

JOHN F. LAURO
Member of FL, NY, & DC Bars
jlauro@laurolawfirm.com

SCOTT J. FLINT
Member of FL Bar
sflint@laurolawfirm.com

GUS M. CENTRONE
Member of FL Bar
gcentrone@laurolawfirm.com

FLORIDA
Bank of America Plaza
101 East Kennedy Blvd.
Suite 3100
Tampa, Florida 33602
P: 813.222.8990
F: 813.222.8991

NEW YORK
1540 Broadway
Suite 1604
New York, New York 10036
P: 646.746.8659
F: 212.938.0858

John F. Lauro, P.A.
WWW.LAUROLAWFIRM.COM

LAURO LAW FIRM

FLORIDA - NEW YORK

Via Electronic Filing

June 10, 2008

Honorable Carol Bagley Amon
United States District Court Judge
United States District Court –
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: United States v. Timothy Donaghy
Case No. 07-CR-587-01

Dear Judge Amon:

On May 8, 2008, the Government submitted a letter to the Court requesting a 5K1.1 departure for Tim Donaghy (the "5K1.1 Letter"), which omitted certain pertinent information. Under 18 U.S.C. § 3661, no limitation shall be placed on information received by a sentencing court regarding a defendant's conduct when imposing an appropriate sentence. We respectfully submit this Supplemental 5K1.1 Letter so that the Court may have complete information to determine the extent of Tim's cooperation before granting a downward departure under U.S.S.G. § 5K1.1 or a variance under 18 U.S.C. § 3553. This letter is a summary of Tim's cooperation, and is not intended to be a verbatim description of all information he provided to the government.

July 6, 2007 Proffer Meeting

On July 6, 2007, Tim met with prosecutors and the FBI in New York. At the meeting, the Government shifted the focus of its investigation to improprieties within the National Basketball Association ("NBA"). Tim provided key information regarding game manipulation by referees.

Tim described various examples of improper interactions and relationships between referees and other league employees, such as players, coaches, or management. Some referees socialized frequently with coaches and players. Others would request autographs from players, or they would receive gratuities, such as merchandise or free meals, from team coaches and managers. Tim described one referee's use of a team's practice facility to exercise and another's frequent tennis matches with a team coach. These activities were against NBA rules; indeed, such inappropriate relationships could influence the outcome of games.

Tim also explained how prevalent gambling was among the referees,¹ and identified referees who engaged in casino gambling and bet on professional sports in violation of league rules.

Tim also described one instance where a referee's relationship with a team's general manager led to an attempt by that referee to influence a game's outcome. In 2004, Team 1 was playing a game against Team 2, which was officiated by Referees A, B, and C. Tim did not officiate that game, but spoke to Referee B by telephone, who confirmed that Referee A had spoken with Team 1's general manager that day. Referee B told Tim that Referee A planned to favor Team 1 at that night's game. Indeed, the referees called 25 personal fouls on Team 2, and far fewer on Team 1.²

The Government asked Tim about the NBA's observer program. In that program, an NBA employee would watch the game from the audience and monitor the calls of the referees. The observer later would review a tape of the game and draft a report, the findings of which would affect a referee's ratings.

Tim explained to the Government that the observer rating system was frequently manipulated. Although the observers were supposed to remain anonymous, all the referees knew who they were. Referees friendly with NBA observers monitoring their game would likely receive a good report. Tim told the government of an instance where an NBA observer entered the referees' locker room before a game and asked the referees to buy a book he had written. The referees felt obligated to buy it because they felt that they would otherwise receive a bad report from the observer.

September 6, 2007 Proffer Meeting

The agents conducted a proffer meeting with Tim in Tampa, Florida, on September 6, 2007. Tim continued to provide information about the inner-workings of the NBA. Tim gave information on how top executives of the NBA sought to manipulate games using referees to boost ticket sales and television ratings. He also described how nepotism played a far greater role than qualifications in a number of referee hirings.

For instance, Tim explained that league officials would tell referees that they should withhold calling technical fouls on certain star players because doing so hurt ticket sales and television ratings. As an example, Tim explained how there were times

¹ Gambling by referees violated league rules. However, after learning that several referees gambled extensively, the NBA changed its rules retroactively to permit referees to gamble in casinos. In order to avoid the possibility of having any disgruntled referees, to our knowledge, the league did not discipline any referees for violating NBA rules.

² Because we believe that, at some point, another prosecutor's office may examine these matters, we have withheld identifying the names of the individuals and teams. However, the Government has a full record of the names provided by Tim. Indeed, the Government, in its 5K1.1 Letter to this Court described Tim as "cooperative, forthcoming, candid, and always willing to assist the government as needed." 5K1.1 Letter at 7.

when a referee supervisor would tell referees that NBA Executive X did not want them to call technical fouls on star players or remove them from the game. In January 2000, Referee D went against these instructions and ejected a star player in the first quarter of the game. Referee D later was reprimanded privately by the league for that ejection.

Tim told of other instances where the manipulation was more subtle. If the NBA wanted a team to succeed, league officials would inform referees that opposing players were getting away with violations. Referees then would call fouls on certain players, frequently resulting in victory for the opposing team.

Tim described manipulative events that occurred in 2005, when Team 3 was in a playoff series against Team 4. Team 3 lost the first two games in the series and Team 3's Owner complained to NBA officials. Team 3's Owner alleged that referees were letting a Team 4 player get away with illegal screens.³ NBA Executive Y told Referee Supervisor Z that the referees for that game were to enforce the screening rules strictly against that Team 4 player. Referee Supervisor Z informed the referees about his instructions. As an alternate referee for that game, Tim also received these instructions. The referees followed the league's instructions and Team 3 came back from behind to win the series. The NBA benefited from this because it prolonged the series, resulting in more tickets sold and more televised games.

Referee Supervisor Z told Tim that he had contacted the Team 4 coach about the NBA's instructions. The NBA launched a secret investigation, except that the investigation did not relate to the team that received preferential treatment. Rather, the NBA fined the Team 4 coach \$100,000 for not disclosing the name of the official who had informed him of the behind-the-scenes instructions. The NBA was concerned only with keeping secret the leaks of behind-the-scenes instructions.

Tim also provided information relating to manipulation occurring in 2002. Referees A, F, and G were officiating a playoff series between the Team 5 and Team 6 in May of 2002. It was the sixth game of a seven-game series, and a Team 5 victory that night would have ended the series. However, Tim learned from Referee A that Referees A and F wanted to extend the series to seven games. Tim knew Referees A and F to be "company men," always acting in the interest of the NBA, and that night, it was in the NBA's interest to add another game to the series.

Referees A and F heavily favored Team 6. Personal fouls (resulting in obviously injured players) were ignored even when they occurred in full view of the referees. Conversely, the referees called made-up fouls on Team 5 in order to give additional free throw opportunities for Team 6. Their foul-calling also led to the ejection of two

³ A "screen" is the legal action of a player who, without causing undue contact, delays or prevents an opponent from reaching a desired position. Under NBA Rules, "a player who sets a screen shall not . . . move laterally or toward an opponent being screened, after having assumed a legal position."

Hon. Carol B. Amon
June 9, 2008
Page 4

Team 5 players. The referees' favoring of Team 6 led to that team's victory that night and Team 6 came back from behind to win the series.

In January 2008, FBI agents asked Tim to prepare a report regarding problematic NBA practices. Tim's report emphasized that the NBA should forbid referees from maintaining relationships with players, coaches, or team owners. The report also explained that these friendships lead referees to form biases when officiating games. Further, the report described the need to eliminate the NBA's tendency to favor certain players and teams. Tim suggested that the league train referees to treat all players equally, regardless of popularity. This policy would help ensure that referees officiate games fairly.

Tim's report further recommended that the NBA prohibit observers from communicating with officials. As explained above, while NBA observers are supposedly anonymous, in reality they visit referee locker rooms and maintain friendships with referees. Tim explained that these friendships lead to prejudice in the monitoring of officials, which harms the integrity of the league.

Tim's cooperation is ongoing. He communicates with federal agents regularly and has made himself available for telephone conferences with them to answer any questions they have regarding the NBA or other matters.

Respectfully,

John F. Lauro

John F. Lauro

JFL/gmc

cc: AUSA Jeffrey A. Goldberg
AUSA John D. Buretta