



## Former FBI Agent and Others Face Federal Criminal Charges Alleging Conspiracy, Honest Services Wire Fraud, Obstruction of Justice, and Obstructing an Agency Proceeding

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

Submitted at 1:09 PM October 22, 2012

Deseret News on October 22, 2012

released the following:

“Former FBI agent charged in military contract bribery case

By Dennis Romboy, Deseret News  
SALT LAKE CITY — A former FBI agent faces federal charges for allegedly trying to derail a Utah-initiated investigation of a business partner with whom he was pursuing lucrative government security and energy contracts.

A federal grand jury in Salt Lake City returned an 11-count indictment against Robert G. Lustyik Jr., 50, of Sleepy Hollow, N.Y.; Michael L. Taylor, 51, of Harvard, Mass.; and Johannes W. Thaler, 49, of New Fairfield, Conn. Each is charged with one count of conspiracy, eight counts of honest services wire fraud, one count of obstructing justice and one count of obstructing an agency proceeding.

Lustyik used his position in an attempt to stave off a criminal investigation into Taylor, owner of Boston-based American International Security Corp., according to the indictment. Authorities say the former agent used Thaler, a childhood friend, as a go-between.

The indictment charges that Taylor, a former Green Beret, offered Lustyik \$200,000 in cash, money purportedly for the medical expenses of Lustyik’s minor child, and a share in the proceeds of several anticipated contracts worth millions of dollars.

In hearing in U.S. District Court in Salt Lake City last month, a federal prosecutor

quoted Taylor telling Lustyik in a message, “If they don’t put me in jail, I’ll make you filthy, stinkin’ rich.”

According to the indictment, Lustyik, a 20-year FBI veteran, was assigned to counterintelligence work in White Plains, N.Y., until September 2012. The indictment states that from at least June 2011, the three men had a business relationship pursuing contracts for security services, electric power and energy development in the Middle East and Africa.

In September 2011, Taylor learned of a Utah-based federal criminal investigation into whether Taylor, his business and others bribed an Army officer to obtain a \$54 million military training contract in Afghanistan.

Taylor and Christopher Harris, of St. George, were charged in a 72-count indictment in August with bribing a public official, accepting of a bribe by public official, money laundering and wire fraud. Taylor remains in jail in Utah pending trial.

Court records say it was Harris’ banking habits in St. George that opened the case for federal investigators three years ago.

Harris, who worked for Taylor as a manager in Afghanistan, was paid about \$17.4 million by American International, according to court records. He tried to hide the money by structuring his transactions at America First Credit Union in St. George so he wouldn’t be detected by the bank’s warning mechanisms, the indictment states.

Lustyik impeded the investigation by designating Taylor as an FBI confidential source and texting and calling the Utah

investigators and prosecutors to dissuade them from charging Taylor, according to the indictment. He also interviewed witnesses and potential targets in the Utah investigation, authorities say.”

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

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

## Former New Mexico Corrections Officer Sentenced for Sexually Assaulting Inmate

(USDOJ: Justice News)

Submitted at 2:47 PM October 22, 2012

Sylvester Bruce, 45, a former corrections officer with Navajo Nation’s Shiprock Detention Center (SDC) in Shiprock, N.M., was sentenced today in federal court on charges related to the sexual abuse of an inmate during the summer and

fall of 2010. In July 2012, Bruce pleaded guilty to one count of violating the victim’s civil rights when he touched her breasts against her will. Bruce also pleaded guilty to making material false statements to the FBI when he denied taking pictures of inmates inside the cells of the SDC.

## Former Georgia Police Chief Sentenced for Assaulting Restrained Inmate

(USDOJ: Justice News)

Submitted at 2:44 PM October 22, 2012

Former chief of the Omega, Ga., Police Department, Walter Young, 54, was sentenced today for physically abusing a man in his custody, the Justice Department announced.



# Christopher Tappin, extradition's forgotten victim who is awaiting US trial, talks of his strange life in Texas

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

Submitted at 9:49 AM October 22, 2012

The Telegraph on October 21, 2012 released the following:

“By Philip Sherwell

As he strolled off the fairway with his scorecard at the 18th hole, the white-haired man in blue polo shirt and khaki shorts could have been just another relaxed late-afternoon golfer.

But a closer look revealed two pieces of extra “kit” not needed by his playing partners at the country club in the affluent leafy suburbia north of Houston.

Inside the white sock on his left foot was the bulge of an ankle bracelet, while a satellite GPS tracking device blinked in a holster on his belt.

For this was Christopher Tappin, the retired British businessman, former president of the Kent Golf Union and epitome of Home Counties respectability who will go on trial in two weeks [NOV 5] in a Texas courtroom charged with conspiring to supply batteries for Iranian missiles.

His case made headlines as he fought extradition from Britain for five years, under the lopsided treaty passed by the Labour government after the Sept 2001 terror attacks.

This requires evidence of “probable cause” before an American is extradited to Britain, a far higher standard of proof than the “reasonable suspicion” that suffices to send a Briton to trial in the US.

Mr Tappin, 65, who has consistently denied the charges, eventually lost that battle in February and was handed over to the US authorities. The next two months were spent in the hellish conditions of a federal prison in New Mexico, much of the time in solitary confinement.

In April, he was released under strict bail conditions – including wearing the ankle bracelet and GPS tracker to ensure that he does not leave the three Texas counties where he is allowed out before his overnight curfew.

And last week, he spoke for the first time about his life since then in a wide-ranging interview with The Sunday Telegraph.

As he finished the 18 holes in a brisk round of 75, the 65-year-old grandfather looked as calm as the new friends he has made among the businessmen and lawyers at the club.

There was no indication of the inner turmoil that he must feel as he prepares to face an agonising dilemma next month in

a federal courtroom in El Paso.

If he pleads not guilty and loses in a country with one of the world’s highest conviction rates, then he could be jailed for up to 35 years in the US – effectively a life sentence away from his sick wife, two children and grandson.

But in a common US legal move, prosecutors are expected to offer him a plea bargain that would give him a much shorter prison term and to probably repatriation to a British jail – provided he admits at least some of the charges.

Mr Tappin, from Orpington, owned a freight shipping company and is accused of trying to buy 50 oxide batteries to power Iranian Hawk missiles after a colleague made contact with a front company set up by the Department of Homeland Security.

He has, however, always insisted he was the unwitting victim of an FBI sting operation and believed the batteries were for commercial use in the Netherlands.

For Mr Tappin, the rounds of his beloved golf that he plays most days are a solace and escape. “Without the golf, I’d go raving mad,” he said. “It keeps me from thinking too much about the case, but it’s tough, it’s very tough.”

His failed battle against extradition was one among a series involving Britons accused in the US of alleged crimes that took place on UK soil.

Last week, he heard some bittersweet news about the most high-profile of all such cases during his daily telephone call from his wife [] Elaine, who is in Britain and unable to visit him because she suffers Churg-Strauss syndrome, a severe allergic condition that endangers the body’s vital organs.

She told him that Theresa May, the Home Secretary, had ruled that the Briton, Gary McKinnon, accused of hacking into US military computers and causing 300 of them to crash, would not be handed to the US authorities for trial. Her last-minute decision to block his extradition frustrated US officials, who said publicly that they were “disappointed” but were privately furious.

Mrs May took the decision on medical grounds – Mr McKinnon suffers from Asperger’s, a form of autism and his family had argued that he would not survive life inside an US jail, even awaiting trial.

But she also announced plans to introduce a so-called “forum bar” under which judges would decide whether

alleged offences should be tried in Britain rather than in the US. If such a law had already been in place, Mr Tappin might have been tried in Britain rather than in America – and as key evidence was collected from a sting operation, the case could have been thrown out before reaching court.

“I’m delighted for Gary and his mother Janis,” he said. “I’ve met them several times and this is great news.

“Gary would never have survived the prison they slung me into, not in his condition. It was the psychotic screaming throughout the night that got me. And the head-banging. And God help him if he’d had to go through solitary like I did, with the lights on 24 hours and the only human contact when they give you a meal three times a day. He couldn’t have coped.

“I desperately hope this presages a change to the system. Something has to be done with that treaty and we’ve been advocating for a ‘forum bar’ for a long time. It’s got to be changed.

“I hope I am the final Brit to be extradited under this treaty as it stands. My case should never be being tried here in the US, I was living in the UK when these alleged offences took place, the crimes were allegedly committed in Britain and the evidence against me comes from the UK, so why am I not being tried in the UK?”

As Mr Tappin awaits that trial, he is trapped in a “gilded cage” existence, and one that is eating up the money he made running his freight business.

After his release on bail, he initially lived at his lawyer’s \$2 million home in an upmarket neighbourhood that is built around a Jack Nicklaus-designed golf course and protected by private guards and security barriers.

He is now renting his own one-bedroom apartment in a nearby gated community in the wealthy suburban belt north of Houston called Woodlands. “There’s a gym and a swimming pool that I use and I try and keep myself physically fit, though mentally is a whole different challenge,” he said.

“It’s a very nice area with some lovely people, but you pay a heavy price for life in a paradise,” he noted wryly. “I miss my family and friends and home deeply. Life is boring, to be honest. Each day is déjà déjà déjà vu.”

He is not allowed access to email or the



# Gupta to Urge Probation From Judge Who Once Defended Insiders

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

Submitted at 12:55 PM October 22, 2012

San Francisco Chronicle on October 22, 2012 released the following:

“Patricia Hurtado and David Glovin,  
©2012 Bloomberg News

Oct. 22 (Bloomberg) — As a lawyer, Jed Rakoff once persuaded a judge to give probation to a client convicted at an insider-trading trial alongside former Wall Street Journal reporter R. Foster Winans. Now a federal judge himself, Rakoff must weigh Rajat Gupta’s similar request to stay out of prison.

Gupta, a former Goldman Sachs Group Inc. director, will come before Rakoff in Manhattan federal court on Oct. 24 to be sentenced for leaking stock tips to Galleon Group LLC co-founder Raj Rajaratnam. Prosecutors say Gupta, convicted by a jury in June, deserves as long as 10 years in prison. Gupta seeks probation.

Gary Naftalis, a lawyer for Gupta, argued his client’s crime was an “aberrational” event in a “lifetime of good works” that merited a punishment for a man who has suffered an extraordinary fall from grace. He asked Rakoff to impose a term of community service, suggesting Gupta work with troubled youth in New York or with the poor in Rwanda.

“Good works help, but on their own they are rarely a ‘Get out of jail free card,’” said Gordon Mehler, a former federal prosecutor who’s now in private practice in New York. “So, it seems as if probation, even in Rwanda, is unlikely.”

Gupta, 63, is the most prominent of 70 people convicted since a nationwide insider-trading crackdown by U.S. prosecutors began four years ago. Gupta also served as managing partner of McKinsey & Co. from 1994 to 2003 and on the board of Procter & Gamble Co. from 2007 to March 2011, when he also resigned from the boards of Goldman Sachs, AMR Corp. and two other companies.

**Buffett’s Berkshire**

After a four-week trial in June, jurors found Gupta guilty of tipping Rajaratnam about dealings at New York-based Goldman Sachs, including a \$5 billion investment by Warren Buffett’s Berkshire Hathaway Inc. Rajaratnam, 55, is serving 11 years in prison for trading on tips from Gupta and others.

In his 17 years as a judge, Rakoff has sentenced at least nine defendants for insider trading, including seven who pleaded guilty and two whom he jailed after they were found guilty by juries.

Rakoff has a track record of imposing a sentence that is half what the government recommends.

“If there is any judge who’s sensitive to the draconian impact of the sentencing guidelines with respect to white-collar offenders, it’s Judge Rakoff,” said J.

Bruce Maffeo, a former federal prosecutor now in private practice. “That being said, he’s equally sensitive to the need to fashion a sentence that takes into account both the defendant’s personal background and the need to deter others in the financial world, where this kind of activity appears to be more prevalent than previously assumed.”

**Winning Leniency**

Rakoff, a former federal prosecutor in New York who headed the office’s securities-fraud unit, was a white-collar criminal- defense lawyer before taking the bench.

As a defense lawyer, Rakoff won leniency for a client convicted of insider trading who was also facing prison.

Rakoff’s client, David Carpenter, went on trial in 1985 with his lover, journalist R. Foster Winans, and broker Kenneth Felis. Prosecutors said Winans leaked tips to Felis about forthcoming market-moving articles in his “Heard on the Street” column, Felis traded on the news and Carpenter allowed Winans to place trades through his account. All were convicted. Carpenter died in 1991.

**Wife, Husband**

At the sentencing, Rakoff compared Carpenter’s relationship with Winans to that of wife-and-husband and said Carpenter merely acquiesced to Winans’ trades, according to Winans’s lawyer, Don Buchwald. Carpenter got probation while Winans was given an 18-month prison term.

“He was following Foster,” Buchwald said in a phone interview last week.

“Carpenter was a very sympathetic figure.”

This week, Gupta will be seeking sympathy of a different sort from Rakoff. Gupta’s lawyer, Naftalis, said in a court filing that Gupta deserves probation because his crime was an aberration in a life “defined by helping others.”

Naftalis cited Gupta’s work as chairman of the Global Fund, an initiative to fight AIDS, tuberculosis and malaria, as well as his work with the United Nations to improve world health. Naftalis declined to comment on a comparison of the Gupta and Carpenter cases. The defense submitted more than 400 letters to the judge describing Gupta’s

accomplishments.

In their pre-sentencing court filings, prosecutors gave a different portrait of Gupta and asked Rakoff to consider the personal relationship between Gupta and Rajaratnam.

**‘Very Close Friend’**

In asking for a term of 97 months to 121 months, which they say are called for by U.S. sentencing guidelines, prosecutors say Gupta violated confidences and breached his duty as a senior corporate official by leaking news to his “very close friend” and business partner.

“Gupta’s interests often were aligned with those of Rajaratnam and Galleon such that Gupta stood to benefit if Galleon was successful,” prosecutors wrote in a filing, citing Gupta’s investment in Galleon and their partnership in another investment fund.

Richard Holwell, the former federal judge who presided over Rajaratnam’s trial and sentenced the fund manager, said judges consider “general deterrence,” or whether the sentence they impose will deter others from committing similar crimes.

“The nature and circumstances of the crime weigh in the government’s favor, because insider trading is a serious white-collar crime that undermines the integrity of the markets” said Holwell, who is now in private practice.

**Deterrence**

“The government will lean on general deterrence because insider trading has to be eradicated and one way to do that is by taking highly visible cases and making examples of them,” Holwell said. “That will weigh heavily on Rakoff.”

Other criminal defense lawyers said Gupta’s fall from grace may work in his favor. Kevin O’Brien, a former federal prosecutor in New York, said the judge must weigh Gupta’s achievements against his crimes.

“There is human drama there,” O’Brien said. “You can make the argument that for a guy like this who was on top of the world to have fallen so low and to have been so humiliated and exposed by a lengthy public trial, that is punishment enough.”

“What is smart about the Rwanda option is that it makes vivid Gupta’s commitment to public service and brings out with some clarity his history of good deeds,” he said. “It’s a creative approach.”

**‘Mirage’ Guidelines**

Federal sentencing guidelines are advisory. Rakoff’s history has been one of





# Miami feds fight defense plan to question witnesses in Pakistan for South Florida terrorism case

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

Submitted at 11:27 AM October 22, 2012

The Miami Herald on October 21, 2012 released the following:

“Federal prosecutors are fighting the defense’s plan to question key witnesses in Pakistan in a Miami case accusing two South Florida Muslim clerics of aiding the Taliban.

BY JAY WEAVER []

Two South Florida Muslim clerics — a father and son separated by more than 50 years in age — are struggling to persuade a Miami federal judge to allow their lawyers to travel to Pakistan to question alleged Taliban sympathizers who might help their defense against terrorism charges.

Lawyers for Hafiz Khan and Izhar Khan, former imams of mosques in Miami and Margate, have already lost their first bid to travel with federal prosecutors to the U.S. Embassy in Islamabad to take depositions from five witnesses who do not want to come to Miami to testify at the upcoming trial.

Among the potential witnesses are two other Khan family members and another suspected Taliban supporter who were accused in the same case of conspiring to aid the Taliban with money and guns.

Last week, U.S. District Judge Robert Scola rejected the defense’s initial deposition plan — which was strongly opposed by federal prosecutors — as “unsafe and impractical.” But Scola left open the possibility for the defense’s alternative: allowing the Khans’ lawyers to question the witnesses at a hotel such as the Marriott in Islamabad in a live, videotaped deposition with the prosecutors participating from Miami. “If there is a way for you to take their deposition, I’m going to let you do it,” Scola said, setting the stage for a final hearing Oct. 29.

The clock is ticking, however, because the “material-support” trial that initially drew national headlines is scheduled for early January. Bottom line, the defense said: No deposition, no fair trial.

“These witnesses are so important if we’re going to have any defense,” Izhar Khan’s lawyer, Joseph Rosenbaum, told the judge. “Without [the deposition], we don’t have a shot.”

Rosenbaum argued that that the prosecutors oppose any deposition of the Pakistani witnesses because their testimony could poke holes in the

government’s case, which is built on phone recordings of the Khan family’s alleged network of fundraising for the Taliban, a U.S.-designated terrorist group.

He further argued that witnesses would provide “context” for the phone calls, proving that the defendants wired about \$50,000 from Miami to Pakistan to aid schools and families in the embattled northwest territory known as the Swat Valley — not to fund the Taliban’s violence against the U.S. government interests in the region.

Assistant U.S. Attorneys Pat Sullivan and John Shipley said in court they were opposed to any deposition, even if it were taken at a modern hotel in Islamabad. They declined to say why at Thursday’s hearing.

In court documents, they opposed the defense’s initial deposition plan, saying Pakistan is dangerous and that the witnesses could not be questioned at the U.S. Embassy because of their involvement in the alleged crime of aiding the Taliban. A fourth witness for the defense, Noor Mohammed, is suspected of being a Taliban soldier, and a fifth is a Pakistani pharmacist who received some of the money transfers from Hafiz Khan’s foreign bank accounts.

On Thursday, the prosecutors called an FBI witness who served at the U.S. Embassy in Islamabad over the past year to testify about the safety risks of taking the deposition there as well as outside the diplomatic zone.

In court papers, they argued: “The entirety of the government’s case against these defendants concerns the Pakistani Taliban’s hostility, animosity and lethality towards United States citizens.”

By contrast, Rosenbaum called two female professors from the University of Colorado and University of Illinois who testified that Islamabad was a modern city of diplomats, business people and relative wealth. The witnesses said the city would be safe for both prosecutors and defense attorneys to conduct the deposition in an off-site hotel.

But Scola kept raising the question about whether it would be safe for U.S. prosecutors to travel to Pakistan if the public knew the purpose of the trip: Gathering testimony for a high-profile terrorism trial in Miami against alleged Taliban supporters.

“The question is whether it is safe for prosecutors to go to Pakistan,” said Scola, who also noted the well-known case of a

teenage girl, Malala Yousufzai, who was recently shot in the head by the Taliban to silence her because she advocated education for girls.

The Miami terrorism indictment was filed with much fanfare in May 2011. Prosecutors charged Hafiz Khan, 77, former imam of the Flagler Mosque in Miami; Izhar Khan, 25, the one-time leader of the Masjid Jammāt Al-Mumineen mosque in Margate; his sister, Amina Khan; her son, Alam Zeb; and Ali Rehman with conspiring to provide financial support for the Taliban from 2008 to 2010.

In June of this year, prosecutors dropped the charges against the elder Khan’s son, Irfan Khan, a one-time Miami cab driver, without explanation. Khan, a 39-year-old naturalized U.S. citizen, had been detained for almost a year before obtaining bail last April.

The FBI used a confidential informant, bank transfer records and more than 1,000 wiretapped phone calls to build the case against the Khan family and others.

In Pakistan, Hafiz Kahn’s daughter, Amina, and her son, Zeb, have said the federal case distorted the patriarch’s good deeds to help their family and relatives. Zeb, 20, said money sent from Miami was meant to repair a religious school founded by his grandfather and to help poor relatives rebuild houses damaged in fighting between the Pakistan army and the Taliban.

But the conspiracy indictment portrays Hafiz Khan as a talkative Muslim spiritual leader who solicited thousands of dollars from donors in the United States, directed family members to help disburse them and openly discussed deadly plots against foes who disagreed with strict Islamic law, or Sharia.”

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Douglas McNabb and other members of

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## CHRISTOPHER

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internet under the terms of his bail, but talks each day with his wife and friends and also spends several hours writing and answering letters in longhand.

And he does of course have his golf, playing with his own clubs after they were brought out on a visit by his son Neil, the deputy editor of Golf Monthly magazine. "I'm playing well and happy to get my game back after his two months in jail," he said. "But these are hardly the circumstances in which I'd want to sharpen my game."

Pointing to his ankle bracelet and GPS device he added: "And of course, I have to wear these things. It's not comfortable, but you get used to it. The court charges me a \$9 fee a day for the honour of wearing them."

He has to be home each night from 10pm to 6am under a curfew, and most evenings he cooks for himself. So one big plus, he said, was the discovery of Goodwood's British Market, a nearby store that specialises in foods from Britain. "They've got it all, bangers, fish and chips, Heinz baked beans, HP sauce, Robinson marmalade and the like," he said.

But he is lonely and desperately pines for home. "It's nice to hear an English accent," he said during the interview. "At least the heat of summer has relented. This is the only place where I know where they have to chill the outdoor pools with ice."

Adding to the strain is the deterioration in his wife's health. Mrs Tappin visited him in June, but is now no longer allowed to fly on doctor's orders and is awaiting an operation.

"Elaine is very unwell and this whole situation is really aggravating her condition," he said. "It used to be me who cared for her. That's now fallen to my daughter Georgina, but it's a real strain for her."

No family will be in El Paso on Nov 5 when appears in court – quite possibly in the manacles and jumpsuit that he had to wear for earlier hearings. "It really wouldn't serve any purpose to have them there," he said with resignation. "I just

## MIAMI

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the U.S. law firm practice and write and/or report extensively on matters involving Federal Criminal Defense, INTERPOL Red Notice Removal, International Extradition Defense, OFAC SDN Sanctions Removal, International Criminal Court Defense, and US Seizure of Non-Resident, Foreign-Owned Assets. Because we have experience dealing with INTERPOL, our firm understands the

need to get home to them." As the trial date approaches, the strain is taking its toll. "I used to feel OK, that I have a strong case and didn't worry too much about it. But the nearer it gets the more I worry."

He has lost weight and runs his hand through his thinning hair as he spoke, sighing and blowing out air as he talks about his exasperation at his plight. "It's utterly devastating to be in this situation at my stage in life," he said. "I should be spending my retirement looking after my wife, enjoying my new grandchild and playing some golf. Extradition was a very bitter pill to swallow."

He is not only dealing with the enormity of his legal challenge. He is also undergoing a crash course in American culture, and in particular that of its biggest state, as he finds himself living in a country that he only ever visited as an occasional tourist, the last time 10 years ago.

"Texas is a funny old pace and everything's just so very different from Kent," he mused. "They go on about road deaths here but there are guns everywhere and they don't seem to care. There's even a Gun Channel on the TV, for heaven's sake.

"I have made some good friends playing golf, but it is difficult to reconcile how nice some of the people are and how harsh the system is. It's not just me of course. They're just as harsh on their own people. They don't call it 'Incarceration Nation' for nothing. There is a huge prison population and the prison industry is a big business."

Mr Tappin talks regularly to David Birmingham, one of the "NatWest Three", the British bankers who were also controversially extradited to the US for financial crimes allegedly committed in the UK. The men were jailed in the US after admitting a single offence and sent home to serve out their sentences.

"It's good to talk to someone who has been in this situation," he said. And he hopes that a change in the extradition

treaty will come in time to help Richard O'Dwyer, a 24-year student in Sheffield, who faces jail in the US for hosting a television download website from his bedsit.

Meanwhile, Mr Tappin is tangling with another immediate headache. His passport has been removed so he cannot board a flight. But his bail conditions restrict his movements to two counties in and around Houston, as his lawyer is based there, and El Paso, where he faces trial – but not the swath of Texas through which he would have to drive between them.

"I'm not quite how I'm even going to get to court," he said. "What a situation."

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

## GUPTA

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imposing sentences well below the recommended federal guidelines, which he has called a "mirage of something that can be obtained with arithmetic certainty."

Last year, he sentenced James Fleishman, a former executive at expert-networking firm Primary Global Research LLC, to 2 1/2 years in prison for passing tips to fund managers while the guidelines called for more than seven years. He also ordered



## GUPTA

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Primary Global consultant Winifred Jiau to serve 48 months for selling information. Her guidelines suggested a term of 78 months to 97 months in prison.

Still, Rakoff has rarely been silent about the contempt he has for insider traders, often expressing his sentiments in open court. In Fleishman's case, he said insider prosecutions over "the last 30 or 40 years" have not "done enough to deter this serious and sophisticated crime."

With Jiau, whose scheme ran for two years, he said the leaks undermined "the integrity of the financial markets" and demanded a "meaningful sentence."

Maffeo said he believes Rakoff will impose some term of incarceration upon Gupta.

### Love Families

Rakoff has demanded prison in cases in which, unlike Gupta, the defendants have admitted trafficking in illicit information. He sentenced ex-SAC Capital Advisors LP manager Donald Longueuil to 30 months instead of the 46 months to 57 months urged by the guidelines. He ordered a former Taiwan Semiconductor Manufacturing Co. manager to spend 18 months behind bars.

"Why is it that defendants always remember how much they love their families after they've committed the crimes that place that relationship in jeopardy?" Rakoff said at the sentencing of former Galleon trader Adam Smith, who won probation largely because he cooperated with prosecutors and testified against Rajaratnam.

Rakoff imposed an 18-month prison term on Manosha Karunatilaka, a former Taiwan Semiconductor Manufacturing

Co. manager who pleaded guilty to passing nonpublic information about his company's orders to fund managers as part of an insider-trading scheme.

Karunatilaka cooperated with the U.S. and accepted responsibility for his crimes.

### Crying Infant

As Karunatilaka's infant child cried in the courtroom, Rakoff rejected a bid by defense lawyer Brad Bailey to impose a term of six months' in prison and six months of home confinement.

Gupta, after two days of deliberations by a jury, was found guilty of three counts of securities fraud and one count of conspiracy. The tips came in September and October 2008 and concerned Buffett's \$5 billion investment in Goldman Sachs and the bank's losses in the fourth quarter of 2008.

Jurors acquitted Gupta of charges that he leaked information that Cincinnati-based P&G's organic sales growth would fall below estimates and that he tipped Rajaratnam about Goldman Sachs's earnings in the first quarter of 2007.

In his filing, Naftalis argued that Gupta deserves leniency because his crimes were limited to a two-month period in 2008.

Peter Henning, a professor at Wayne State University Law School in Detroit, said Rakoff will focus on the nature of the crime and Gupta's background. Henning predicted that the former Goldman Sachs director will get a prison term of two years to three years.

"That's not a deleterious prison term, but it is prison and it doesn't mean he will get a free pass," Henning said in a phone interview. "It has to be a term to get everyone's attention, and by everyone, I

mean Wall Street."

The case is U.S. v. Gupta, 11-cr-00907, U.S. District Court, Southern District of New York (Manhattan)."

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

# Bulger's lawyers due in federal court on trial

## prep

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

Submitted at 10:30 AM October 22, 2012

7News whdh.com on October 22, 2012 released the following:

"BOSTON (AP) — Mobster James "Whitey" Bulger's lawyers will be returning to federal court in Boston to give a judge a status report on preparation for his March trial.

The former leader of the Winter Hill Gang is accused of participating in 19 murders. He fled Boston in 1994 and remained one of the FBI's most wanted fugitives until his capture in Santa Monica, Calif., last year.

Bulger's lawyers have repeatedly complained that they won't have enough time to prepare for trial, given that prosecutors have turned over more than

300,000 documents.

Bulger lawyer J.W. Carney Jr. has said that Bulger will testify about his claim that he was given immunity to commit crimes while he was an informant.

A status conference is scheduled Monday in U.S. District Court."

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# Hereford House defendant rejected plea deals

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

Submitted at 11:55 AM October 22, 2012

The Kansas City Star on October 22, 2012 released the following:

“BY MARK MORRIS

The Kansas City Star  
Kansas City restaurateur Rodney J. Anderson rejected three possible plea bargains before going to trial this morning on fraud and arson conspiracy charges in the Hereford House fire.

Federal prosecutors made the plea disclosures at an 8 a.m. hearing held by U.S. District Judge Greg Kays before jury selection began.

Anderson, who is on trial with Vincent Pisciotta and Mark A. Sorrentino, rejected two offers that would have had prosecutors recommending sentences of five years in prison, one with an agreement to cooperate with prosecutors and one without. The most recent offer, made last month, would have had a binding seven-year sentence with a cooperation agreement.

Anderson's lawyer, J.R. Hobbs, confirmed that those were the terms of the offers.

Lawyers representing Pisciotta and Sorrentino said their clients were never

interested in plea negotiations so no formal offers were ever made. Jury selection was underway Monday morning, to be followed by opening statements from prosecutors and defense lawyers.

Anderson is accused of hiring Pisciotta and Sorrentino to burn his restaurant in Oct. 2008 so he could collect insurance money. Those funds, prosecutors have alleged, would have paid for renovations to make the Hereford House, once located at 2 E. 20th St., more competitive with new restaurants in the Power & Light District.

Anderson's lawyer is expected to argue that his client's ownership interest in the restaurant was too small for him to have expected any significant recovery from insurance funds.

Lawyers representing Pisciotta and Sorrentino confirmed in court Monday that their cases hinge on undermining the identification of their clients as the arsonists, who can be seen on surveillance video bringing containers of gasoline into the restaurant late the evening of Oct. 19, 2008.”

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# Federal corruption cases increase in Atlanta area

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

Submitted at 10:23 AM October 22, 2012

Jacksonville.com on October 22, 2012 released the following:

“By Associated Press

ATLANTA | The number of federal corruption prosecutions has increased in metro Atlanta in recent years, an increase that law enforcement officials attribute in part to an increased focus on targeting corrupt officials.

An analysis by The Atlanta Journal-Constitution found the number of corruption convictions in the federal Northern District of Georgia rose from just six in 2006 to 32 in both 2010 and 2011. The region ranked 51st in the country in corruption convictions in 2006. Four years later, it ranked sixth out of 93 federal districts.

During the 10-year period starting in 2002, the northern district saw 181 public corruption convictions, ranking it 22nd among the 93 districts. Metro Atlanta ranked behind New Jersey, Chicago and South Florida.

These statistics do not prove which regions are the most corrupt. They are not

adjusted to include differences in population and the number of state-level corruption cases. They can be influenced by the differing priorities of prosecutors.

Still, University of Illinois-Chicago professor Dick Simpson, who has analyzed corruption conviction rates, said the statistics are the best available measure of corruption levels in different parts of the country. He described the increased number of cases in metro Atlanta as “worrisome.”

The head of Atlanta's FBI office, Mark Giuliano, said public corruption prosecutions are the top priority. The bureau earlier worked with state and local law enforcement agencies to establish a corruption taskforce.

“The damage caused by such activity can be immense due to large monetary losses to the taxpayer, the disruption of normal operations of government, as well as the loss of public trust,” Giuliano said.”

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