

Law Offices of Dennis K. Burke

August 3, 2015

The Honorable Richard Hartunian
United States Attorney
Northern District of New York
445 Broadway, Room 218
Albany, New 12207-2924

Re: Special Prosecutor' Referral of Suzanna Andrews for Federal Prosecution

Dear United States Attorney Hartunian:

I represent Clare Bronfman who resides in your District and is a victim in this matter.

We understand you received a formal request from a State Special Prosecutor to seek a federal prosecution of a Suzanna Andrews. We would like to provide some background and support as to why you should, respectfully:

- 1) Accept that referral;
- 2) Proceed with an investigation and prosecution by your office or seek the Department to assign an attorney to your District; and
- 3) Address this matter as expeditiously as possible.

The Special Prosecutor was charged with investigating several individuals who had gained unlawful access to the computer network of a company, NXIVM, in your District. These were not random acts nor were they innocuous activities. The individuals in this matter were conspiring over a lengthy period, some over many years, and they were well aware and proceeded, as so, knowing that their conduct was criminal in nature. Beyond any doubt, the intent was to harm the company.

As will become quite evident, Suzanna Andrews was not a minor participant nor just the beneficiary of a source. She committed the federal crime, herself.

The New York State Police have been conducting an ongoing investigation into this matter beginning not long after it was first discovered in 2011. There has been no gap in the investigation and the investigators have treated it with the degree of alacrity circumstances

would permit. As you know the investigation has resulted in state indictments of four individuals, one who has already pled to the crime at the heart of matter. Presented to you now by this Special Prosecutor is a similarly situated culprit whose criminal activity does indeed rise to the requisite federal interest for it to be pursued by your office. As we will further uncover below, for her criminal actions to be left unaddressed would leave a distinct impression that she is free to operate above the law.

This investigation is important to our client because she has invested considerably both financially and in personal labor to build and grow this company. Separately, any public notoriety she has is due to her family status. She didn't inject herself into the public sphere, indeed, quite the opposite. Yet, she has had to suffer being hounded and harmed by destructive people in a robust conspiratorial ring, including Suzanna Andrews hailing from the celebrity media sphere. These individuals repeatedly accessed NXIVM's company network, a network containing extremely confidential and propriety materials whose value is considerably diminished by its unauthorized disclosure.

NXIVM took numerous steps and procedures to protect access to this network and no one could ever feasibly claim that was not abundantly evident. Suzanna Andrews was serving no greater good nor were her actions constitutionally protected by any stretch. She didn't benefit from a confidential source. Instead, she committed a crime in the pursuit of writing a salacious defamatory hit piece for a fashion magazine. Intrusion into private property through subterfuge has no constitutional shield.

Background on the Victim

Founded in 1998 and located in Albany New York, NXIVM conducts professional success training programs for executives and other individuals in areas such as internal ethics, logical analysis and problem-solving skills. As part of its intellectual property portfolio it has developed a patent-pending system known as Rational Inquiry. NXIVM's information and property was developed over time at a great expense. It is unique and proprietary to NXIVM and is not available to the general public thereby providing a distinct and highly valuable advantage over its competitors.

NXIVM's primary asset is an innovative educational system, including its methodologies, its written materials, its complex business and educational philosophy and its client list. With the exception of some very limited introductory material, no one is permitted to view or experience any of its course material without signing a confidentiality agreement.

NXIVM requires any participant who formally withdraws from its business program or becomes hostile to NXIVM to return all written materials and revokes their access to NXIVM' Password Protected Website.

The confidentiality of NXIVM' client list is critical, and NXIVM goes to great lengths to guard the confidentiality of each client's personal identifying information. It is also highly valuable and its creation has taken years of effort to cultivate and develop through a highly personalized, time-intensive and expensive process that is unique to NXIVM.

NXIVM established an interactive confidential and proprietary website, which is saved on NXIVM' server and maintained by NXIVM' Information Technology staff for the exclusive use of its clients and staff. This protected site was created for the purposes of communicating privately to its clients and staff, providing its clients an interactive forum to communicate with other NXIVM clients and staff, and to view schedules of upcoming NXIVM course and events, among other available resources.

NXIVM's Password Protected Website can only be accessed with a NXIVM username and password, or by using a specialized formula, with varying degrees of access depending upon a user' role with NXIVM.

The information contained on NXIVM's Password Protected Website is extremely valuable to the company. For over a decade, NXIVM has invested extensive time and money into creating, gathering, maintaining and updating the information contained in its Password Protected Website, including its client and coach lists, and it requires considerable time to routinely update the client and coach lists and database so that all information is current. NXIVM has also spent extensive time and money developing other confidential and proprietary information on its website, including, but not limited to its humanities questionnaire, Coach Evaluation Tool, Goal Reporting Tools, Knowledge Base, Magnificence Reports, and Video Testimonials, among others.

The Criminal Activity of Suzanna Andrews

This is a straight forward no blind shots matter lacking any degree of complexity. The investigational groundwork has already been conducted and preserved by the New York State Police. Indeed, as investigators will inform you, Suzanna Andrews has not denied she was indeed the individual who logged in to the NXIVM network impersonating a permissible user.

In late 2011, suspicions arose at NXIVM as to whether unauthorized users were accessing the Password Protected Website. NXIVM conducted an internal investigation uncovering evidence

that the user name and password belonging to Mary Jane Pino, a former client of NXIVM in continuous good standing with the company, was being used without her knowledge and over a period of time.

One of the individuals indicted by the New York State Special Prosecutor unlawfully obtained the user name and password of Ms. Pino and provided it to co-conspirators, eventually reaching Suzanna Andrews. Giving an indication of the criminal proclivity and sophistication of these individuals, one of the co-defendants is currently serving a sentence for a separate fraud scheme.

We can provide the witnesses who conducted this investigation, their methods and the work product they produced and provided the New York State Police.

Beginning in or about July 2010 and continuing into September 2010, Suzanna Andrews, in violation of federal law, accessed NXIVM' Password Protected Website using a client's login credentials. This was not a singular act but a continuing criminal conspiracy with Toni Natalie over this period of time. Andrews accessed, among other proprietary NXIVM information, the "Magnificence Reports," "NXIVM' coach list," and its "Vanguard Week" information. The value of this property is considerably diminished by not only being unlawfully accessed but by its public circulation, which was Andrews' intent in this conspiracy.

Andrews, along with the defendants indicted by the New York State Special Prosecutor, repeatedly accessed NXIVM' Password Protected Website without authorization and utilized this private property obtained from that site to harm NXIVM and harass or attempt to harass NXIVM' clients. The conspiracy was driven by a warped desire to financially damage this successful company by devaluing its intellectual property.

In an overt act furthering the conspiracy, Suzanna Andrews obtained the log-in credentials belonging to a current client of NXIVM, Mary Jane Pino, from a third party, Toni Natalie. Natalie was indicted by the State Special Prosecutor for her criminal activity in this conspiracy. Leading up to this scheme, Natalie had made it clear that she was going to take steps to harm NXIVM. We can provide evidence to that effect.

Andrews had conspired with Toni Natalie to access NXIVM's password protected website, downloading confidential information and publishing that information impersonating an authorized user. Andrews's impersonation was intentional to further this scheme. Indeed, she would have faced a prompt of "Welcome back, Mary Jane" while she was illegally hacking into the protected network. Her whole method of operating during this conspiracy evinces that she was aware that she was accessing someone else's private property without permission with the eventual goal of disseminating it and thereby devaluing it.

Mary Jane Pino never authorized Andrews to use her username and password to access proprietary information. Toni Natalie had no permission to use nor provide that username or password for herself or anyone else. We have an affidavit from Ms. Pino we will provide you.

Andrews repeatedly accessed the NXIVM website from her home. New York State Police have the log-ins and the original server.

The Federal Criminal Statutes Violated

The Computer Fraud and Abuse Act (18 USC § 1030) (“CFAA”) defines the federal offense and parameters for computer hacking. This section applies to seven categories of illegal activity regarding the intrusion of computers, both government and privately-owned.

The CFAA criminalizes conduct whereby an individual “intentionally accesses a computer without authorization or exceeds authorized access, and thereby obtains...information from any protected computer 18 USC § 1030(a) (2)(C), or “knowingly and with intent to defraud, accesses a protected computer without authorization, or exceeds authorized access, and by means of such conduct furthers the intended fraud and obtains anything of value,” *id.* § 1030(a) (4), or “knowingly and with intent to defraud traffics...in any password or similar information through which a computer may be accessed without authorization. *id.* § 1030(a) (6).

18 USC § 1030 was violated by Suzanna Andrews on a number of occasions and she constitutes a repeat offender under this statute. Andrews engaged in such unlawful conduct by, among other acts, accessing NXIVM’ Password Protected Website without authorization, obtaining information from the website and distributing it to others. The NXIVM network is Internet-based and therefore is used in or affecting interstate or foreign commerce or communications.

Similar to the CFAA, the Stored Communications Act, 18 USC §§ 2701-12 makes it a crime to “intentionally access without authorization a facility through which an electronic communication service is provided...and thereby obtain []...access to a wire or electronic communication while it is in electronic storage in such systems 18 USC § 2701(a).

Andrews and her co-conspirators intentionally accessed NXIVM’ Password Protected Website, database and server, in knowing violation of this criminal statute.

Andrews violated 18 USC § 371 by conspiring with Toni Natalie, at the minimum, to commit this crime and her intrusions were overt acts furthering that conspiracy. This conspiracy continued at least until Andrews’ last intrusion into the NXIVM network but arguably beyond as

she continued her scheme to damage the company by referencing the proprietary information in her article.

The Federal Interest at Matter

The United States Attorney Manual (USAM) provides in Section 9-27.23 a list of factors relevant, to be appropriately weighted, in determining whether prosecution should be pursued or declined due to the existence or not of a substantial Federal interest to be served by prosecution. Foundational to a consideration of this non-exclusive list is two factors: 1) Did the person commit a Federal offense; and 2) is there sufficient admissible evidence to obtain and sustain a conviction.

Andrews admitted she logged-in. She will contend that Natalie had authority to grant her that access. Natalie did not and Andrews has no basis whatsoever by any stretch to contend that as a defense. There is sufficient evidence that was obtained by the New York State Police pursuant to the state investigation to sustain a conviction against Andrews.

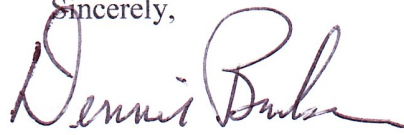
Underlying this matter is a looming statute of limitations defense that could arguably be invoked and create a preclusion next month. First of all, the premise of this legal concept and federal law is not at issue in this matter: that is, there has been no intentional delay detrimental to the defendant. During the period of time since these federal crimes were discovered, the victims and state investigators have been diligent and active. And Suzanna Andrews is well aware of that activity. In addition, the USAM encourages federal prosecutors to institute prosecution to prevent the running of a statute of limitations (9-27.23(8) -- "The prosecutor should also be alert to the desirability of instituting prosecution to prevent the running of the statute of limitations") rather than to consider it as a basis not to proceed.

Conclusion

We respectfully request that you accept the referral from the New York State Special Prosecutor and proceed with a federal investigation and prosecution of Suzanna Andrews. Andrews unquestionably committed a Federal crime, a crime that indeed has victims. Andrews conspired to intentionally and without authorization accessed NXIVM' network and database in violation of 18 USC Section 1030, 18 USC § 2701(a) and 18 USC § 371. Over a series of times, Andrews, conspiring with others, accessed NXIM' secure website she had no authority to access and viewed information she had no permission to view and damaged the private property of the victim contained in that network and database.

This is not a cold case, though the period to file is rapidly closing. We appreciate this opportunity to provide this information and are available to assist you in any way possible.

Sincerely,

A handwritten signature in dark ink, appearing to read "Dennis Burke", with a stylized, cursive script.

Dennis K. Burke