

MAWICKE & GOISMAN, S.C.

ATTORNEYS AT LAW

1509 NORTH PROSPECT AVENUE
MILWAUKEE, WISCONSIN 53202

TELEPHONE: 414-224-0600

FACSIMILE: 414-224-9359

E-MAIL: info@dmgr.com

JEFFREY J. MAWICKE
♦ MARTIN W. MEYER
JAMES C. REIHER
PAUL G. SHERBURNE
THOMAS E. WHIPP
SHANNON M. WHITWORTH

♦ SCOTT A. KOMP
Certified Public Accountant
Also licensed CPA

* DONALD A. ALLEN
KEITH R. BUTLER
LUKE J. CHIARELLI
DENNIS P. COFFEY
RICHARD S. GOISMAN
THAD W. JELINSKE
KRIS M. KLOVERS
♦ VICTORIA KORNIS

* Also licensed in Michigan
** Also licensed in California

January 24, 2005

Hon. Rudolph T. Randa
United States District Judge
517 East Wisconsin Avenue
Milwaukee, Wisconsin 53202

RE: *United States of America v. Carl Gee*
Case No. 03-CR-259

Dear Judge Randa:

While the Pre-sentence Investigation Report with respect to the above-captioned matter was completed and provided to me some time ago, I have delayed responding formally in anticipation of and consideration of the recent decisions of the United States Supreme Court in the *Booker* and *Fanfan* matters. I am not yet certain whether the “old methodology” for the submission of Objections to Pre-sentence Reports is or can remain the policy in this District, but I am providing this letter to summarize the defense position with respect to “consideration” of the Guidelines in the Court’s determination as to the appropriate sentence to be imposed herein.

Paragraphs 7 and 8 of the Report are either the Government’s or Probation’s summary of material from the Indictment, as it relates to Mr. Gee. He entered a not guilty plea to the charge in the Indictment and persists in his denial of the accuracy of these allegations. Paragraphs 11 through 15, I believe, represent the government’s Version of the Offense.

In ¶ 12 it is asserted that “the total amount of OIC funds” paid to George was \$273,415.48. It is important to understand that this total is claimed by the government to be the total amount of “government program” money paid. This is a claim made by the State for restitution purposes. It is a number based not on actual dollars paid, but on a percentage basis of all legal fees for all providers.

The Indictment lists only \$205,334.18 in actual receipts by George. This amount is arrived at by reference to an accounting system approved by the State and recognized by the State’s auditors in every review of O.I.C. operations. It is also respectfully asserted that the government has never claimed that Sostarich did not perform all legal services required by the Retainer Agreement; the government has never claimed that the quality of legal representation was deficient. O.I.C. got exactly what the contract with Sostarich called for.

Paragraph 13 recites certain facts relating to the legislative service of Gary George. The defense objects to any consideration of the “credit Repair Bill” as a matter pushed by or passed through the efforts of George as an action of George on behalf of O.I.C. It is respectfully asserted that George’s efforts were contrary to the interests of O.I.C. because of the very strong objection of then Governor Thompson to adding additional funds to the W-2 funding. Mr. Gee did not request any such legislative action by George.

Paragraph 14 - Mr. Gee persists in his denial of the material in this paragraph relating to his alleged activity as described in his earlier submission (See, ¶16).

Paragraph 15 - Roemmel Brown’s statement regarding a \$170,000.00 check drawn on a Robbie’s Corn Roast account is false. No such check was ever given to Brown by Mr. Gee.

More importantly, the defense objects to any consideration of the \$200, 000.00 investment in Atlantic Broadcasting Corporation either as a part of the “loss” or as a consideration in establishing an amount of restitution. The funds at issue, while paid by the State of Wisconsin to O.I.C., were paid as a “bonus” for exemplary performance under the provisions of a W-2 contract. The funds were wholly those of O.I.C. They were no longer government funds; they were funds O.I.C. had earned and could disburse any way it chose.

Parenthetically, O.I.C. continues to have a valid claim against A.B.C. for the value of the investment; A.B.C., under a new corporate name, continues to possess a valuable asset - an FCC broadcasting license.

As testified to at trial, the return of Mr. Gee’s investment was demanded as a part of the O.I.A. investment so as to assure no conflict of interest existed by virtue of Mr. Gee’s occupying a position on the Corporation’s Board as O.I.A.’s representative.

Paragraphs 18-19 - The amounts described herein have been discussed above and will be discussed in the remarks below relating to the Guidelines.

GUIDELINE COMPUTATIONS

Initially, it is essential that the Court understand that the defense objects to any application of the Guidelines that violates the dictates of the *Booker* and *Fanfan* decisions.

Paragraph 25 - Additur to Base Offense Level based upon “loss.”

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The defense objects to any “finding” by the Court as to a specific dollar loss; such a finding is now appropriately made only by a jury and only if made by evidence meeting the reasonable doubt evidentiary standard.

As indicated earlier, the legal services paid for were performed. The investment dollars were the organization’s dollars to spend as it saw fit. It earned the dollars by exemplary performance of the State contract. The offense of conviction

The defense asserts that only the Base Offense Level may be considered. Even if the defense position is rejected by the Court and reference is made to “program money” the additur to the Base Offense Level should only be 12.

Paragraph 27 - Role in the Offense / abuse of Position of Trust

Any additur for Role would require a judicial “finding of fact;” such a finding is no longer constitutionally permissible pursuant to *Booker*.

Paragraph 28 - Obstruction of Justice

Any additur for Obstruction would require a judicial “finding of fact;” such a finding is no longer constitutionally permissible pursuant to *Booker*.

In summary, the Guidelines as an advisory tool, utilized in a fashion consistent with the dictates of *Booker* result in an Offense Level, in the defense view, of 10. With a Criminal History Category of I, the guideline range would be six to twelve months.

Very truly yours,

/ s /

Dennis P. Coffey

DPC/dpc
cc: U.S. Attorney Biskupic
U.S.P.O. Fetherston