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July 5, 2020

BY E-MAIL & CERTIFIED FIRST CLASS MAIL
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Regarding: United States v. The Blacksands Pacific Group, Inc., et al (Brennerman)
Appeal Docket Nos. 18-1033(L); 18-1618(Con)
District Court Case No. 1:17-CR-155-LAK

United States v. Brennerman
Appeal Docket Nos. 18-3546(L); 19-497(Con)
District Court Case No. 1:17-CR-337-RJS

Dear Attorneys Sobelman and Landsman-Ross:

As I (Defendant - Appellant Raheem Brennerman) wait for the United States Court of Appeals for the Second Circuit to decide whether protection of the law in United States v. Abuhamra, 389 F.3d 309,

319 (2d Cir. 2004) and in statute 18 U.S.C.S. 3143(b) will be afforded to me based on my appeal for evidence requested at appeal docket no. 20-1414, I remain imprisoned at a time when the Coronavirus pandemic continues to claim lives of incarcerated inmates while I am at a heightened risk from Covid-19 due to my pre-existing medical conditions (diabetes and hypertension) and as I continue to grieve over the loss of my mother.

I write to remind you of your continuing obligations as stipulated in the opinion issued on April 13, 2018 by N.Y.C Bar Association Commission, on Prof'l Ethics, Op. 2018-2, which promulgates that "A prosecutor's duty of competence includes an obligation to investigate credible exculpatory evidence that is revealed after a defendant is convicted (see New York Rule of Professional Conduct 3.8(c))". On June 23, 2020, I highlighted to the United States Court of Appeals for the Second Circuit at appeal docket nos. 18-3546(L): 19-497(Con) that government witness, Julian Madgett, testified (at Trial Transcript 551-554) that such evidence are extant. His testimony also highlighted the importance of the evidence to my defense theory, as the evidence includes the underwriting file which documents the reasons for approving the bridge finance. Judge Sullivan (who presided over the trial) acknowledged Government witness' testimony as to the existence of the evidence (at Trial Transcript. 617.)

The committee's (N.Y.C Bar Association Commission on Prof'l Ethics) opinion underscores that a lawyer's general duty of competence supplements the more specific duties enumerated by other ethics rules.

New York Rule of Professional Conduct 3.8(c) sets forth a prosecutor's obligations when the prosecutor knows of new evidence that a defendant may have been wrongly convicted. Subsection (d) outlines when a prosecutor must seek to remedy a wrongful conviction, and (e) provides a safe harbor for violations of 3.8(c) and (d) if a prosecutor makes a "good faith but erroneous, judgment."

The committee said the rules are clear, but it wanted to make four points.

1. Ethics rules for prosecutors are for disciplinary purposes only. They are not meant to limit what prosecutors "can or should do to rectify wrongful convictions."

2. The committee said that the duty of competence under Rule 1.1 can require a prosecutor to act on potentially exculpatory evidence even when Rule 3.8(c) isn't triggered. "[P]rosecutors have not only a general duty to seek justice but also a professional obligation of competence," the committee said. Even if Rule 3.8(c) doesn't apply, in "some situations, ignoring new potential exculpatory evidence will reflect incompetent prosecutorial work." The committee clarified that "Rules 3.8(c)-(e) were not meant to establish the full extent of prosecutors' post conviction duty, as a matter of competence, to investigate and rectify wrongful convictions."

3. Rule 3.8(c) can be triggered in numerous ways, including by new forensic evidence, a new alibi, or new impeachment evidence. It can also be triggered, the committee said, when the defendant was tried and convicted or after a guilty plea.

4. The ethical requirements imposed by Rule 3.8(c) and (d) aren't dictated by a prosecutor's obligations under procedural rules, statutes or case law. And the committee said the words in the ethics rules generally have their ordinary meaning and don't have a more restrictive interpretation as defined by statute. For example, "new" evidence under Rule 3.8(c) can include evidence that would be excluded under a post-conviction statute's definition of "newly discovered evidence," which would not, under certain statutes, include evidence that could have been discovered by the time of trial. Similarly, "evidence" under the ethics rules includes information that may not be admissible in court.

But the committee said the term "knows" should be understood in its legal sense, in addition to its ordinary sense. "Knows" under the ethics rules includes actual knowledge, but also may include "[c]onscious avoidance" of a fact. While a prosecutor's failure to uncover new, exculpatory evidence due to negligence may not result in a violation of rule 3.8(c), it may still be a competence violation, the committee said.

Thus, in light of the fact that trial transcripts demonstrate that the evidence is extant with the bank - ICBC (London) plc's file and your obligations as highlighted above, I respectfully request that you obtain the evidence (complete ICBC files) so as to resolve this wrongful conviction, particularly as I am at a heightened risk from the corona virus. There should be no hindrance to me benefitting from the full protections of the law and constitution.

I look forward to hearing from you and hopefully receiving the complete ICBC (London) plc records including the underwriting files and files relating to the settlement discussion and negotiation with respect to the transaction between ICBC (London) plc and The Blacksands Pacific Group, Inc., which was/is is the subject of this prosecution.

Dated: July 5, 2020

White Deer, PA 17887-1000

RESPECTFULLY SUBMITTED

/s/ Raheem J. Brennerman

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