DENNIS P. WILL

Prosecuting Attorney
Lorain County, Ohio

225 Court Street • 3rd Floor • Elyria, Ohio 44035
Phone 440.329.5389 • Fax 440.329.5430
email lcp@lcprosecutor.org

September 7, 2010

Via Email to jfm@paladin-law.com
& Regular US Mail

John F. McCaffrey, Esq.
McLaughlin & McCaffrey, LLP
Eaton Center, Suite 1350
1111 Superior Avenue
Cleveland, Ohio 44114-2500

CLERK OF COURTS
MAHONING COUNTY OHIO
DEC 6 2010
FILED
ANTHONY VASO, CLERK

RE: Letter of John McCaffrey to Judge Wolff, dated 9-2-2010;
State of Ohio vs. Anthony Cafaro, Sr., 10 CR 0800, et al.

Dear Mr. McCaffrey:

This letter is directed to you and not to any other attorney representing the Cafaro interests although we certainly have no objection should you decide to share it with any of them.

We've never seen anything quite like your letter to Judge Wolff. "Incredulous" is the best word to describe our collective reaction and, frankly, your letter was both insulting and disturbingly disingenuous.

We understand that our situation is different than yours inasmuch as we receive no compensation for our efforts in Mahoning County, having been engaged on a mutual aid basis while you've been retained to zealously represent the interests of your clients.

Although we have, to date, ignored many of your annoying transgressions during the course and scope of this investigation and case, we can no longer do so, given your most recent attempts to rewrite the Ohio Rules of Criminal Procedure and circumvent the filing of a proper motion pursuant to the Rules of Superintendence For The Courts Of Ohio[1].

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[1] Rule 45(E)(1) of the Rules of Superintendence provides that "Any party to a judicial action or proceeding or other person who is the subject of information in a case

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MEMO

The State has made every effort to be fair and accommodating to all of the requests by the defendants' counsel:

- The State complied with your request relative to the Oakhill publicity DVD you asked to have provided to the grand jury;
- The State asked for personal recognizance bonds although it could have sought cash or surety bonds for all defendants;
- The State did not object and, in fact, approved the use of the Mahoning County process of allowing all defendants in this matter to waive appearances at arraignments in an effort to curtail any hype or frenzy--although it could have refused to consent under local rules--nor did we complain when the arraigning judge allowed all counsel for the defendants to stay home while the State was required to spend 2 ½ hours travelling to and from Mahoning County, wait for almost two hours to call 9 cases in minutes and then avoid the media while leaving the courtroom.
- The State did not object to any delay in an arraignment of a defendant who was out of the country and, in fact, assented to the setting of an arraignment for that defendant at the end of last month;
- The State did not object to any delay in the booking of any defendant including, at your own request, the booking of Mr. Cafaro based on your representation that he had a preplanned business meeting on the court-ordered date;
- The State did not object to any defendant's travel out of the State during the pendency of the case (preauthorization apparently required by local custom and practice);
- The State did not object to any requests for any expansions of time in which to file Rule 7 or Rule 16 requests;
- The State did not object to any defendant's lack of attendance at the first pretrial;

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document may, **by written motion to the court**, request that the court restrict public access to the information or, if necessary, the entire document. Additionally, the court may restrict public access to the information in the case document or, if necessary, the entire document upon its own order. The court shall give notice of the motion or order to all parties in the case. The court may schedule a hearing on the motion."

- The State has not called press conferences to bring publicity to its theory of the case, unlike your client and other co-defendants; and

- We were even in the process of accommodating your request and, although not required by rule, converting discovery materials to a more manageable and accessible .pdf format organized in categories of information until today.

That is, we have endeavored at every turn to deal with all counsel--including you --in a professional and courteous manner and avoid all statements about the merits of the case to any media outlet beyond minimal responses necessitated by statements made by or on behalf of your client and other defendants in this case.

You should therefore attempt to understand our reaction to your incredible characterization of the events surrounding the filing of the Bill of Particulars with respect to Flora Cafaro and Martin Yavorcik.

We informed all counsel for the defendants more than a week ago through a filing with the Clerk of Court's office of a Notice of the State's intent to voluntarily provide and file a bill of particulars. We did that in an effort to end the needless posturing and to inform all counsel of our intent to comply with Rule 7 as that rule is normally followed. You didn't object.

There is no provision under local rule of court or the Ohio Rules of Criminal Procedure for filing court documents anywhere else. In short, we filed the Notice and the Bill of Particulars where they were required to be filed and served each on counsel in the manner required. If there was some other special procedure for filings in this case that is unique to Mahoning County, no one informed the State of Ohio.

We provided absolutely nothing to the media when the Notice and Bill of Particulars were filed on September 1, 2010, despite your insinuations to the contrary. We do not control what the media chooses to publish or the procedures of the Clerk of Courts with respect to documents properly filed there.

As you should know, court filings are made in the Clerk's office and are a matter of public record [2]. We filed our documents in the proper place.

You also know or should have known that an indictment is sufficient under Ohio law if it states a charge in terms of a statute and supplies the relevant dates of offense—as did the indictment in this case. You should also know that the facts of the

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[2] In fact the Ohio Supreme Court has stated that: "**...the public had a right of access to any court record before, during, and for a period of time after the criminal trial. In fact, the public's access to the records is unrestricted until a decision is made to seal records.**" (emphasis added) *State ex rel. Cincinnati Enquirer v. Winkler,* 101 Ohio St.3d 382, 2004 Ohio 1581 (2004).

case are then supplied through a bill of particulars and that Criminal Rule 7 requests by defendants are normally routine (much like the requests made by other defendants in this case) and often rather perfunctory.

We didn't object while you continue to play musical chairs in your representation of varying clients; or when we read about the filing of your motion for a bill of particulars and 'preliminary statement' in the news and received a copy of them two days later; or even when you filed the 'motion for a bill of particulars' and your self-styled 'preliminary statement', attaching irrelevant documents which looked to us like a transparent effort at attracting media attention to your characterization of the case as one lacking evidence and providing your media spin to a defense that the move to Oakhill was somehow a bad thing.

We take great issue with your misstatement that the State somehow engaged in an effort to "pander to the media" especially in view of both your unusual motion for a bill of particulars (seeking to control the content and manner of response akin to a civil rule request for interrogatories) and the media comments made by a member of your defense team and by a Director of Corporate Communications employed by one of the Cafaro organizations.

You ask for more particularity, stating that the indictment is vague and yet when you got it, you didn't like the facts and now seek some kind of editorial right of prior restraint by demanding 14 days notice of content before the State files a bill of particulars. Every statement made in that Bill of Particulars is factually backed. You moved for it and we voluntarily responded. If you had moved for and received a prior order to seal the record, we would certainly have complied with that.

The most objectionable and disappointing aspect of our interaction with you is your demonstrated lack of candor and courtesy. When you need something from us—like our consent to waivers of arraignment—you have no problem politely and expeditiously showering us with telephone calls and emails. However, when you decide to publish a tome of a defense position paper disguised as a motion for a bill of particulars or send a repugnant, self-serving letter to a judge that makes unfounded accusations against the State (of doing something that you look to actually be doing yourself), you use more surreptitious methods.

You sent your September 2, 2010 letter to the judge's office via email and then faxed it to us so we received it only after the judge's bailiff had communicated with both you and the judge. We were literally reading your letter--received moments before off the fax machine--when we received what appeared to us to be a prearranged conference call with both you and the judge's bailiff on the line announcing the judge's 'decision' after the contents of your letter had already been communicated to the judge. That happened without any ability on the State's part to make a record or even present its position via correspondence in response to your letter.

As you know, the proper procedure requires that you file a motion--with the Clerk of Courts--seeking to seal the record. You even cited the rule in your letter. We would then have requested a hearing before a judge to make a record, so that the interests of the State and the other defendants in this case could be heard. Of course filing a proper motion in accordance with a rule may have subjected your request to adverse media scrutiny since you know that Clerk of Court filings are public record unless ordered otherwise.

Better yet, you could have picked up the phone, shared your concerns and allowed us the courtesy to address it cooperatively with you and the court.

We fully intend to voluntarily comply with the judge's request, communicated to us through your unusual conference call arranged with his bailiff. We will do so even without benefit of a journalized order until the date of the first pretrial. However, you should know that you will not receive any response to your motion for a bill of particulars or discovery until the State determines the best course in which to proceed after that meeting.

Very truly yours,

Dennis P. Will,
Prosecuting Attorney
Lorain County, Ohio

Anthony Cillo
Assistant Prosecuting Attorney
Lorain County, Ohio

by Paul Nick,
Chief Investigative Counsel,
Ohio Ethics Commission

and David P. Muhek
Assistant Prosecuting Attorney,
Lorain County, Ohio

as Special Prosecutors for Mahoning County, Ohio

cc: Hon. William H. Wolff, Jr.
c/o Stephanie Frank, Bailiff
Mahoning County Court of Common Pleas
120 Market Street
Youngstown, Ohio 44503