

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF PENNSYLVANIA

William Keisling)	
Plaintiff	)	CIVIL ACTION LAW
)	
v.)	
	)	No. 1:09-CV-2181
Richard Renn, et al)	
	)	Hon. JOHN E. JONES III
Defendants)	
	)	JURY TRIAL DEMANDED

PLAINTIFF'S BRIEF IN OPPOSITION TO
PAMELA S. LEE AND COUNTY OF YORK'S
SECOND MOTION TO DISMISS

William Keisling IV
601 Kennedy Road
Airville, PA 17302
717-927-6377

Table of Contents

I.	Factual and Procedural History	1
II.	Issues	2
III.	Standard of Review	3
IV	Argument	3
	A. Claim within statute of limitations	3
	B. Claim stated against Pamela Lee	4
	C. Cause of action against County of York	5
	D. Defendants have no qualified immunity	8
	E. Abstention and Rooker Feldman doctrines	9
	Conclusion	9

Table of Citations

Cases

<i>Graves v. Lowert</i> , 117 F.3d 723, 726 (3d Cir.1997)	3
<i>Colburn v. Upper Darby Twp.</i> , 838 F.2d 663, 666 (3d Cir.1988)	3
<i>Conley v. Gibson</i> , 2L.Ed.2d 80 (U.S.1957)	3
<i>Harlow v. Fitzgerald</i> , 457 U.S. 800, 818 (1982)	8
<i>Anderson v. Creighton</i> , 483 U.S. 635 (1987)	8
<i>Alston v. Parker</i> 363 F.3d 229 (3rd Circuit Cir 2004)	9

Pennsylvania Rules of Appellate Procedure

PA Rules of Appellate Procedure Rule 1935(a)	4
PA Rules of Appellate Procedure Rule 1931 (c)	4, 5, 9

Federal Regulations

Federal Acquisition Regulation (FAR)	6
--------------------------------------	---

Pennsylvania Rules of Professional Conduct

Rule 8.4 Misconduct	7
Rule 8.3 Reporting Professional Misconduct	7

United States Constitution

1st Amendment	passim
14th Amendment	passim

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF PENNSYLVANIA

William Keisling)	
Plaintiff	)	CIVIL ACTION LAW
)	
v.)	
	)	No. 1:09-CV-2181
Richard Renn, et al)	
	)	Hon. JOHN E. JONES III
Defendants)	
	)	JURY TRIAL DEMANDED

PLAINTIFF’S BRIEF IN OPPOSITION TO PAMELA S. LEE AND
COUNTY OF YORK’S SECOND MOTION TO DISMISS

I. FACTUAL AND PROCEDURAL HISTORY

On November 4, 2009, Plaintiff Keisling filed a Complaint in the above-captioned case with the United States District Court for the Middle District of Pennsylvania.

This suit was brought under 42 U.S. Code Section 1983, and alleges widespread, systemic and ongoing unlawful activities in the York County, Pennsylvania, Common Pleas Courthouse, and the willful failure of the Pennsylvania Supreme Court to investigate and/or end these unlawful activities, which include reckless endangerment of children, influence peddling, case fixing, theft of good services, prostitution, allegations of court officers having sex with minor children, judges sitting on cases involving their own personal hidden financial interests, and other offenses, and the ongoing retaliation of said judges and court officers against Plaintiff Keisling for writing about and reporting these grievous unlawful activities.

The suit alleges that the defendant state judges regularly engage in unlawful activities which are personal and administrative in nature, and which by their very nature are exempt from any lawful judicial immunity.

Because these many unlawful activities have been, in essence, protected by state and federal court officials of late in Pennsylvania, the judicial defendants in this case continue to willfully and unlawfully deprive Keisling of substantive 1st and 14th Amendment protections of due process and equal protection before the courts.

Keisling has been, and continues to be, grievously deprived of his most basic rights before these state and federal courts, including, the right to a fair and impartial hearing before a fair and impartial judge; the right to discovery; the right to introduce evidence; the right to a day in court; and rights of appeal.

Plaintiff thereafter, on December 23, 2009, filed an Amended Complaint, including the Pennsylvania Supreme Court and its head administrator, Ronald Castille.

On January 6, 2010, counsel for judicial defendants; the County of York and Pamela S. Lee; filed Motions and Briefs to Dismiss the Amended claims.

On February 4, 2010 a suggestion of bankruptcy was filed on behalf of Defendants MediaNews Group and Rick Lee, and proceedings against those Defendants were stayed by this court.

II. ISSUES

- A. Whether Plaintiff's claims are timed-barred by the applicable statute of limitations.
Suggested Answer: No.
- B. Whether Plaintiff's Complaint states a cause of action against Pamela Lee.
Suggested Answer: Yes
- C. Whether Plaintiff states a cause of action against County of York.
Suggested Answer: Yes
- D. Whether Pamela Lee is immune from Plaintiff's claims?
Suggested Answer: No.
- E. Whether Plaintiff's claims are barred by the Rooker-Feldman doctrine or, in the alternative, the doctrine of abstention.

III. STANDARD OF REVIEW

In deciding a motion to dismiss, the factual allegations of the complaint must be accepted as true. *Graves v. Lowert*, 117 F.3d 723, 726 (3d Cir.1997). In particular, the court should look to whether sufficient facts are pleaded to determine that the complaint is not frivolous and to provide defendants with adequate notice to frame an answer. *Colburn v. Upper Darby Twp.*, 838 F.2d 663, 666 (3d Cir.1988). A court should dismiss a complaint only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations. *Graves* at 726. Thus, in order to prevail, a moving party must show beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief *Conley v. Gibson*, 2L.Ed.2d 80 (U.S.1957).

IV. ARGUMENT

A. Statute of Limitations

Defendant York County and Pamela S. Lee erroneously state that Keisling's Amended Complaint refers only to the incident involving Defendant Lee's failure to notify Plaintiff of the reassignment of the judge in Defendant Wantz's defamation case, and other ongoing failures to notify Plaintiff of similar court assignments.

To the contrary, the Amended Complaint clearly states, "On July 21, 2009, Defendants Federal Home Loan Mortgage, the Udren Law Firm, Udren, Minato and Simoni filed a fraudulent and untimely Default Notice and Writ of Possession with Defendant Prothonotary Pamela Lee, which Defendant Pamela Lee granted." (Amend.Compl. ¶262).

As well, despite have remitted on September 10, 2009, the required fee for an appeal to Superior Court involving this case, Prothonotary Pamela Lee to this day refuses to send the file of the case to Superior Court, as required of Prothonotary Lee by the Pennsylvania Rules of Appellate Procedure (Exhibits 1 and 2).

These overtly unlawful acts, causing great harm to Keisling, occurred on July 21

and September 10, 2009, *to the present*, and so are well within the statute of limitations required by 42 U.S. Code Section 1983.

The failure of Prothonotary Lee to notify Keisling of the assignment of judges in the Wantz case, and other cases, as well as the fact that Prothonotary Lee is married to Defendant newspaper reporter Rick Lee, are offered in the Amended Complaint to illustrate the nature, depth, and intended harm, of the long-running conspiracy of Defendants against Plaintiff and his federally guaranteed rights of due process and equal protection before the courts, and Plaintiff's 1st Amendment right to free speech.

As such, Defendants' Motion should be denied.

B. FAILURE TO STATE A CLAIM AGAINST PAMELA LEE

As stated above, the basic factual premise of Defendants' objection here is strikingly incorrect, incomplete, misleading, and frivolous. Plaintiff clearly states a claim against Prothonotary Pamela Lee.

The Amended Complaint clearly states, "On July 21, 2009, Defendants Federal Home Loan Mortgage, the Udren Law Firm, Udren, Minato and Simoni filed a fraudulent and untimely Default Notice and Writ of Possession with Defendant Prothonotary Pamela Lee, which Defendant Pamela Lee granted." (Amend.Compl. ¶262). Exhibits # 3 and 4.

The fraudulent Default Notice and Writ of Possession issued by Defendant Lee on July 21, 2009 threatened to put Keisling (and non-existent unnamed "John Does") out of Keisling lawful home, and unlawfully take Keisling's possessions and property from him.

Despite Plaintiff's having paid the clerk at Prothonotary Lee's office the required fee of \$78.00, and other associated required fee(s), for an appeal to Superior Court involving this matter on September 10, 2009, Prothonotary Lee continues to refuse to forward the case file of the matter under appeal to Superior Court of Pennsylvania, in violation of PA Rules of Appellate Procedure Rule 1935(a) and Rule 1931 (c).

PA RAP 1931 (c) states, in part: Duty of the clerk to transmit the record — When the record is complete for purposes of appeal, the clerk of the lower court shall transmit it to the prothonotary of the appellate court..." This Defendant Lee, to this date, unlaw-

fully, and out of her jurisdiction (which after all lies with Pennsylvania Superior Court) refuses to comply with this rule of Appellate Procedure, as evidenced by the request from Superior Court entered January 21, 2010 (Exhibit #1). By failing to comply with rules of Appellate Court Procedure in this matter, Defendant Lee is acting *out of her jurisdiction* to harm Plaintiff, who has also been effectively unlawfully deprived of his appeal rights in this matter, in blatant violation of his rights to due process in this matter.

As for the claim by Defendants that Keisling never raised this issue in a Concise Statement of Matters Complained of, Defendant Judge Musti Cook never required Plaintiff Keisling to clarify the scope of appeal by filing her 1925[b] statement, so the appeal and issues are unbounded, allowing Keisling the right of virtually unlimited issues of appeal.

As for the matter of whether Plaintiff was not notified by Prothonotary Lee of hearings and the reassignment of judges in the Wantz case, Keisling can only reiterate that he was never notified of this, and other, events before York County Common Pleas Court, as the required discovery in this case will show.

As such, Defendants' Motion should be denied.

C. FAILURE TO STATE A CAUSE OF ACTION AGAINST COUNTY OF YORK

The Amended Complaint states that the County of York, Pennsylvania, its Commissioners, and Prothonotary Pamela Lee participated in a long-running and ongoing conspiracy with other Defendants, named and unnamed, to cover-up and retaliate for Plaintiff's formal complaints and published writings concerning a diverse list of unlawful activities, including human trafficking; prostitution and paid sex acts involving county employees and contractors; the violation of federal laws regarding human trafficking involving public contractors; case fixing in the county court system; influence peddling in the county court system; negligence in the harming of children; reckless endangerment of children; widespread and systemic corruption in York County's District Attorney's office and its drug task forces; and participation in events leading to a race-related murder involving members of York County's Sheriff's Department.

The County of York, among other unlawful activities, continues to employ, as its prime security contractor, Defendant Wantz in extremely lucrative and sensitive security contracts, including public contracts with the county's drug task force. Exhibit #5.

This unlawful contracting between York County, Wantz and Schaad continues to this day, even after Wantz's arrest for paid sex acts in December 2007 (Exhibit #6), and his subsequent guilty plea.

The County of York receives federal funds, particularly for its drug task force, and in other areas, as discovery will show.

The County of York, as such, is in violation of numerous federal prohibitions against federally funded contractors involvement in paid sex activities, for which the County of York and its District Attorney's Office have willfully and unlawfully taken no action, including the Federal Acquisition Regulation requirements of due diligence investigation and training. Exhibit 7.

Defendants Wantz and the Schaad Detective Agency, continuing to receive -- unlawfully -- federal and county funds for security services, continues to use these funds to unlawfully attempt to silence Keisling by his baseless, retaliatory, and insiders' Defamation action against Keisling, causing Keisling great harm, and in violation of Keisling's guaranteed rights to free speech and freedom of the press, and due process and equal protection before the courts.

It should be added that, in its Brief, County of York Solicitor Michael Flannelly, writes that "Plaintiff claims to be an author." Elsewhere in the Brief, Solicitor Flannelly also curiously writes, that Plaintiff Keisling, "does weave an interesting tale about the York County judicial system."

Yet, we do not have a free press in the United States, and our hard-won 1st Amendment freedoms, merely so that officials and attorneys, such as Mr. Flannelly, in positions of great responsibility to the law, our communities, and society, can entertain themselves with — or ignore at will — "interesting tales" about systemic corruption and the breakdown of the rule of law, the harming of children and sex trafficking in our courthouses, and our temples of justice. We have these 1st Amendment freedoms so that problems can be freely aired, the public informed, so that these problems then can be *properly addressed and corrected*. Solicitor Flannelly, inadvertently or not, himself amply demonstrates with his detached comments the great disconnect from the rule of law displayed by court and public officials in York County, and elsewhere in Pennsylvania. It is this very disconnect from their public and professional responsibilities that currently and with growing infamy undermine not only the rule of law, but public safety, and the very

welfare and freedoms of our children. Plaintiff's Complaint is not a Dickens' story, but a listing of the very real nails in the coffin of a very real child, a real family, and a home destroyed by our lawless courts — and harmed to this day — and the apparent whimpering demise of a once-great Commonwealth, and nation, that once was governed by the rule of law applied equally to all of its citizens. That's beyond unlawful, beyond an outrage; it's sad.

Solicitor Flannelly claims to be an officer of the court, admitted to the bar with an I.D. Number of 37013.

Yet, Solicitor Flannelly makes no attempt to report the many unlawfully activities, reported by Plaintiff in his books and filings, to the appropriate authorities as required by numerous provisions of Pennsylvania Rules of Professional Conduct, including, but not limited to:

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) (d) (e) engage in conduct involving dishonesty, fraud, deceit or misrepresentation; engage in conduct that is prejudicial to the administration of justice; state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or
- (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

As well as Rule 8.3:

Rule 8.3 Reporting Professional Misconduct

(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.

(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for

office shall inform the appropriate authority.

By not reporting, as required, the various unlawful activities of court officers that Keisling has long written about and has complained of here, Attorney Flannelly has not only violated the rules of his own profession, he has personally contributed to the breakdown of the rule of law in York County and Pennsylvania, and helps to create the environment under which Keisling has now been so grievously injured and damaged. In a very real sense, each break in the chain of professional responsibilities, as we see here, ends up harming children in Pennsylvania, and parents such as the Plaintiff, and creates an environment where the parents of victimized children can do nothing to help them. Solicitor Flannelly would here have the Court believe the laws we live under, and the writings of those who care about them, are empty of meaning or law, and merely dead ink pressed to yellowing paper.

Simply put, Plaintiff Keisling, and other citizens of York County and Pennsylvania, have been clearly and intentionally victimized by a shameful, infamous, and wholesale failure of the legal profession to follow their own rules to uphold the laws of the Commonwealth of Pennsylvania and the United States of America, and to inflict great harm on any who, like Plaintiff, speaks out against their misdeeds.

As such, Defendants' Motion should be denied.

D. IMMUNITY

The qualified immunity doctrine protects government officials from liability for civil damages “insofar as their conduct does not violate clearly established statutory or constitutional rights *of which a reasonable person would have known.*” Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982).

Courts apply the test articulated by the Supreme Court in Anderson v. Creighton, 483 U.S. 635 (1987), to determine whether the right is “sufficiently clear that a reasonable official would understand that what he is doing violates that right.” Id. at 639-40.

Prothonotary Pamela Lee should reasonably know that she should not have issued a fraudulent Writ of Possession against Plaintiff Keisling, which later was rescinded, though her misdeed caused great damage to Keisling, who had to temporarily vacate his home, as discovery will show.

Prothonotary Pamela Lee should also reasonably know that she is required, as PA RAP 1931 (c) states, to transmit the record of Plaintiff's case to the Appellate Court. Yet Prothonotary Pamela Lee refuses to do this, in clear violation of PA RAP, and *even after receiving clear and repeated notices from Superior Court that the transcript is overdue, most recently on January 25, 2010*. This is a willful failure of Prothonotary Lee to uphold Keisling's constitutional rights of appeal, and goes well beyond the "reasonable person" tests described in *Harlow* and *Anderson*.

As such, Defendants' Motion should be denied.

E. ABSTENTION AND ROOKER FELDMAN DOCTRINES

The Younger abstention does not apply, due to the aforementioned, and as more fully detailed in the Amended Complaint. Keisling, by deliberate design of Defendants, has no appeal rights in Pennsylvania courts. The current appeal to which Defendants Prothonotary Lee and Judge Musti Cook unlawfully and out of their jurisdiction refuse to turn over the case files to Superior Court, in a blatant attempt to harm Plaintiff, amply demonstrates that Plaintiff has no substantive appeal rights whatsoever.

Defendants' Rooker-Feldman arguments are just frivolous and meritless. Plaintiff is suing to remedy the violation of his federally guaranteed rights, not to reverse or alter any state court decision.

As such, Defendants' Motion should be denied.

Conclusion

This Court should not dismiss any or all of plaintiff's amended complaint without permitting discovery. In *Alston v. Parker* 363 F.3d 229 (3rd Circuit Cir 2004) the 3rd Circuit made clear that plaintiffs in civil rights cases should be permitted discovery before complaints are dismissed. This Court should rule accordingly.

Wherefore, it is respectfully requested that this Court Deny the Motion to Dismiss filed on behalf of the County of York and Prothonotary Pamela Lee.

Respectfully submitted,

William Keisling IV, pro se
601 Kennedy Road
Airville, PA 17302
717-927-6377

February 19, 2010

IN THE COURT OF COMMON PLEAS OF YORK COUNTY, PENNSYLVANIA
CIVIL DIVISION

FEDERAL HOME LOAN : No. 2008-SU-005272-04
MORTGAGE CORPORATION, :
Plaintiff :
vs. : CIVIL ACTION
WILLIAM KEISLING, JOHN DOE, :
TENANT /OCCUPANT :
Defendants :

APPEARANCES:

Chandra Arkema, Esquire
For the Plaintiff

Pro Se
601 Kennedy Road
Airville, PA 17302
For Defendant Keisling

JAN 23 11:21
PROthonotary CLERK YORK PA

STATEMENT OF LOWER COURT PURSUANT TO PA. R. A. P. 1925(a)

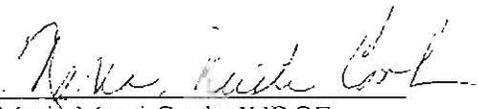
AND NOW, this 22nd day of January, 2010, upon notification from the Superior Court that the record had not been transmitted and upon further investigation, this Court finds that Defendant failed to serve the undersigned with proper notice of his appeal, filed with the prothonotary on September 10, 2009. Further, Defendant indicates that he is appealing an Order of August 24, 2009 and attaches as evidence thereof, a copy of the docketing statement in this case. No Order was entered on August 24, 2009. The only entry for that date is judgment in favor of Defendant entered by the Prothonotary of York County,

Exhibit 1

for the failure of Plaintiff to file an answer to Defendant's Counterclaim. Hence, there is nothing from which the Defendant can appeal.

The Prothonotary shall provide a copy of this STATEMENT to counsel of record and any unrepresented party.

BY THE COURT,


/Maria Musti Cook, JUDGE

U.S. POSTAL SERVICE	CERTIFICATE OF MAILING
MAY BE USED FOR DOMESTIC AND INTERNATIONAL MAIL. DOES NOT PROVIDE FOR INSURANCE-POSTMASTER	
Received From:	
WM Keisling	
503 Kennedy Rd	
Arlville PA 17302	
One piece of ordinary mail addressed to:	
Judge Maria Monti Cook	
York Co Courthouse	
45 N. George St	
York PA 17401	

PS Form 3817, January 2001



0000

00051-430-01

\$1.10

U.S. POSTAGE
PAID
ARLVILLE, PA
17302
SEP 10 2009
AMOUNT

U.S. POSTAL SERVICE	CERTIFICATE OF MAILING
MAY BE USED FOR DOMESTIC AND INTERNATIONAL MAIL. DOES NOT PROVIDE FOR INSURANCE-POSTMASTER	
Received From:	
WM Keisling	
503 Kennedy Rd	
Arlville PA 17302	
One piece of ordinary mail addressed to:	
J Pat Cook Court Admin	
York Co Courthouse	
45 N. George St	
York PA 17401	

PS Form 3817, January 2001



0000

00051-430-01

\$1.10

U.S. POSTAGE
PAID
ARLVILLE, PA
17302
SEP 10 2009
AMOUNT

Exhibit 2

UDREN LAW OFFICES, P.C.
BY: Louis A. Simoni, Esquire
ATTY I.D. NO. 200869
111 WOODCREST ROAD, SUITE 200
CHERRY HILL, NJ 08003
856-669-5400
pleadings@udren.com

ATTORNEY FOR PLAINTIFF

Federal Home Loan Mortgage
Corporation
5000 Plano Parkway
Carrollton, TX 75010
Plaintiff

COURT OF COMMON PLEAS
CIVIL DIVISION
York County

NO. 2008-SU-005272-04

v.

John Doe
William Keisling
and/or Tenant/Occupant
601 Kennedy Road
Airville, PA 17302
Defendant(s)

2009 JUL 21 PM 12:42
JUDICIAL CENTER
YORK, PA

WRIT OF POSSESSION

TO THE SHERIFF OF York COUNTY:

(1) To satisfy the judgment for possession in the above matter you are directed to deliver possession of the following property to:

Federal Home Loan Mortgage Corporation
(See Legal Description Attached)

(2) To satisfy the costs against Defendants, you are directed to levy upon any property of Defendants and sell their interest therein.

Pamela S Lee
Prothonotary

By *C. Waltenyer*
Clerk

Date 7/21/09

PLUS SHERIFF COSTS \$

RECEIVED
OFFICE OF THE SHERIFF
2009 JUL 21 PM 1:50
YORK PA

Richard P. Keisling

Exhibit 3



PETER J. MANGAN, ESQ.
Solicitor

Richard P Keuerleber
Sheriff

Leuben B Zeager
Chief Deputy, Operations

Richard E Rice, II
Chief Deputy, Administration

FEDERAL HOME LOAN MORTGAGE CORPORATION

VS.

JOHN DOE
WILLIAM KEISLING

IN THE COURT OF COMMON PLEAS
OF YORK COUNTY
PENNSYLVANIA

WRIT OF POSSESSION
2008-SU-5272-04

NOTICE OF POSSESSION

NOTICE IS HEREBY GIVEN THAT BY VIRTUE OF A WRIT OF POSSESSION ISSUED OUT OF THE COURT OF COMMON PLEAS OF YORK COUNTY TO ME BE DIRECTED, POSSESSION OF THE FOLLOWING DESCRIBED PROPERTY:

601 KENNEDY ROAD
AIRVILLE, PA 17302

IS TO BE DELIVERED TO:

FEDERAL HOME LOAN MORTGAGE CORPORATION

ON:

DAY: Friday

DATE: August 7, 2009

TIME: 2:00 pm

DATE: July 23, 2009

Richard P Keuerleber

RICHARD P KEUERLEBER, SHERIFF
COUNTY OF YORK

OFFICE OF THE SHERIFF
YORK COUNTY JUDICIAL CENTER
45 NORTH GEORGE STREET
YORK, PA 17401

BY: Gregory D. Hbler #183
DEPUTY

BY: _____
DEPUTY

Exhibit 4

YORK COUNTY BOARD OF COMMISSIONERS

COMMISSIONERS
STEVE CHRONISTER, PRESIDENT
CHRISTOPHER B. REILLY, VICE PRESIDENT
DOUG HOKE, COMMISSIONER



SOLICITOR
MICHAEL W. FLANNELLY
ASSISTANT SOLICITOR
DONALD L. REIHART
ADMINISTRATOR-CHIEF CLERK
CHARLES R. NOLL

YORK COUNTY ADMINISTRATIVE CENTER
28 East Market Street
York, Pennsylvania 17401-1588
(717) 771-9964
FAX (717) 771-9804

April 30, 2009

Mr. William Keisling
601 Kennedy Road
Airville, PA 17302

Re: Docket No. 09-0024
Date of Original Docketing: April 14, 2009

Dear Mr. Keisling:

This letter is in response to your Open Records Request docketed to No. 09-0024. As you may recall, the County sent you a letter dated April 15, 2009 indicating that thirty (30) days would be required to respond.

Your request is granted in part and denied in part. I am producing copies of the County contract with Schaad Detective Agency as well as copies of financial transaction histories between the County and Schaad Detective Agency, Best Chevrolet and Russ's Used Cars. The County was unable to locate any documents regarding All-Star Chevrolet. The County does not typically retain the type of documents requested for twenty (20) years. The documents I have copied for production represent all of the documents I know to exist that are responsive to your request.

There are a total of 125 pages. The copying charge is 25¢ per page. Please deliver a check to the Treasurer's Office (28 East Market Street, 1st floor, York, PA 17401) in the amount of \$31.25. Please then take the receipt to my office and I will provide you the copies. Call me in advance at 771-4777 so that we do not miss each other. If you would prefer to have the documents mailed, please send the check directly to me and add \$5.20 for postage.

There are additional documents in the possession of the DA's Office. Again, you will need to send a separate Open Records Request to the District Attorney's Open Records Officer at 45 North George Street, York, PA 17401.

Exhibit 5

April 30, 2009

As I stated in the previous letter, to the extent those documents involve financial transitions with the Drug Task Force, those documents will not be produced pursuant to 42 Pa. CSA Section 6801.

The District Attorney's office is the likely repository of the records you are seeking. You need to send a separate Open Records Requests to the District Attorney's Open Records Officer at 45 North George Street, York, PA 17401.

You have the right to appeal this denial of information in writing to Office of Open Records, Commonwealth Keystone Building, 400 North Street, 4th Floor, Harrisburg, PA 17120. Your appeal must be filed with the Office of Open Records within fifteen (15) business day of the date of this letter.

Very truly yours,



Michael W. Flannelly
York County Solicitor

MWF/kr

cc: Charles Noll
Stanley Rebert
Steve Chronister
Christopher B. Reilly
Doug Hoke

12/31/00
ACCOUNTING PERIOD: 12/00

COUNTY OF YORK
VENDOR PAYMENT HISTORY

PAGE 66

SELECTION CRITERIA: transact.vend_no='00065484'

VENDOR	INVOICE PURCHASE ORD	1099 P/F	CHECK NO DATE	DEPARTMENT	DESCRIPTION	AMOUNT
00065484	SCHAAD DETECTIVE AGENCY I 102363	Y	09/13/00 149818	- 020414-5200236	CUST 3351 SERVICES	1,908.48
00065484	SCHAAD DETECTIVE AGENCY I 102413	Y	09/20/00 151254	- 020414-5200236	PROF SERVICES 8/30	1,908.48
00065484	SCHAAD DETECTIVE AGENCY I 102559	Y	09/27/00 152080	- 020414-5200236	CUST 3351 9/11	2,044.80
00065484	SCHAAD DETECTIVE AGENCY I 102611	Y	10/04/00 152961	- 020414-5200236		1,908.48
00065484	SCHAAD DETECTIVE AGENCY I 102670	Y	10/11/00 155027	- 020414-5200236		1,908.48
00065484	SCHAAD DETECTIVE AGENCY I 102732	Y	10/25/00 155027	- 020414-5200236		1,908.48
00065484	SCHAAD DETECTIVE AGENCY I 102891	Y	10/25/00 156240	- 020414-5200236		1,973.28
00065484	SCHAAD DETECTIVE AGENCY I 102961	Y	11/01/00 160920	- 020414-5200236		1,999.20
00065484	SCHAAD DETECTIVE AGENCY I 103012	Y	12/06/00 161640	- 020414-5200236		1,999.20
00065484	SCHAAD DETECTIVE AGENCY I 103071	Y	12/13/00 162563	- 020414-5200236	CUST 3351 10/27	1,999.20
00065484	SCHAAD DETECTIVE AGENCY I 103231	Y	12/20/00 163801	- 020414-5200236		2,011.10
00065484	SCHAAD DETECTIVE AGENCY I 103290	Y	12/28/00 164869	- 020414-5200236	CUST 3351	1,999.20
00065484	SCHAAD DETECTIVE AGENCY I 103346	Y	12/29/00 164869	- 020414-5200233		1,999.20
00065484	SCHAAD DETECTIVE AGENCY I 103408	Y	12/29/00 164869	- 020414-5200236		2,142.00
00065484	SCHAAD DETECTIVE AGENCY I 103465	Y	12/29/00 164869	- 020414-5200236		1,999.20
00065484	SCHAAD DETECTIVE AGENCY I 103616	Y	12/29/00 164869	- 020414-5200236		1,999.20
TOTAL DEPARTMENT						132,651.31
00065484	SCHAAD DETECTIVE AGENCY I 009354	N	32574 01/07/98	020421-5600560 -		565.71
00065484	SCHAAD DETECTIVE AGENCY I 007270	N	7075 03/26/97	020451-5200240 -		251.94
00065484	SCHAAD DETECTIVE AGENCY I 007686	N	11950 05/31/97	020451-5200240 -		538.46
00065484	SCHAAD DETECTIVE AGENCY I 01561320	Y	116095 01/12/00	020451-5200240 -		619.12
TOTAL DEPARTMENT						1,409.52
TOTAL VENDOR						1,635,993.12
TOTAL REPORT						1,635,993.12

SUNGARD PENTAMATION
 DATE: 04/14/2009
 TIME: 16:12:47

COUNTY OF YORK
 VENDOR PAYMENT HISTORY

PAGE NUMBER: 41
 ACCTPA31

SELECTION CRITERIA: transact_vend_no='65484'

-----VENDOR-----	INVOICE ENCUMBRANCE	1099 P/F	CHECK NO DATE	BUDGET PROJECT	-----DESCRIPTION----- CONTROL	SALES TAX	AMOUNT
65484	SCHAAD DETECTIVE AGENC 0		11/07/07		BOND 27		
	136998	N	600292	840200-5200240	3433 WK END 10/12-1B/07	0.00	2585.52
65484	SCHAAD DETECTIVE AGENC 0		11/07/07		BOND 27		
	137087	N	602718	840200-5200240	CUST 3433 WK 10/19-25	0.00	2585.52
65484	SCHAAD DETECTIVE AGENC 0		11/21/07		BOND 29		
	137234	N	604055	840200-5200240	3433 WK 10/26-11/1/07	0.00	2585.52
65484	SCHAAD DETECTIVE AGENC 0		12/05/07		BOND 28		
	137332	N	604055	840200-5200240	3433 WK 11/2-11/8/07	0.00	2604.76
65484	SCHAAD DETECTIVE AGENC 0		12/05/07		BOND 28		
	137416	N	604055	840200-5200240	3433 WK 11/9-11/15/07	0.00	2585.52
65484	SCHAAD DETECTIVE AGENC 0		12/05/07		BOND 28		
	137503	N	604694	840200-5200240	3433 WK 11/16-22	0.00	2770.20
65484	SCHAAD DETECTIVE AGENC 0		12/12/07		BOND 28		
	137589	N	605587	840200-5200240	3433 11/23-29/07	0.00	2585.52
65484	SCHAAD DETECTIVE AGENC 0		12/19/07		BOND 29		
	137738	N	606891	840200-5200240	3433 11/30-12/6/07	0.00	2447.01
65484	SCHAAD DETECTIVE AGENC 0		12/28/07		BOND 13		
	136347	N	611950	840200-5200240	3433 WK END 8/31-9/6/07	0.00	2770.20
65484	SCHAAD DETECTIVE AGENC 0		02/20/08		BOND 60		
	TOTAL BUDGET					0.00	63622.27
	TOTAL VENDOR					0.00	2613012.51
	TOTAL REPORT					0.00	2613012.51

football championship game. Running back Jeremiah Young tipped off a class, 45 carries, scoring four touchdowns for the Rollers, who ended their season wi

CIA VIDEOTAPES

Attorney General Michael Mukasey won't give Congress details of the probe into the CIA's destruction of videotapes of interrogations. **A5**

VETS' BENEFITS

Congress has passed a bill that would give National Guard members and Reservists serving in Iraq or Afghanistan up to \$32,000 for college. **A3**

RETURN TO IRAQ

A U.N. report says refugees are returning to Iraq because of worries about money, schooling for children and work, not improved security. **A9**

6 PAGES OF COVERAGE INSIDE SPORTS MORNING

Sex trade 'evolves' with Web, police say

Craigslist postings lead area police to 3 arrests

BY MATTHEW KEMENY
Of The Patriot-News

The world's oldest profession is using a new way to reach its clientele — and area police are starting to take note.

A Harrisburg woman was arrested Monday at the Red Roof Inn on Eisenhower Boulevard in Swatara Twp. after police accused her of offering to have sex with an undercover officer for \$125.



WILLIAMS

Payonna Theresa St. Rose Williams, 21, had advertised her services on the Harrisburg section of Craigslist, a free classified ads Web site, according to court papers.

After arresting Williams about 9:30 a.m., police took her cell phone as evidence. Minutes later, it started ringing. On the other end was Russell Leroy Wantz Jr., according to court papers. Police said Wantz, 57, of York, was respond-

Please see **ONLINE** on Back Page

HOLIDAY CELEBRATIONS



JOE HERMITT, The P

Nidia Millan of C&J catering prepares a fruit tray for a holiday party.

Planners hope for little snow on season's biggest party

BY SUE GLEITER AND LI WANG
Of The Patriot-News

Tonight is booked. Solid. It should come as no surprise to anyone juggling multiple invitations that this is the biggest party night of the holiday season, if not the year. That is, if a winter storm system calling for a mix of rain, sleet and snow doesn't crash partygoers' plans.

"We're a little concerned. It would be disappointing if the weather is really bad," Bob Bender of Silver Spring Twp. said.

Bender, his wife, Ashleigh, and their five children, ages 4 to 14, will host a catered party for about

INSIDE

■ Northeast braces for second bout of winter weather. **BACK PAGE**

70 guests in their home. "We try and go a couple of miles out (from the holiday) and there seems to be a lot of people with several friends the way we do," he said.

According to party-planning Web site Evite, Dec. 15 is the week's top party day of the year, projected to be bigger than New Year's Eve, the Super Bowl and Halloween. Evite estimates

Please see **PARTY** on



12 DAYS OF CARING

Parenting isn't easy for Renada, 17, of Harrisburg.

But she has help at Young Mothers Together, a program of the Neighborhood Center of the United Church of Christ for pregnant and parenting teens who are still in school.

PAGE B1

INDEX

Business A10
Classified B8-15

Comics B4, B5
Crosswords B3, B4
Editorial A
How to reach us B1
Letters A
Obituary B1



Exhibit 6

ONLINE: Sex trade 'evolves' with Web, police say

Continued from Page A1

ing to Williams' Craigslist posting and agreed to meet her at the hotel for a \$125 sex session.

Wantz was taken into custody shortly after arriving. He was charged with criminal attempt of soliciting a prostitute, a misdemeanor.

Williams was charged with prostitution, also a misdemeanor.

On Thursday night, Swatara police charged Patricia K. James of the 500 block of Maclay Street, Harrisburg, after accusing her of agreeing to have sex with an undercover officer at the Howard Johnson on Eisenhower Boulevard for \$300.

Vice squads from Seattle to New York have monitored the Craigslist Web site for years and made hundreds of arrests.

Midstate authorities are following suit.

"I think it's interesting. Twenty years ago, when I first ran into prostitution, the only places they were was the street corner," Dauphin County Detective John Gos-



WANTZ

JAMES

hert said. "That evolved to call [girl] services when cell phones came around and now it's evolved to Craigslist."

Dauphin County District Attorney Edward M. Marsico Jr. and his Cumberland County counterpart, David Freed, said their offices will probably start taking a closer look at Craigslist.

Craigslist launched in the San Francisco Bay area in 1995 and has expanded to 450 cities worldwide, including Harrisburg, York and Lancaster. It generates about 8 billion hits per month from users looking for jobs, housing, goods, services, romance, local activities, advice - and apparently sex.

One woman posted an ad Thursday on the Harrisburg site's "erotic services" sec-

tion offering striptease and massage services for \$160 an hour, plus tips. Another recent poster promises to "show you the time of your life" for "75 kisses for 20 minutes, 125 kisses for 30 minutes and 160 kisses for an hour."

Providers often use terms such as 160 kisses, 150 roses or 100 reasons to indicate the price of the service, police said.

Responding to an e-mail seeking comment for this story, Craigslist public relations representative Susan MacTavish Best sent an "Erotic Services Frequently Asked Questions" link.

One FAQ: "Why does Craigslist have an erotic services category?"

The answer: "It was established at the request of Craigslist users, who were tired of seeing ads for escort services, sensual massage, adult Web cams, phone sex, erotic dancing, adult Web sites, nude housecleaning, etc. mixed into the regular personals and services categories."

The page states that Craigslist prohibits the use of adult-oriented categories

by people under 18, responds promptly to inquiries and requests for assistance from law enforcement officers and briefs law enforcement on how to efficiently obtain information from Craigslist.

However, Craigslist officials said it is not possible to "effectively review each of the more than 30 million free postings submitted per month." Craigslist users have the ability to flag inappropriate postings.

Marsico said it's difficult for law enforcement to monitor prostitution services on the Internet.

"There's not a specific area where you get complaints," he said. "It's much more private, more expansive."

He said sexual services being advertised on the Harrisburg Craigslist site do not surprise him.

"We've seen other crimes across the Internet: fraud, [selling] children for sex," he said. "The Internet is a marketplace, just like the street used to be."

MATTHEW KEMENY: 255-8271
or mkemeny@patriot-news.com

INTERNATIONAL GOVERNMENT CONTRACTOR

THOMSON
WEST

Information and Analysis on Legal Aspects of International Public Procurement

Vol. 5, No. 1

January 2008

Analysis

¶ 1

Combating Human Trafficking: The Long Arm Of The FAR

Human trafficking—often referred to as a modern-day form of slavery—has for years been among the U.S. Government's "high-priority" enforcement areas. See, e.g., the Department of Justice Web site at www.usdoj.gov/whatwedo/whatwedo_ctip.html. The effort is, without a doubt, an important one:

- As many as 800,000 people are trafficked across national borders each year, and approximately 17,500 victims are brought into the U.S. each year, according to DOJ. *Report on Activities to Combat Human Trafficking, Fiscal Years 2001–2005*, Department of Justice, February 2006, at 9.
- According to the International Labour Organization, there are 12.3 million people, including children, in forced labor, bonded labor and sexual servitude at any given time. *Trafficking in Persons Report*, Department of State, June 2007, at 8.
- The Federal Bureau of Investigation estimates that human trafficking generates \$9.5 billion in revenue annually. *Trafficking in Persons Report*, Department of State, June 2006, at 13.
- Some project that human trafficking soon will surpass drug trafficking and weapons dealing as the world's largest illegal industry. Jennifer Nam, *The Case of the Missing Case: Examining the Civil Right of Action for 1 Human Trafficking Victims*, 107 Colum. L. Rev. 1655, 1660 (2007).

Despite these staggering numbers, the number of prosecutions globally has decreased each year from 7,992 prosecutions in 2003 to 5,808 prosecutions in 2006. *Trafficking in Persons Report*, Department of State, June 2007, at 36.

On Aug. 17, 2007, the U.S. Government issued a revised interim rule amending the Federal Acquisition

Regulation to implement the Trafficking Victims Protection Reauthorization Act of 2003, as amended by the Trafficking Victims Protection Reauthorization Act of 2005. The revised interim rule prohibits contractors, subcontractors and their employees from engaging in conduct that violates criminal human trafficking statutes and from procuring commercial sex acts, even if such activity is legal, as it is in Nevada. The revised interim rule also requires contractors and subcontractors to notify their employees of the prohibited activities and the disciplinary actions that may be taken against them for violations. The consequences for contractor or subcontractor noncompliance are potentially draconian—termination of the contract for default or cause, suspension, and debarment.

Background—The U.S. long has had criminal statutes prohibiting peonage, involuntary servitude and slavery. See 18 USCA §§ 1581–1588. These laws were expanded and strengthened with the passage of the Trafficking Victims Protection Act of 2000 (TVPA). Not only did the TVPA strengthen existing laws by, for example, extending their reach to cases in which persons are held in a condition of servitude through psychological or physical coercion, it also, inter alia, (1) provided protection and assistance for victims of trafficking; (2) authorized assistance to foreign countries that meet minimum standards for the elimination of trafficking; (3) authorized the withholding of nonhumanitarian, nontrade-related foreign assistance to countries that do not meet those minimum standards; and (4) established the Interagency Task Force to Monitor and Combat Trafficking, chaired by the secretary of state.

Although many TVPA provisions are designed to encourage countries to address this global problem, enforcement efforts originally focused on criminal prosecutions by DOJ and only on violations committed within the U.S. Since the TVPA's passage in 2000, however, the Government has expanded the scope of its enforcement efforts and the reach of its laws.

The Trafficking Victims Protection Reauthorization Act of 2003 amended the TVPA to authorize the termination of any Government contract if a contractor or subcontractor "engages in severe forms of trafficking in persons or has procured a commercial sex act during the period [of performance,] or uses forced labor in the per-

Exhibit 7

formance of the [agreement]." 22 USCA § 7104(g). The legislative history of the 2003 reauthorization makes clear that Congress was concerned about the "complicity of U.S. Government contractors with trafficking-in-person offenses," as brought to light in an April 2002 congressional hearing. H. Rep. No. 108-264, at 16 (2003), as reprinted in 2003 U.S.C.C.A.N. 2408, 2415. As stated by the House of Representatives Committee on International Relations, "contractors, their employees and agents must be held accountable to a code of conduct with associated consequences for unethical or improper personal conduct while under U.S. Government contracts." *Id.*

The TVPA's reach expanded again with the passage of the Trafficking Victims Protection Reauthorization Act of 2005, which provides for broad extraterritorial application of TVPA prohibitions. In particular, it expands application of the TVPA to the conduct of contractors, subcontractors and their employees that work abroad. Section 3271 of Title 18 provides that:

- (a) Whoever, while employed by or accompanying the Federal Government outside the United States, engages in conduct outside the United States that would constitute an offense under chapter 77 [Peonage, Slavery, and Trafficking in Persons] ... if the conduct had been engaged in within the United States ... shall be punished as provided for that offense.

Persons "employed by the Federal Government" include (a) civilian Government employees, (b) Government contractors and subcontractors, and (c) contractor and subcontractor employees who are not nationals of or ordinary residents in the host country. See 18 USCA § 3272(a).

The Revised FAR Clause—The revised interim FAR rule implementing 22 USCA § 7104(g) sets forth the Government's "zero tolerance policy regarding trafficking in person."

Contractors and contractor employees shall not—

- (1) Engage in severe forms of trafficking in persons during the period of performance of the contract;
- (2) Procure commercial sex acts during the period of performance of the contract; or
- (3) Use forced labor in the performance of the contract.

FAR 52.222-50(b). This rule applies to all acquisitions, and the FAR clause must be included in all solicitations, contracts and subcontracts.

The revised interim rule also sets forth a contractor's obligations in combating human trafficking. Before we

discuss those obligations, however, it is necessary first to understand the scope and breadth of the three prohibitions.

Severe Forms of Trafficking and Forced Labor. Both 22 USCA § 7104(g) and the revised interim rule implementing that provision espouse the Government's zero tolerance policy on severe forms of trafficking in persons and the use of forced labor. We address these together because the prohibition against the use of forced labor is, for practical purposes, subsumed by the broader prohibition against engaging in severe forms of trafficking in persons.

As defined in the TVPA and the revised interim rule, "severe forms of trafficking in persons" include:

- (1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- (2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

22 USCA § 7102; FAR 52.222-50(a).

Cases that have addressed what constitutes a violation of the human trafficking statutes are fact-intensive and do not apply a rigid standard of liability. Rather, courts generally apply a "totality of the circumstances" test to the relevant facts to analyze whether or not laborers were coerced. Among the factors most often considered by courts are (a) the existence of violence or threats of violence; (b) the state of living conditions and other general indicators of treatment of laborers; (c) use of misrepresentations about the nature of the work in order to assemble a workforce; (d) restrictions on laborers' travel; and (e) whether an employee or employer retained possession of laborers' passports, immigration documents or other identification documents.

Violence—Without question, evidence of physical contact and violence is a primary factor that courts consider in determining whether human trafficking has occurred. The violence in many cases is systematic. For example, in *U.S. v. Marcus*, 487 F. Supp. 2d 289 (E.D.N.Y. 2007), the court, in upholding the jury verdict against defendants for sex trafficking and forced labor, focused on the extreme violence committed by the defendant against laborers, as well as the threats of violence against laborers who did not do as they were told. In another case, *U.S. v. Norris*, 188 Fed. Appx. 822 (11th Cir. 2006), a defendant was indicted for sex

trafficking and forced labor violations. The defendant was accused of physically and sexually abusing women, and forcing them to work as prostitutes and perform sex acts.

Similarly, the court in *U.S. v. Lee*, 472 F.3d 638 (9th Cir. 2006), upheld a conviction of human trafficking violations that occurred in American Samoa. In that case, the defendant operated a garment factory in the unincorporated U.S. South Pacific territory. The defendant recruited laborers locally and from Vietnam and China to work at the factory. The court, in upholding the conviction, cited the factory guards' and supervisors' physical abuse of laborers who disobeyed orders. The court noted one particularly violent day when, after a laborer "talked back" to a guard, approximately 20 guards attacked a group of laborers, blinding one.

In all of these cases, courts found that violence or the threat thereof was ever-present and played a substantial role in coercing laborers to continue working for the employer.

Poor Living Conditions and General Mistreatment—Courts tend to consider factors such as poor living conditions, low wages and bad medical care as evidence of abusive employers rather than as dispositive evidence of severe trafficking violations. This seems intuitive because a laborer in a job that provides poor living conditions would feel free to leave that work, assuming no other factors were present. However, courts have cited general mistreatment in conjunction with other factors as further evidence of a scheme or pattern of coercion.

In *U.S. v. Bradley*, 390 F.3d 145 (1st Cir. 2004), the defendant was convicted of forced labor because Jamaican laborers brought to New Hampshire were promised good living conditions, but instead were housed in trailers without running water, electricity or heat, and were denied medical care. Similarly, in *Lee*, the employers deprived their laborers of food, to the point of starvation.

Misrepresentations to Lure Laborers—Courts also have deemed misleading acts by employers to induce laborers to work for them to be relatively strong evidence of forced labor, sex trafficking and coercion. For example, in *Bradley*, the defendants promised high wages and lodging in houses, but paid half of the promised wages and provided poor living conditions. Courts seem to view such trickery as indicative of a willingness to take extreme actions not only to obtain laborers, but to keep them against their will.

Scrutiny of Laborers' Travel—Courts have found evidence of human trafficking violations if an employer scrutinizes or limits laborers' ability to travel. The court

found evidence of coercion in *Bradley*, in part because defendants confiscated and held the laborers' passports and restricted local travel.

Courts also have determined that stories of attempted escape by laborers demonstrate that the laborers were not free to leave. For example, in *Norris*, the court described a woman who tried to escape from a bathroom by cutting a hole in a window. Similarly in *Bradley*, the court relied on the escape and "recapture" of one laborer to show that he was not free to leave the location of his employment. These escape attempts are additional evidence of coercion.

In assessing whether individuals have been coerced, judges often try to assess whether they would feel free to leave in light of the particular circumstances. For example, the court in *Bradley* considered the laborers' immigrant status and lack of local ties in determining that the laborers reasonably believed that they could not leave. The court in *Norris* noted special circumstances such as homelessness and drug addiction that may have rendered the women more vulnerable.

Additional Factors—Courts have acknowledged other factors to be evidence of human trafficking as well. These include the doctoring of laborers' documents and the practical inability of laborers to return to their homes. For example, in *Bradley*, the laborers, who earned only \$8 per hour and had to pay \$50 per week for rent, could not afford the \$1,000 return ticket to Jamaica.

Commercial Sex Acts: Although in some sense the FAR prohibition against activities that likely would also violate the TVPA is not remarkable, the same cannot be said for the FAR prohibition against the procurement of a commercial sex act, which is broadly defined to mean any sex act on account of which anything of value is given to or received by any person.

In issuing the revised interim rule, the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council acknowledged that the rule covered conduct that might otherwise be lawful, but noted their belief that "Congress' intent [in 22 USCA § 7104(g)] is to reduce the demand for commercial sex acts, both lawful and unlawful, as such activities have contributed to the worldwide problem of trafficking in persons." 72 Fed. Reg. 46337 (Aug. 17, 2007).

Contractor Requirements and Government Remedies: The breadth of the U.S. zero tolerance policy creates myriad compliance and enforcement difficulties for contractors. One issue about which the FAR is not clear is whether it now penalizes contractors for their employees'

personal conduct. FAR 52.222-50(c) sets forth contractors' affirmative obligations to further the zero tolerance policy and the remedies available to the Government if contractors do not fulfill those obligations. Specifically, it requires, *inter alia*, that every contractor:

- notify its employees of the Government's zero tolerance policy;
- notify its employees of the actions that will be taken against anyone violating the policy, including a reduction in benefits, removal from contracts or termination of employment; and
- notify the contracting officer of (a) any information from any source that alleges that employees or subcontractor employees have engaged in conduct that violates the policy, and (b) actions it has taken against those employees.

Potential remedies for a contractor's violation of the notice, discipline and reporting requirements include removal of the offending employee from performance of the contract, suspension of contract payments, loss of award fee, termination of the contract, and even suspension or debarment. FAR 52.222-50(e).

FAR 22.1704, however, seems to suggest that the Government can impose these remedies *even if the contractor complies with the notification, discipline and reporting requirements*. As a practical matter, termination of a contract in such circumstances may never be imposed, but the broad sweep of FAR 22.1704 undoubtedly will concern contractors.

Precisely what is and is not prohibited by the zero tolerance policy also is unclear. For example, although "commercial sex act" is defined as "any sex act on account of which anything is given to or received by any person," there is no definition for the term "sex act." Such lack of detail makes enforcement of the zero tolerance policy difficult, if not impossible.

It is worth noting that the U.S. Department of Defense has issued an interim Defense FAR Supplement rule that requires certain contractors to "conduct periodic reviews of ... service and construction subcontractors to verify compliance with their obligations" under the zero tolerance policy. DFARS 252.222-7006(g)(2). How and with what frequency such reviews are to be

conducted, and whether contractors are qualified and equipped to conduct such reviews, are open questions.

Notwithstanding the uncertainties about the extent of a contractor's obligations under the revised interim rule, it would be wise for contractors to, at a minimum, establish and disseminate to their employees written policies and procedures that explain the Government's zero tolerance policy and the consequences for violating that policy. To ensure effective communication of that policy, a contractor's written guidance should include examples of what constitutes and indicia of human trafficking.

Contractors should carefully consider other prescriptions, such as whether to *require* employees to report on a coworker's violation of the policy, before implementing them. In light of the revised interim rule's mandate that contractors notify a CO of *any* information from *any* source that alleges a violation of the Government policy, some contractors may be wary of establishing such a requirement for its employees.

Conclusion—The revised interim rule imposes far-reaching and potentially onerous obligations on Government contractors. To avoid the remedies for noncompliance—including termination, suspension and debarment—contractors must, at a minimum, establish policies and procedures that effectively notify employees of the zero tolerance policy and the consequences for violating that policy. Contractors also must follow through with disciplining employees who violate the policy and notify a CO of any alleged violation. Although what constitutes compliance with the rule is ambiguous, contractors that make no attempt to comply do so at their own peril.



This analysis was written for INTERNATIONAL GOVERNMENT CONTRACTOR by Andy Liu and Jane Foster. Mr. Liu is a partner in the Washington, D.C., office of Crowell & Moring LLP, where he is a member of the White Collar and Securities Litigation, Government Contracts, and International Dispute Resolution groups. Ms. Foster is an associate in the Washington, D.C., office of Crowell & Moring LLP, where she is a member of the Labor and Employment group.

THOMSON
WEST

CERTIFICATE OF COMPLIANCE

I, William Keisling, pursuant to Local Rule 76.8 (b) (2), certify that the foregoing brief contains 2,523 words based on Microsoft Word's word count function.

William Keisling IV, pro se

Dated: February 19, 2010

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF PENNSYLVANIA

William Keisling)	
Plaintiff	)	CIVIL ACTION LAW
)	
v.)	
	)	No. 1:09-CV-2181
Richard Renn, et al)	
Defendants)	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 19, 2010, he personally caused to be served upon the following a true and correct copy of the foregoing Plaintiff's Brief in Opposition to Pamela S. Lee and York County's Second Motion to Dismiss to the following individuals by mailing same first class, postage pre-paid, U.S. Mail:

Judge John E. Jones III
United States District Court
Middle District of Pennsylvania
U.S. Courthouse
228 Walnut Street
Harrisburg, PA 17108

Hon. J. Andrew Smyser
Magistrate Judge
United States District Court
Middle District of Pennsylvania
U.S. Courthouse
228 Walnut Street
Harrisburg, PA 17108

Geri Romanello St. Joseph, Esq.
Administrative Office of PA Courts
1515 Market Street, Suite 1414
Philadelphia, PA 19102
Lead counsel for Judicial Defendants

Michael W. Flannelly, Esq.
Solicitor of York County
York County Administrative Center
28 East Market Street, 2nd Floor
York, PA 17401

William Keisling IV, pro se
601 Kennedy Road
Airville, PA 17302
717-927-6377

Date: February 19, 2010

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF PENNSYLVANIA

William Keisling)	
Plaintiff	)	CIVIL ACTION LAW
)	
v.)	
	)	No. 1:09-CV-2181
Richard Renn, et al)	
Defendants)	

ORDER

AND NOW, this _____ day of _____, 2010, upon consideration of York County, Pennsylvania and Pamela S. Lee's Second Motion to Dismiss, it is hereby ordered that,
Defendants' Motion is DENIED.

U.S.D.J.