign against terrorism. Mr. Miller, who was prime minister from 2001 to 2004 and is the leader of the Democratic Left Alliance, a left-wing party in Poland’s Parliament, continues to deny that Poland was ever the site of secret detention facilities.

“I refused to answer any questions from the prosecution and I shall continue to do so at every other stage of the proceedings, including in court,” Mr. Siemiatkowski told the newspaper.

Mr. Bodnar said: “I remember the lessons of constitutionality given by the Americans in the early ’90s, always saying to us, you have to create a new constitution and every action by state authorities must have limits. Poland has just learned this lesson well.””

Douglas McNabb – McNabb Associates, P.C.’s

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Antitrust Division Issues 2012 Edition of Its Annual Newsletter

(USDOJ: Justice News)

Submitted at 9:16 AM March 28, 2012

The Department of Justice’s Antitrust Division today issued the 2012 edition of

its annual newsletter on its website.



FBI

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Former Grant Administrator and Legal Assistant of American Samoa Non-profit Legal Aid Corporation Sentenced for Stealing Nearly \$160,000 in Federal Grant Funds

(USDOJ: Justice News)

Submitted at 10:50 AM March 28, 2012

Julie Matau, 49, and her daughter, Andrea Matau, 28, each were sentenced yesterday in Oakland, Calif., for their participation in the theft of nearly \$160,000 in federal grant funds from a now-defunct nonprofit American Samoa legal services corporation.

Federal Criminal Defense, INTERPOL Red Notice Removal, International Extradition and OFAC SDN Sanctions Removal.

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Removal.

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Mississippi Pharmaceutical Firm and CEO to Pay \$2.8 Million to Resolve Allegations of Illegal Marketing of Unapproved Drugs

(USDOJ: Justice News)

Submitted at 10:36 AM March 28, 2012

Mississippi-based Cypress Pharmaceutical Inc., its subsidiary Hawthorn Pharmaceuticals Inc. and its CEO, Max Draughn, have agreed to pay \$2.8 million to resolve civil allegations under the False Claims Act, the Justice Department announced today.