



Justices Take Case on Lying About Honors From Military

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

Submitted at 9:06 AM October 18, 2011

The New York Times on October 17, 2011 released the following:

“By ADAM LIPTAK

WASHINGTON — The Supreme Court on Monday agreed to decide whether Congress can make it a crime to lie about having earned a military decoration.

The case arose from the prosecution of Xavier Alvarez under a 2005 law, the Stolen Valor Act. Mr. Alvarez, an elected member of the board of directors of a water district in Southern California, described his background at a public meeting in 2007.

“I’m a retired Marine of 25 years,” he said. “I retired in the year 2001. Back in 1987, I was awarded the Congressional Medal of Honor. I got wounded many times by the same guy.”

That was all false, and Mr. Alvarez was charged with violating the law, which makes it a crime to falsely say that one has “been awarded any decoration or medal authorized by Congress for the armed forces of the United States.” Mr. Alvarez argued that his remarks were protected by the First Amendment.

The trial judge rejected that defense, saying the First Amendment does not apply to statements the speaker knows to be false. The judge sentenced Mr. Alvarez to three years of probation.

A divided three-judge panel of the United States Court of Appeals for the Ninth Circuit, in San Francisco, reversed the ruling.

Judge Milan D. Smith Jr., writing for the majority, said that a ruling upholding the

law would set a dangerous precedent.

“There would be no constitutional bar,” Judge Smith wrote, “to criminalizing lying about one’s height, weight, age or financial status on Match.com or Facebook, or falsely representing to one’s mother that one does not smoke, drink alcoholic beverages, is a virgin, or has not exceeded the speed limit while driving on the freeway.”

“The sad fact is,” he wrote, “most people lie about some aspects of their lives from time to time.”

The full Ninth Circuit declined to rehear the case. Chief Judge Alex Kozinski concurred, saying that a ruling against Mr. Alvarez would be “terrifying,” as it would allow “the truth police” to censor “the white lies, exaggerations and deceptions that are an integral part of human intercourse.”

In a dissent, Judge Ronald M. Gould said the “lack of any societal utility in tolerating false statements of military valor” justified the law. He rejected the slippery slope argument, saying that “making false statements about receiving military honors is a carefully defined subset of false factual statement not meriting constitutional protection.”

In urging the justices to hear the case, *United States v. Alvarez*, No. 11-210, Solicitor General Donald B. Verrilli Jr. argued that Congress was entitled “to guard against dilution of the reputation and meaning of the medals.”

“The law,” Mr. Verrilli continued, “serves a compelling interest in protecting the integrity of the military honors program, thereby preserving the medals’ ability to foster morale and esprit de corps in the

military.”

The central question in the case is whether statements known by the speaker to be false are entitled to First Amendment protection. In defamation and fraud cases, Mr. Verrilli wrote, the requirement of knowing falsity is sufficient to ensure adequate “breathing space” for statements that should be protected by the First Amendment, notably including criticism of the government. That same analysis should apply to false statements about medals, he said.

The Supreme Court under Chief Justice John G. Roberts Jr. has generally been sympathetic to free speech claims, ruling in favor of protesters at military funerals, the makers of violent video games and the distributors of materials showing cruelty to animals. Later this term, the court will consider whether the Federal Communications Commission may regulate cursing and nudity on broadcast television.”

To find additional federal criminal news, please read [Federal Crimes Watch Daily](#).

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Attorney General Holder Speaks at the 14th Annual Council of the Inspectors General on Integrity and Efficiency Awards Ceremony

(USDOJ: Justice News)

Submitted at 10:15 AM October 18, 2011

“Over the last few decades – and, especially, in recent years – your efforts have become essential not only in making the organizations you serve more efficient,

more effective, and more accountable – but also in preserving the principles that define who we are, and must continue to be – both as a government, and as a people,” said Attorney General Holder.

U.S. v. Danfoss Flensburg GmbH

(Antitrust Division: Upcoming Public Hearings)

Submitted at 7:41 AM October 18, 2011

Arraignment/bail hearing has been scheduled for December 7, 2011 at 1:30 p.m. Eastern



Pants on fire

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

Submitted at 9:14 AM October 18, 2011

Boston Globe on October 18, 2011 released the following:

“By Kevin Cullen

You’ve got to admire the FBI’s chutzpah. Eight years after the bureau promised Congress it would never, ever, pull another Whitey Bulger, it has been caught red-handed pulling another Whitey Bulger, this time with a reputed gangster and suspected murderer named Mark Rossetti.

Rossetti, a suspect in at least six homicides, was used as an FBI informant for two decades, ostensibly because he was a reputed capo regime in the Mafia in Boston, though, given the state of that fine fraternal organization, that’s like being the captain of a sinking ship.

In the two months that have passed since the Globe revealed that the FBI was using Rossetti as an informant despite his violent record and had lied to the State Police about his informant status, the bureau has done nothing to answer the myriad questions raised by its actions. They just say no comment, hoping we’ll all grow bored and go away.

Stephen Lynch, the congressman from South Boston, took part in those hearings eight years ago at which the FBI promised, cross-their-hearts-hope-to-die, that they wouldn’t pull another Whitey Bulger. Lynch has asked his colleagues on the Committee on Oversight and Government Reform to hold a hearing on

the FBI-Rossetti axis. This, after he met three weeks ago with three FBI officials at his Washington office. They told Lynch they were about to launch a review of the Rossetti case, then told Lynch they had spoken too soon: They hadn’t received the go-ahead from above.

The foot dragging surprised Lynch. “You would think the FBI would be hypersensitive to this sort of stuff, given what happened with Bulger,” said Lynch. You would think.

Lynch also filed a bill last week that would increase congressional oversight of informants. And he’s hoping New York’s congressional delegation might piggyback on it after recent revelations that members of the Colombo crime family were killing people while working as FBI informants.

FBI stonewalling makes the need for congressional intervention beyond Boston and New England imperative, which is why Senator Chuck Grassley’s intervention is so welcome. Grassley is the ranking member of the Senate Judiciary Committee. He comes from Iowa and is a plain-speaking, get-to-the-point kind of guy.

Yesterday, he sent a letter to Robert Mueller, the FBI’s director, asking some very reasonable questions: When did Rossetti become an informant? How much was he paid? When did the FBI become aware of Rossetti’s criminal activity? What crimes were the FBI aware of? Was murder one of them? Did the FBI or the Justice Department’s Office of Professional Responsibility conduct a

review? If the FBI lied to the State Police about Rossetti being an informant, were any agents disciplined?

Grassley says he will wait for answers and, like Lynch, he’s not going away until he gets some. As it reviews its options, the FBI might want to consider the prospect of a repeat performance of those congressional hearings eight years ago and what that did to its reputation and credibility.

The FBI employed similar tactics of delay and denial when the Bulger fiasco was first exposed in these pages in 1988. For a decade, it lied about using a reputed killer like Bulger as an informant until a federal judge named Mark Wolf made the bureau tell the truth.

The FBI can try the same thing with Mark Rossetti. It will ultimately prove futile, and the truth will come out.

And the FBI will find that, as with Bulger, putting off the inevitable only makes the final reckoning worse.”

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Justice Department rejects Darrell Issa’s talk of third gun

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

Submitted at 9:23 AM October 18, 2011

Politico on October 17, 2011 released the following:

By: Josh Gerstein

“No third gun was recovered from the scene of the murder of Border Patrol agent Brian Terry in Arizona last December, the Justice Department said Monday, rejecting suggestions from House Oversight and Government Reform Committee Chairman Darrell Issa (R-Calif.) that irregularities in evidence collected by the FBI at the scene of Terry’s death raise the possibility of a “third weapon.”

Issa has been investigating the case as part of the broader Congressional probe into “Operation Fast & Furious,” a Bureau of Alcohol, Tobacco & Firearms investigation that may have allowed more

than 1000 guns to flow from legal U.S. dealers to Mexican drug cartels despite law enforcement suspicions that they were headed to the violent narco-traffickers. Two of the weapons from the operation were found at the scene of Terry’s death. “The FBI has made clear that reports of a third gun recovered from the perpetrators at the scene of Agent Terry’s murder are false,” Justice Department spokeswoman Tracy Schmalzer said in a statement Monday evening. “Unfortunately, this most recent false accusation not only maligns the dedicated agents investigating the murder of Agent Terry, it mischaracterizes evidence in an ongoing case. The prosecution arising from the murder of Agent Terry is ongoing. Therefore, further public comment is inappropriate.”

Issa said on CBS’s Face the Nation Sunday that he wasn’t saying anyone

tampered with the evidence but that questions about it remained.

“We’re not suggesting [tampering] but when you have tickets that are numbered 2 and 3 and there’s no ticket 1, when agents who were at Brian Terry’s funeral made statements to his mother indicating that there were three weapons, when the two weapons that they have tested don’t conclusively match up — then you look and say, ‘Well, was there a third weapon at the scene? Were there additional people who escaped with weapons?’” Issa told CBS

Schmalzer said Issa misunderstood the coding of the evidence and that he was told before his CBS appearance that the Justice Department insisted there were only two weapons recovered.

“When law enforcement analyzes



Text messages help expose LAX marijuana smuggling ring

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

Submitted at 9:20 AM October 18, 2011

Los Angeles Times on October 18, 2011 released the following:

By: Rick Rojas and Richard Winton
“Authorities have revealed text messages used by two people involved in an alleged marijuana smuggling ring at Los Angeles International Airport.

The son of a former Los Angeles fire chief was charged Monday with bribing a federal Transportation Security Administration officer at LAX to help him smuggle about 14 pounds of marijuana past security on nine separate trips.

Millage Peaks IV, 23, admitted to FBI agents that he and his associates made the trips with the aid of a TSA officer, whom they paid nearly \$6,000 in bribes to avoid detection, according to an FBI affidavit.

Peaks and TSA Officer Dianne Perez were arrested on bribery charges Sunday

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evidence from a crime scene, it refers to some of the items seized as ‘known’ items or ‘Ks’ for shorthand. Certain items were analyzed as ‘known’ items from the crime scene of Agent Terry’s murder, including the two firearms referenced by Chairman Issa and designated by the FBI as Known Specimens ‘K2 and ‘K3. According to the FBI, the item that Chairman Issa refers to as ‘K1 is a blood sample from Agent Terry, not a firearm. For this reason, it was not listed on the ballistics report prepared by the FBI,” Schmalzer explained in the statement.

A spokesman for Issa, Frederick Hill, stressed that Issa’s comments were based not solely on the FBI markings, but also on an ATF agent’s statement to a gun dealer that three weapons were found at the Terry scene as well as similar comments made to Terry’s mother. Hill said Issa would still like Justice Department to make clear whether they believe the bullet that killed Terry came

after what the FBI said was his most recent attempt. A baggage handler smelled marijuana in the luggage and alerted authorities, who found 14 pounds of marijuana.

Text messages from cellphones Peaks turned over to the FBI show Peaks had sent a number of text messages to Perez. In a message dated Oct. 7, he wrote: “He made it coo. Thanx soo much. U have no clue how clutch u r. Without u none of this would b possible....Ill have ur 700 Monday maybe earlier.”

In another, dated Sept. 30, he wrote: “500\$ tom night. Good looks.”

In interviews with authorities, Peaks offered a detailed explanation of the system devised by him and Perez to get drugs aboard planes.

On Sunday, he met Perez outside the terminal and checked in for his American Airlines flight to Boston. He then gave her the two pieces of checked luggage, which

from the seized Fast & Furious weapons or not.

“This is something that Justice needs to clarify and not just get into wordgames about the evidence,” Hill told POLITICO.”

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Perez took to a TSA screening room, according to an affidavit from federal investigators.

She returned three minutes later and waved, an indication that “everything is good,” he said. He also said that Perez taught him how to pack his bags in order to avoid detection.”

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