



As Gupta Insider Trading Trial Begins, Prosecution to Call First Witness

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

Submitted at 10:01 AM May 22, 2012

WNYC News on May 22, 2012 released the following:

By WNYC Newsroom

"Federal prosecutors are expected to call their first witness in the case against former Goldman Sachs board member Rajat Gupta on Tuesday.

The witness list in the case reads like a who's who in business, including Warren Buffet and Lloyd Blankfein. But the prosecution is expected to call Gupta's former secretary, Caryn Eisenberg to the stand first. Other possible witnesses for the prosecution on Tuesday include an FBI agent and a former co-worker of Gupta's from the consulting firm McKinsey.

Prosecution and defense teams have made their opening arguments in the trial of the prominent NY businessman on Monday.

Government lawyer said they have Gupta's phone records that show he illegally passed corporate secrets to his friend, Raj Rajaratnam, who ran a hedge fund. Assistant U.S. Attorney Reed Brodsky told jurors in opening statements that Gupta "threw away his duties, threw away his responsibilities and broke the law."

Brodsky recounted how former

billionaire Rajaratnam earned close to \$1 million after Gupta told him in a phone call that Goldman had received an offer from Warren Buffett's Berkshire Hathaway to invest \$5 billion in the banking giant in 2008.

"That was trading on secrets coming from someone who actually knew what was happening in the confines of the board room," Brodsky said. "That's called insider trading and that's a serious crime."

Gupta's lawyer said the prosecution's evidence is like a cropped photograph. It doesn't tell the whole story, it's circumstantial. He questioned why a rich and successful businessman take this risk.

Defense attorney Gary P. Naftalis told jurors that Gupta "never defrauded anybody. He never cheated anybody." Naftalis argued the call harms rather than helps the government's case because no unusual trading occurred around that time, and the men were discussing information already reported by analysts and journalists.

The 63-year-old Gupta was a former Goldman Sachs board member, and also a former board member at Procter & Gamble Co.

Gupta has pleaded not guilty to conspiracy and securities fraud charges that carry a potential for more than 100 years in prison."

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 or at one of the offices listed above.

Acting Assistant Attorney General for the Office of Justice Programs Mary Lou Leary Speaks at the National Second Chance Act Conference

(USDOJ: Justice News)

Submitted at 10:29 AM May 22, 2012

"It's been remarkable to witness the way the issue of reentry has taken root in so many communities across the country. And it's impressive to see how, thanks to visionary leaders in the Administration, in Congress, and in the states, the topic has become so prominent on the nation's public safety agenda," said Acting

Assistant Attorney General Leary "It's been remarkable to witness the way the issue of reentry has taken root in so many communities across the country. And it's impressive to see how, thanks to visionary leaders in the Administration, in Congress, and in the states, the topic has become so prominent on the nation's public safety agenda," said Acting Assistant Attorney General Leary

Attorney General Eric Holder Speaks at the National Second Chance Act Conference

(USDOJ: Justice News)

Submitted at 10:34 AM May 22, 2012

"Today, I want to assure each of you that – for me, for President Obama, for leaders across the administration, and for my

colleagues at every level of the Justice Department – effective reentry is, and will remain, a top priority," said Attorney General Holder. "Today, I want to assure each of you that – for me, for President

Ohio Insurance Salesman Guilty of Tax Charges

(USDOJ: Justice News)

Submitted at 10:07 AM May 22, 2012

A jury convicted William A. Herder of Richland County, Ohio, yesterday on federal tax charges, the Justice Department and Internal Revenue Service (IRS) announced. A jury convicted William A. Herder of Richland County, Ohio, yesterday on federal tax charges, the Justice Department and Internal Revenue Service (IRS) announced.

Obama, for leaders across the administration, and for my colleagues at every level of the Justice Department – effective reentry is, and will remain, a top priority," said Attorney General Holder.



Prosecutors also have stake in Edwards' trial verdict

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

Submitted at 10:40 AM May 22, 2012

Myrtle Beach Online on May 21, 2012 released the following:

“By Anne Blythe

GREENSBORO — John Edwards might be the one with the most to win or lose with the jury deliberating his fate, but the U.S. Department of Justice has a lot riding on his case, too.

When the eight men and four women return to the federal courthouse in downtown Greensboro Tuesday morning, they will begin their third day of deliberations in a case that also has put the Justice Department's small public-integrity section under scrutiny.

Edwards' trial came almost four years after the unit's federal prosecutors bungled a corruption case against Ted Stevens, the U.S. senator from Alaska accused of failing to properly report more than \$250,000 in gifts.

Stevens was convicted, but the verdict was appealed and later vacated after it was revealed prosecutors and FBI agents had conspired to conceal and withhold evidence from the defense.

An investigation was launched into the integrity and professional practices of prosecutors in the public-integrity division. A scathing report from that investigation was released earlier this year, showing that prosecutors had “repeatedly ignored the law” and the ethical standards of their profession.

The Public Integrity Section was set up to root out corruption through the prosecution of elected and appointed public officials at all levels of government.

The section has exclusive jurisdiction over allegations of criminal misconduct on the part of federal judges and also supervises the nationwide investigation and prosecution of election crimes.

New chief for federal unit

Since the Stevens case, the unit has a new chief, former New York-based federal prosecutor Jack Smith. The Justice Department also has ordered training to make sure prosecutors disclose key evidence to defense attorneys.

Attorneys who have attended Edwards' trial have commented throughout that the prosecution as well as the defense has a lot at stake in the case.

Edwards, a former two-time Democratic presidential candidate and U.S. senator who branched into politics after achieving success as a trial lawyer, was indicted last June on six counts related to violations of

campaign-finance laws. The violations allegedly occurred during Edwards' campaign for the 2008 nomination, when two wealthy Edwards' supporters gave more than \$900,000 used to help hide Edwards' extramarital affair with Rielle Hunter and her pregnancy.

Each of the six counts Edwards faces carries a penalty of up to five years in prison and a \$250,000 fine. However, Kieran Shanahan, a former federal prosecutor from Raleigh who sat through the trial, said Edwards — if convicted and unable to successfully appeal — would likely receive a concurrent sentence and serve no more than five years.

Peter Henning, a law professor at Wayne State University in Detroit and co-author of “The Prosecution and Defense of Public Corruption,” said Monday that a not-guilty verdict would be “a black eye” for the justice department.

“It would call into question their decision even to pursue the case,” Henning added.

But he added that he had seen no surprises from the prosecution, and that ultimately the questions that arise from the trial might be those raised by rulings made outside the jury's presence by Judge Catherine Eagles, who was appointed to the federal bench in 2010 by President Barack Obama.

Eagles prohibited a former Federal Election Commission chairman from offering his opinion to the jury on whether the money from billionaires Rachel “Bunny” Mellon and Fred Baron would typically be classified as a campaign contribution or gift. Scott Thomas, who had more than 30 years with the FEC, testified while the jury was out of the courtroom that he thought the money that went from Mellon and Baron to other people was used for personal expenses that did not need to be publicly reported or subject to campaign limits.

The jury, during its first two days of deliberations, has asked for many exhibits related to testimony about the \$925,000 in checks issued by Mellon in 2007 and 2008.

Though only the 12 people on the jury know what is being discussed behind closed doors, the first two counts on the jury verdict sheet are related to the Mellon money.

Toward the end of the trial, the jurors sounded as if they were a collegial group, laughing and talking as they walked into and out of the jury box.

On Monday, the second day of deliberations, the jurors were quieter and somber-looking, barely looking at

prosecutors or Edwards as they waited for the judge to answer questions or release them for lunch or the evening break.

As many await the verdict inside the federal courthouse in downtown Greensboro, national political organizations are seeking answers and raising questions outside the tense atmosphere.

Objections to judge's instructions

On Monday, the Center for Competitive Politics, a conservative group that promotes the deregulation of U.S. elections, harshly criticized the final juror instructions issued last week in the trial, particularly sections about the definition of “influencing an election.”

“If Edwards goes to prison, we will have an Alice in Wonderland world where conduct that would not be punished by a civil fine can result in jail time,” Allison Hayward, vice president for policy of CCP, said in a prepared statement.

The organization's spokeswoman pointed to a U.S. Supreme Court case decided in 1976, the landmark Buckley v. Valeo case, which states that under “due process” a person of ordinary intelligence must understand that his actions could be considered illegal.

“There is no legislative history to guide us in determining the scope of the critical phrase ‘for the purpose of ...

influencing,’” Hayward further stated.

“The Supreme Court said the phrase ‘for the purpose of influencing’ is so vague and broad that it cannot be constitutionally applied to define campaign spending.”

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Roger Clemens trial: Prosecutors seek to authenticate physical evidence used against pitcher

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

Submitted at 9:35 AM May 22, 2012

The Washington Post on May 21, 2012 released the following:

“By Ann E. Marimow and Del Quentin Wilber

Federal prosecutors delved into the nitty gritty of the distribution, design and freshness of Miller Lite beer cans Monday as they sought to authenticate the physical evidence being used against star pitcher Roger Clemens in his perjury trial in the District’s federal courthouse.

A crushed beer can has played something of a leading role in the trial: Clemens’s former strength coach and chief accuser, Brian McNamee, used one to store needles, cotton balls and gauze he said he used to inject the baseball legend.

McNamee, who testified for a sixth and final day Monday, has said he recovered the can from Clemens’s recycling bin after injecting him with performance-enhancing drugs at his Manhattan apartment in 2001.

Displaying a chart that showed the evolution of the blue-and-gold Miller Lite can since the 1970s, government lawyers used the testimony of a beer company manager to try to back up McNamee’s assertion by putting a date on the can.

MillerCoors manager Anthony Manuele testified about the “freshness code” on the can in question and determined that it was filled in July 2001 at a North Carolina brewery and would have hit retail shelves in August.

On cross-examination, Clemens’s lawyer Rusty Hardin tried to raise doubt about McNamee’s story and pointed out that the company’s distribution map meant that the strength coach could have purchased the can in his home town of Breezy Point, N.Y.

Manuele’s testimony showed the lengths prosecutors have gone to try to authenticate evidence against Clemens, who is charged with perjury, making false statements and obstruction of Congress for denying to a House panel in 2008 that he had ever used performance-enhancing drugs. Congress was following up on a 2007 report by former senator George Mitchell that named dozens of ballplayers, including Clemens.

Government lawyers have already called

a U.S. Postal Service employee to try to establish the likely date of a shipping receipt from steroid supplier Kirk Radomski to McNamee at Clemens’s Houston home.

The trial, now in its sixth week, again featured testimony from McNamee, who said Monday that he had supplied several big league ballplayers with performance-enhancing drugs and shared that information with law enforcement officials.

McNamee’s testimony regarding other ballplayers and performance-enhancing drugs was intended to suggest that he was not out to get Clemens when he began confiding in federal agents in 2007.

Defense attorneys for Clemens had opposed allowing McNamee to testify about the other players because of concerns about “guilt by association.” But U.S. District Judge Reggie Walton ruled that the government could introduce the information as a way to bolster McNamee’s credibility.

Last week, McNamee endured aggressive questioning by Hardin, Clemens’s lead attorney. He was forced to acknowledge that his story about injecting the baseball legend had evolved over time and that he had lied to federal agents and, separately, to police in a Florida criminal investigation.

But McNamee has largely remained unapologetic about his changing story. McNamee said Monday that he was loyal to Clemens and had no incentive to damage his employer’s reputation. The strength coach agreed to cooperate with federal agents, he said, to try to avoid getting in trouble for distributing the banned substances.

He told authorities about his involvement with several players, including pitchers Mike Stanton and Andy Pettitte and infielder Chuck Knoblauch. Earlier in the trial, Pettitte gave conflicting testimony about his memory of a conversation with Clemens about human growth hormone.

Before leaving the stand, McNamee said he regretted helping Clemens with performance-enhancing drugs. McNamee said he had become unemployable, ruined his marriage and his relationship with his children.

“I shouldn’t have gotten involved. I

should have just educated and left it at that. I shouldn’t have enabled,” he said.

Prosecutors and defense attorneys also questioned a neighbor of Jose Canseco, Clemens’s former teammate. Alexander Lowrey was 11 years old at the time he attended a 1998 pool party at Canseco’s home, where he had his picture taken with Clemens.

McNamee alleges that Clemens and Canseco talked about performance-enhancing drugs at the party, but defense lawyers suggested that Clemens was playing golf during the time that McNamee attended.

Lowrey was questioned in an attempt to establish whether Clemens and McNamee could have been at the party together.

Under cross-examination, Lowrey conceded to Hardin that he was uncertain of the date of the party or the exact times that he was there, raising questions about the timing of the conversation McNamee claimed to have observed.”

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