



## Court Overturns Conviction of Ex-Goldman Programmer

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

Submitted at 9:10 AM February 17, 2012

The New York Times on February 17, 2012 released the following:

“BY PETER LATTMAN

A federal appeals court reversed the conviction late Thursday of Sergey Aleynikov, a former Goldman Sachs programmer found guilty of stealing proprietary code from the bank’s high-frequency trading platform.

The United States Court of Appeals for the Second Circuit overturned the conviction and ordered the trial court to enter a judgment of acquittal. A judgment of acquittal generally bars the government from retrying a defendant.

The reversal was without explanation; it said an opinion would follow “in due course.”

The appeals court ruling came just hours after a three-judge panel heard oral arguments on Mr. Aleynikov’s appeal. Mr. Aleynikov, who was convicted in December 2010, is serving an eight-year sentence at a federal prison in Fort Dix, N.J.

“We are pleased and gratified that the court of appeals has roundly rejected the government’s attempt to rewrite the federal criminal laws,” said Kevin Marino, Mr. Aleynikov’s lawyer. “Mr. Aleynikov spent a year in prison and suffered many other losses as a result of these unjust charges, but he never lost faith in his ability to win an acquittal. This is a wonderful day in his life.”

Ellen Davis, a spokeswoman for the United States attorney’s office in Manhattan, declined to comment.

The reversal deals a major blow to the Justice Department, which has made the prosecution of high-tech crime and intellectual property theft a top priority. This case tested the boundaries of the Economic Espionage Act, a 15-year-old law that makes it a crime to steal trade secrets. Federal prosecutors held up the arrest of Mr. Aleynikov as an example of

the government’s crackdown on employees who steal valuable and proprietary information from their employers.

The decision is also a loss for Goldman Sachs, which reported Mr. Aleynikov to federal authorities after it accused him of stealing computer code. The bank had portrayed itself as the victim of a brazen crime.

A crucial issue in the appeal — and a main focus of Thursday’s oral argument — was whether Mr. Aleynikov’s actions constituted a crime under the statutory language of the Economic Espionage Act. The debate centered on whether Goldman’s high frequency trading system was a “product produced for interstate commerce” within the meaning of the law. Lawyers for Mr. Aleynikov argued that the bank’s trading platform was built for internal use and never placed in the stream of commerce. The government countered that the high-frequency trading system, which Goldman used to trade in markets around the globe, was clearly produced for interstate and foreign commerce.

Mr. Aleynikov’s arrest in 2009 drew attention to a new and lucrative corner of Wall Street. High-frequency trading uses complex computer algorithms to make rapid trades that exploit tiny price discrepancies. The trading became a substantial source of revenue at banks and hedge funds, and these companies vigilantly guard the code underpinning their trading strategies.

Armed with a degree in computer programming, Mr. Aleynikov came to the United States from Russia in 1990. His services were in demand at Goldman, which paid him \$400,000 a year to write code for its high-frequency trading business, making him one of the bank’s highest-paid programmers.

He was lured away from Goldman by Teza Technologies, a new firm run by an executive from the Citadel Investment Group, a giant Chicago hedge fund. Teza offered to pay about triple what he made

at Goldman.

During his last final days at Goldman, Mr. Aleynikov uploaded source code to a server in Germany that allowed him to do an end run around the company’s security systems. He was arrested shortly thereafter.

At trial, Mr. Marino, the lawyer for Mr. Aleynikov, acknowledge that his client breached Goldman’s confidentiality agreements, but insisted that he did not commit a crime.

Federal prosecutors portrayed Mr. Aleynikov as a thief who stole Goldman’s closely guarded code to help his new employer. After a two-week trial, the jury deliberated for just three hours before reaching a unanimous guilty verdict.

The ruling is the second time in as many months that the Federal Appeals Court in Manhattan has overturned a conviction secured by the United States attorney for the Southern District of New York. In January, the appeals court reversed the conviction of Joseph P. Collins, a former outside lawyer to Refco, the collapsed brokerage firm, citing judicial error.”

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# Tech Analyst Arrested in Insider Trading Crackdown

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

Submitted at 9:02 AM February 17, 2012

The New York Times on February 16, 2012 released the following:  
 “BY AZAM AHMED AND BEN PROTESS

The government’s crackdown on insider trading has ensnared one of the most vocal critics of the campaign to root out illegal information swapping on Wall Street.

John Kinnucan, a technology analyst who gained notoriety last year for openly challenging federal authorities, was arrested on Thursday night by the Federal Bureau of Investigation. His lawyer could not be immediately identified.

It is the latest twist in one of the more bizarre chapters of the government’s years-long investigation. Mr. Kinnucan is the most recent individual charged in the government’s wide-ranging case, which has resulted in 60 convictions and guilty pleas.

Federal agents first approached Mr. Kinnucan at his Portland, Ore., home in late 2010, asking the independent analyst to cooperate with an investigation into several hedge fund clients, a list that included the behemoths Citadel and SAC Capital Advisors. Mr. Kinnucan balked, then fired off an e-mail to warn his clients. “Today two fresh faced eager beavers from the FBI showed up unannounced (obviously) on my doorstep thoroughly convinced that my clients have been trading on copious inside information,” the email said. “We obviously beg to differ, so have therefore declined the young gentleman’s gracious offer to wear a wire and therefore ensnare you in their

devious web.”

Neither Citadel nor SAC Capital has been accused of any wrongdoing.

In the months after the e-mail surfaced, Mr. Kinnucan granted dozens of interviews to the media, lambasting the government’s efforts while defending himself. Later, his communications grew stranger, and included expletives and racial epithets targeted at specific law enforcement personnel, daring them to arrest him.

In charging Mr. Kinnucan, the government is alleging that he participated in an insider-trading ring involving some of the biggest hedge funds in the world. The case is related to a continuing investigation into expert networks, organizations that connect business executives with investors interested in their companies and fields.

As a principal at the research firm Broadband Research, Mr. Kinnucan maintained a list of impressive clients, who bought his technology sector analysis. Last summer, Mr. Kinnucan’s name surfaced during the guilty plea of a technology company executive, who indicated he had passed the analyst inside information about Apple and Cisco, among other companies.

In a piece written for DealBook, Mr. Kinnucan described why he refused to cooperate with the authorities. He said he was offended first that the agents arrived at his home just before his wife and children were due home from school. But he also said that cooperating would have violated his principles.

“I had to decide between committing a wrong — agreeing to try to entrap

someone whom, based on our mutual dealings, I believe to be innocent — or standing up to fight for what I believe is right,” he said. “I chose the latter.”

As for his research, Mr. Kinnucan said there was nothing illegal about it. “The type of research I provide to clients is pervasive in the financial community, the same kind of analysis provided not only by all investment banks, large and small, but by an ever-expanding group of research boutiques, virtually all larger than mine,” he wrote.”

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# Defense witnesses say Stanford wasn’t hands-on boss

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

Submitted at 8:48 AM February 17, 2012

The Houston Chronicle on February 16, 2012 released the following:

“Defense witnesses portrayed R. Allen Stanford as distant from the day-to-day operation of his companies, as his lawyers laid a foundation Thursday for their contention that financial machinations by a star prosecution witness led to fraud charges against Stanford.

Joan Stack, who headed global human resources for Stanford’s companies in the final two years before U.S. regulators shut them down, characterized her boss as “disconnected” from much of the

companies’ operations. She said he focused mostly on the Island Club, a resort for the wealthy he hoped to develop on Caribbean islands he owned.

She testified that government witness James Davis, Stanford’s former chief financial officer, worked out of an office in Tupelo, Miss. that Stanford set up to accommodate Davis, his longtime business associate and former college roommate.

Davis pleaded guilty to three felony counts and testified against Stanford during the government’s portion of the trial.

Stack described the Tupelo office as clubby, employing mostly relatives and

friends of Davis or Laura Holt, former Stanford chief investment officer who is named in a separate indictment and will be tried later.

Stack said employees in Tupelo reported solely to Davis and Holt rather than to others in the company.

Kelly Bailey, a graphic designer, testified that Stanford told her to “work with Jim” on annual report numbers.

Bailey testified that Davis was “highly disrespectful” of Stanford and once mumbled under his breath “something to the effect of ‘he doesn’t know what he’s doing’” in reference to Stanford as they



# LSU Student Indicted for Alleged Violations of Stolen Valor Act

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

Submitted at 9:21 AM February 17, 2012

The Federal Bureau of Investigation (FBI) on February 16, 2012 released the following:  
“BATON ROUGE, LA—United States Attorney Donald J. Cazayoux, Jr. announced that a federal grand jury returned an indictment on Thursday, February 16, 2012, charging ANDREW I. BRYSON, 31, of Baton Rouge, Louisiana, with falsely claiming to have been awarded the Purple Heart and unauthorized wearing of military medals. BRYSON faces a maximum sentence of two years in prison and fines of \$200,000. The indictment alleges that BRYSON falsely represented himself to have been awarded the Purple Heart in an attempt to defraud the Louisiana Office of Motor Vehicles and obtain a military honor license plate for Purple Heart recipients.

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worked on financial reports.

She acknowledged under government cross-examination, however, that Stanford had the final say on annual reports.

Government witnesses testified earlier in the trial that they saw Stanford and Davis changing numbers on annual reports before sending them to printers, and Davis said they fabricated figures to make financial reports look more favorable.

Bailey said she also recalled last-minute changes on reports, but could not detail what they were.

Stanford is accused of running a \$7 billion investor fraud through certificates of deposit issued by his Stanford International Bank in the Caribbean nation of Antigua.”

BRYSON is also charged with wearing several military medals and ribbons, namely the Purple Heart and Joint Service Commendation medals, at an awards ceremony honoring veterans without authorization.

The investigation of BRYSON was conducted by the Federal Bureau of Investigations with assistance from the Louisiana State University Police Department. The case is being prosecuted by Assistant United States Attorney Cam T. Le.

NOTE: An indictment is a determination by a grand jury that probable cause exists to believe that offenses have been committed by a defendant. The defendant is presumed innocent until and unless proven guilty at trial.”

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