

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ECF CASE

UNITED STATES OF AMERICA : 05 Cr. 518 (RCC)

- v. - :

VIKTOR KOZENY, :
FREDERIC BOURKE, JR., and :
DAVID PINKERTON, :

Defendants. :

----- x

CITY OF NEW YORK)
COUNTY OF NEW YORK) ss:
SOUTHERN DISTRICT OF NEW YORK)

I, JONATHAN S. ABERNETHY, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am an Assistant United States Attorney in the United States Attorney’s Office for the Southern District of New York (the “U.S. Attorney’s Office”), and am one of the prosecutors handling the case of United States v. Viktor Kozeny, Frederick Bourke, Jr. and David Pinkerton, 05 Cr. 518 (RCC). I submit this Declaration in connection with the Government’s opposition to David B. Pinkerton’s Motion to Dismiss the Indictment and for a Bill of Particulars and Frederic A. Bourke Jr.’s Pretrial Motions (the “Motions”). Specifically, this Declaration (1) sets forth the reason why the Indictment in this case was filed under seal and (2) attaches other Declarations that the Government submits in connection with the Motions.

2. The Indictment was returned under seal on May 12, 2005 and unsealed on October 6, 2005. The Indictment was returned under seal because of the risk of flight posed by Viktor Kozeny if the Indictment were immediately made public. During the period between the return and the unsealing of the Indictment, the U.S. Attorney’s Office was coordinating with the

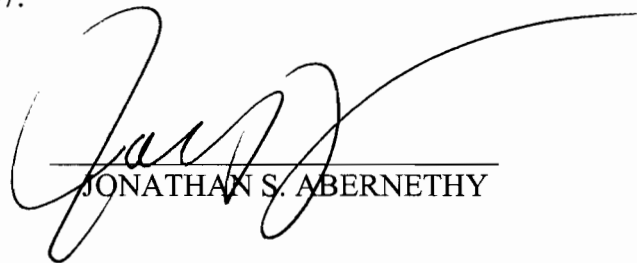
Department of Justice's Office of International Affairs to secure and execute a provisional arrest warrant for Kozeny.

3. Attached to this Declaration are copies of the following other Declarations:

Exhibit A Declaration of Judith H. Friedman dated January 18, 2007

Exhibit B Declaration of Mark F. Mendelsohn dated January 12, 2007

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on January 18, 2007.



JONATHAN S. ABERNETHY

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DISTRICT OF COLUMBIA)
) ss:
)

I, JUDITH H. FRIEDMAN, pursuant to 28 U.S.C. § 1746, declare as follows:

1. Since 1972, I have been employed by the United States Department of Justice, the last 15 years in the Criminal Division's Office of International Affairs ("OIA"), and currently as a Senior Trial Attorney in OIA.

2. In my work at OIA, I have been responsible for over 1000 mutual legal assistance matters and over 400 extradition matters, including all mutual legal assistance and extradition requests to and from the Netherlands under the Mutual Legal Assistance and Extradition Treaties with the Kingdom of the Netherlands (entered into force on September 15, 1983), and most mutual legal assistance requests to Switzerland under the Treaty Between the United States of America and the Swiss Confederation on Mutual Assistance in Criminal Matters (entered into force January 23, 1977). I currently am responsible for over 130 pending criminal matters involving mutual legal assistance with the Netherlands and over 75 pending criminal matters involving mutual legal assistance with Switzerland. During the course of my employment at OIA, I have become

familiar with the procedures in the Netherlands, Switzerland, and the United States that are applicable to requests for assistance, including requests for business and bank records.

3. Also during the course of my employment over the last four years, I have become familiar with the investigation of Viktor Kozeny and others (the "Kozeny Investigation"), particularly as that investigation relates to records sought on behalf of the United States Attorney's Office for the Southern District of New York (the "Southern District") from the Netherlands and Switzerland. I am the attorney at OIA principally responsible for acting as the liaison between the Southern District and the Netherlands and between the Southern District and Switzerland in connection with official requests made by the United States to those two countries.

4. I submit this declaration for the purposes of providing this Court with (1) information about when the Netherlands responded to an official request from the United States in connection with the Kozeny Investigation; and (2) the dates used by the United States and Switzerland, respectively, in referring to an official request made to that county in connection with the Kozeny Investigation. This declaration is based on my personal knowledge of these matters and my review of internal case reports concerning these official requests that are maintained by OIA.

The Netherlands' Response to an October 29, 2002 Official Request

5. On or about October 29, 2002, OIA sent an official request to the Netherlands (the "Netherlands Request") on behalf of the Southern District in connection with the Kozeny Investigation. Approximately two weeks later, OIA sent via facsimile to the Netherlands a translation of the Netherlands Request, as required by treaty.

6. By letter dated November 8, 2005, more than three years after the Netherlands Request was sent, Dutch authorities sent copies of documents responsive to the Netherlands Request.

Those documents were received at OIA on November 15, 2005. Prior to that time, the United States Government had not received any responsive documents from the Netherlands.¹

The Dates Used To Refer to the Swiss Request

7. On or about January 13, 2003, OIA submitted an official request to Switzerland (the "Swiss Request") on behalf of the Southern District in connection with the Kozeny Investigation. On or about March 26, 2003, OIA sent to Switzerland an official German translation of the Swiss Request, as required by treaty.

8. The Swiss authorities executed the Swiss Request by sending documents to the United States Government on an ongoing basis, along with transmittal letters indicating what documents were enclosed. In those transmittal letters, the Swiss authorities referred to the Swiss Request as being dated March 26, 2003, rather than January 13, 2003, as the March 26, 2003 date was the date of the official German translation of the request.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on January 18, 2007.


JUDITH H. FRIEDMAN

¹ In the three-year period between OIA's sending of the Netherlands Request and translation and the Netherlands' response on November 8, 2005, an OIA paralegal sent a number of electronic mail messages to the Ministry of Justice in the Netherlands inquiring about the status of that country's execution of the Netherlands Request. In some cases, the OIA paralegal received no response to these e-mails, and in other cases, the response indicated that delays had been encountered in the Netherlands in executing the request.

EXHIBIT B

UNITED STATES DISTRICT COURT
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DISTRICT OF COLUMBIA)
) ss:
)

I, MARK F. MENDELSON, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am a Deputy Chief of the Fraud Section of the Criminal Division of the United States Department of Justice (“DOJ”), with responsibility for oversight of DOJ’s Foreign Corrupt Practices Act investigations and prosecutions. I have held that position since January 2005.

2. I am also a Special Assistant United States Attorney in the United States Attorney’s Office for the Southern District of New York (the “U.S. Attorney’s Office”). I hold that title specifically due to my work on the case of United States v. Viktor Kozeny, Frederick Bourke, Jr. and David Pinkerton, 05 Cr. 518 (RCC).

3. From February 1998 through September 2003, I was employed as an Assistant United States Attorney (“AUSA”) in the Southern District of New York. During my tenure in the U.S. Attorney’s Office, I was the assigned AUSA on an investigation into Viktor Kozeny and others (the “Investigation”).

4. I submit this declaration for the purpose of providing this Court with facts that I believe are relevant to defendant Frederic Bourke Jr.'s motion for a pretrial Kastigar hearing. This information is based upon my personal knowledge.

5. In the course of my work on the Investigation, I became aware that the New York County District Attorney's Office (the "D.A.'s Office") was itself conducting an investigation of Viktor Kozeny (the "D.A.'s Investigation"), which resulted in an indictment against Mr. Kozeny in the fall of 2003 on a number of counts of grand larceny.

6. During my work on the Investigation, I recall having one – and only one – discussion with John Moscow, the lead Assistant District Attorney ("A.D.A.") on the D.A.'s Investigation. During that one conversation, which I recall was an in-person meeting at the U.S. Attorney's Office sometime in 2003 with Mr. Moscow, A.D.A. Miriam Klipper, and my supervisor and the then-Chief of the Major Crimes Unit of the U.S. Attorneys' Office Jonathan Halpern, neither Mr. Moscow nor Ms. Klipper discussed the substance of any grand jury testimony by any individual in the D.A.'s Investigation, including Frederic Bourke Jr.'s state grand jury testimony. In addition, neither I nor Mr. Halpern asked Mr. Moscow or Ms. Klipper for any such information. Indeed, at one point during the meeting I specifically recall that either I or Mr. Halpern stated, in substance, that we did not want to hear anything about any grand jury testimony by any individual in the D.A.'s investigation because we wanted to avoid any Kastigar issues.

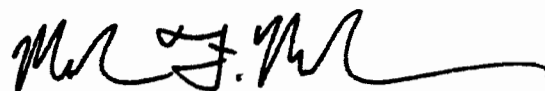
7. During my work on the Investigation, I estimate that I also had approximately 4 or 5 telephone conversations with Ms. Klipper. Those conversations related principally to my request to look at and/or obtain copies of certain documents that the D.A.'s Office had received, and were not about the substance of the D.A.'s Investigation or of any witness's state grand jury

testimony.

8. On one occasion I went to the D.A.'s Office to look at documents that the D.A.'s Office had received. Those documents did not contain any information about any individual's testimony before the state grand jury.

9. The Government obtained a copy of Mr. Bourke's state grand jury transcript after the Indictment was returned in this case, and only after lawyers for Mr. Bourke asked the Government to do so.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on January 12, 2007.

A handwritten signature in black ink, appearing to read 'Mark F. Mendelsohn', written over a horizontal line.

MARK F. MENDELSON