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March 11, 2003

The Honorable John Gleeson
United States District Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

RE: U.S.A. v. Jason Vale, 02 CR 466

Your Honor:

We are scheduled to argue the Defendant's Motions on March 14, 2003, and write to address two issues. The first concerns the Defendant's Motion to Recuse the Prosecutor. The second concerns the Defendant's Motion for a Bill of Particulars.

Motion for Recusal of Prosecutor

In its reply brief, the government makes a point that we believe is contrary to the applicable law.

The government attorney argues that his role as both an attorney in the civil action and prosecutor in the criminal action presents no conflict. One reason for that, according to the government, is because Mr. Vale's injunction is final and he may not modify it. See United States' Memorandum of Law in Opposition to Defendant Vale's Pre-Trial Motions, n. 5.

We disagree. Mr. Kleinberg's position as both civil and criminal prosecutor of Mr. Vale continues to prejudice Mr. Vale in any efforts to modify the injunction. Under the law it is never too late to modify an injunction proscribing future conduct such as this in certain circumstances.

