

30(b)(6) Deposition of Mallun Yen 11/17/2008
CONFIDENTIAL - Subject to the Protective Order

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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION

ERIC M. ALBRITTON,
Plaintiff,

vs.

No. 6:08-CV-00089

(1) CISCO SYSTEMS, INC.,
(2) RICHARD FRENKEL, (3) MALLUN
YEN and (4) JOHN NOH,

Defendants.

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

30(b)(6) DEPOSITION OF MALLUN YEN

Monday, November 17, 2008

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Reported by:
JANIS JENNINGS, CSR, CRP, CLR
CRS-100282-019



1 Q. You don't know that the clerk's office
2 is responsible for keeping federal court filings,
3 Miss Yen?

4 MR. McWILLIAMS: Object to the form.

5 MR. BABCOCK: Objection. Form.

6 THE WITNESS: I believe the clerk is
7 responsible, and I don't know specifically who does
8 what within each court.

9 BY MR. PATTON:

10 Q. Do you know, Miss Yen, that there is
11 actually in every federal district court district
12 in the United States there is a clerk's office?

13 A. I don't that with certainty, but I assume
14 so.

15 (Whereupon, Yen Exhibit 6 was marked
16 for identification.)

17 BY MR. PATTON:

18 Q. Exhibit 6. Do you see what that is, out
19 of the United States Code?

20 A. It says "United States Code Service" on
21 top.

22 Q. Well, it's Title 18, Section 1512, is it
23 not?

24 A. It's 18 USCS, Section 1512.

25 Q. So the answer is yes? That's what it is?

1 THE WITNESS: What I can say is that
2 this document that you just gave me, that I have
3 not seen before, says on the front "18 U.S.C
4 Section 1512," and it says what you had just read
5 the last time.

6 BY MR. PATTON:

7 Q. Would you read up at -- very close to the
8 top of the first page, go down three or four lines
9 and it says, "Title 18:"

10 Do you see that?

11 A. No, I don't see "Title 18:"

12 Q. "Title 18" (indicating). Do you see that?

13 A. It says "Title 18," period.

14 Q. And what follows?

15 A. It says, "Title 18. Crimes and Criminal
16 Procedure."

17 Q. Wouldn't that tell you that this statute
18 is setting forth what the crime is?

19 A. This document lists the language you just
20 wrote under this title.

21 Q. Which one is that? Exhibit 6?

22 A. Yes.

23 MR. BABCOCK: 6.

24 MR. PATTON: We'll skip this one
25 (indicating).

UNITED STATES CODE SERVICE
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*** CURRENT THROUGH PL 110-448, APPROVED 10/22/2008 ***

TITLE 18. CRIMES AND CRIMINAL PROCEDURE
PART I. CRIMES
CHAPTER 73. OBSTRUCTION OF JUSTICE

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18 USCS § 1512

§ 1512. Tampering with a witness, victim, or an informant

- (a) (1) Whoever kills or attempts to kill another person, with intent to--
- (A) prevent the attendance or testimony of any person in an official proceeding;
 - (B) prevent the production of a record, document, or other object, in an official proceeding; or
 - (C) prevent the communication by any person to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, parole, or release pending judicial proceedings;
- shall be punished as provided in paragraph (3).
- (2) Whoever uses physical force or the threat of physical force against any person, or attempts to do so, with intent to--
- (A) influence, delay, or prevent the testimony of any person in an official proceeding;
 - (B) cause or induce any person to--
 - (i) withhold testimony, or withhold a record, document, or other object, from an official proceeding;
 - (ii) alter, destroy, mutilate, or conceal an object with intent to impair the integrity or availability of the object for use in an official proceeding;
 - (iii) evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official proceeding; or
 - (iv) be absent from an official proceeding to which that person has been summoned by legal process; or
 - (C) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, supervised release, parole, or release pending judicial proceedings;
- shall be punished as provided in paragraph (3).
- (3) The punishment for an offense under this subsection is--
- (A) in the case of a killing, the punishment provided in sections 1111 and 1112 [18 USCS §§ 1111 and 1112];
 - (B) in the case of--
 - (i) an attempt to murder; or
 - (ii) the use or attempted use of physical force against any person;imprisonment for not more than 30 years; and
 - (C) in the case of the threat of use of physical force against any person, imprisonment for not more than 20 years.
- (b) Whoever knowingly uses intimidation, threatens or corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to--
- (1) influence, delay or prevent the testimony of any person in an official proceeding;
 - (2) cause or induce any person to--
 - (A) withhold testimony, or withhold a record, document, or other object, from an official proceeding;



(B) alter, destroy, mutilate, or conceal an object with intent to impair the object's integrity or availability for use in an official proceeding;

(C) evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official proceeding; or

(D) be absent from an official proceeding to which such person has been summoned by legal process; or

(3) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, supervised release, parole, or release pending judicial proceedings:

shall be fined under this title or imprisoned not more than 20 years, or both.

(c) Whoever corruptly--

(1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or

(2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so.

shall be fined under this title or imprisoned not more than 20 years, or both.

(d) Whoever intentionally harasses another person and thereby hinders, delays, prevents, or dissuades any person from--

(1) attending or testifying in an official proceeding;

(2) reporting to a law enforcement officer or judge of the United States the commission or possible commission of a Federal offense or a violation of conditions of probation, supervised release, parole, or release pending judicial proceedings;

(3) arresting or seeking the arrest of another person in connection with a Federal offense; or

(4) causing a criminal prosecution, or a parole or probation revocation proceeding, to be sought or instituted, or assisting in such prosecution or proceeding;

or attempts to do so, shall be fined under this title or imprisoned not more than 3 years, or both.

(e) In a prosecution for an offense under this section, it is an affirmative defense, as to which the defendant has the burden of proof by a preponderance of the evidence, that the conduct consisted solely of lawful conduct and that the defendant's sole intention was to encourage, induce, or cause the other person to testify truthfully.

(f) For the purposes of this section--

(1) an official proceeding need not be pending or about to be instituted at the time of the offense; and

(2) the testimony, or the record, document, or other object need not be admissible in evidence or free of a claim of privilege.

(g) In a prosecution for an offense under this section, no state of mind need be proved with respect to the circumstance--

(1) that the official proceeding before a judge, court, magistrate, grand jury, or government agency is before a judge or court of the United States, a United States magistrate [United States magistrate judge], a bankruptcy judge, a Federal grand jury, or a Federal Government agency; or

(2) that the judge is a judge of the United States or that the law enforcement officer is an officer or employee of the Federal Government or a person authorized to act for or on behalf of the Federal Government or serving the Federal Government as an adviser or consultant.

(h) There is extraterritorial Federal jurisdiction over an offense under this section.

(i) A prosecution under this section or section 1503 [18 USC § 1503] may be brought in the district in which the official proceeding (whether or not pending or about to be instituted) was intended to be affected or in the district in which the conduct constituting the alleged offense occurred.

(j) If the offense under this section occurs in connection with a trial of a criminal case, the maximum term of imprisonment which may be imposed for the offense shall be the higher of that otherwise provided by law or the maximum term that could have been imposed for any offense charged in such case.

(k) Whoever conspires to commit any offense under this section shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

HISTORY:

(Oct. 12, 1982, P.L. 97-291, § 4(a) in part, 96 Stat. 1249; Nov. 10, 1986, P.L. 99-646, § 61, 100 Stat. 3614; Nov. 18, 1988, P.L. 100-690, Title VII, Subtitle B, § 7029(a), (c), 102 Stat. 4397, 4398; Sept. 13, 1994, P.L. 103-322, Title VI, § 60018, Title XXXIII, § 330016(1)(O), (U), 108 Stat. 2148; Oct. 1, 1996, P.L. 104-214, § 1(2), 110 Stat. 3017; Oct. 11, 1996, P.L. 104-294, Title VI, § 604(b)(31), 110 Stat. 3508; July 30, 2002, P.L. 107-204, Title XI, § 1102, 116 Stat. 807; Nov. 2, 2002, P.L. 107-273, Div B, Title III, § 3001(a), (c)(1), 116 Stat. 1803, 1804; Jan. 7, 2008, P.L. 110-177, Title II, § 205, 121 Stat. 2537.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES