

National State Attorneys General Program at Columbia Law School

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1. Colorado Attorney General decides against charges in CU recruiting Scandal

By Judith Kohler (AP) May 11, 2004

Colorado's attorney general decided against criminal charges Tuesday in nine alleged sexual assaults involving Colorado football players, citing concerns about evidence and the reluctance of women to go forward with the cases.

Attorney General Ken Salazar, tapped as a special prosecutor by Gov. Bill Owens in February at the height of the recruiting scandal, said a "thorough review" by his task force resulted in a unanimous decision against charges. The decision was "based upon evidentiary considerations and/or the expressed wishes of some victims not to be subjected to the criminal justice process," Salazar said.

The investigation, however, remains open. Salazar also said the task force will continue its investigation concerning other potential criminal matters involving the Colorado football team and its embattled recruiting program.

The university and a Board of Regents panel are also looking into allegations that sex and alcohol were used to entice recruits to the Boulder campus. Owens and a spokesman for the regents' panel declined comment on Salazar's decision. University President Elizabeth Hoffman said she appreciated the "timely manner" in which Salazar completed his work. "We have great respect for the difficult work being done by the special prosecutor," she said in a written statement.

At least eight women have accused football players or recruits of rape since 1997, though no criminal charges were filed. Salazar spokesman Ken Lane said the ninth allegation

surfaced during the investigation, but he declined to elaborate. Three of the women have sued the school in federal court, saying its failure to rein in athletes contributed to their rapes in 2001. They are seeking unspecified damages and sweeping changes at the school, which recently overhauled the football recruiting program. A spokeswoman for one of the women, Lisa Simpson, who has agreed to be identified, declined immediate comment.

The scandal erupted in January when a deposition by Boulder County prosecutor Mary Keenan in one of the lawsuits against the school was made public. Keenan said prosecutors met with university officials in 1998 to discuss an alleged rape the year before and advised them to clamp down on partying by recruits and their student-hosts. Keenan also said she believed the football program uses sex and booze to entice recruits. School officials have disputed Keenan's version of the meeting, but the scandal has not died down.

Football coach Gary Barnett was put on leave pending the outcome of the regents' investigation over comments in two of the cases. One involved Katie Hnida, who told Sports Illustrated she was raped by a Colorado teammate in 2000. The regents' panel must finish its work by Friday. Its report will be discussed at a special regents meeting May 19 in Boulder.

2. Officials petition for drug imports Attorneys general send Thompson letter

AP May 6, 2004

Attorneys general from 18 states sent a letter to Health and Human Services Secretary Tommy Thompson yesterday, asking him to allow states to import low-cost prescription drugs from Canada. The letter came a day after Thompson said that legalizing prescription drug imports was inevitable and that he would advise President Bush not to stand in the way of legislation making its way through Congress that would clear the way for imports. In the letter, the attorneys general urge Thompson to "act immediately to help provide our citizens with affordable prescription drugs while ensuring drug safety." The letter asks Thompson to allow states to be appointed as licensed wholesalers or allow them to contract with licensed wholesalers to import prescription drugs from Canada.

All drugs would be manufactured in facilities approved by the Food and Drug Administration and shipped to the United States from Canada in their original packaging. Special tracking technologies would be used to guard against counterfeit drugs, the letter said. "We believe that, with the assistance of the Food and Drug Administration, the undersigned states can work with the Canadian authorities to develop a process for the safe importation of prescription drugs," the attorneys general wrote. On Tuesday, Thompson said drug imports would help American consumers, but warned the move would be expensive because regulators, to ensure safety, would have to increase inspections of foreign pharmaceutical plants and packaging of prescription drugs entering this country.

Several bills are pending in Congress to permit drug imports from Canada and elsewhere. Besides Peter Heed, the Attorney General of New Hampshire, attorney generals from Arizona, California, Colorado, Connecticut, Illinois, Iowa, Maine, Maryland,

Massachusetts, Mississippi, New Mexico, New York, Ohio, Oregon, Rhode Island, Vermont and Wisconsin also signed the letter.

3. Drug maker told to produce records

Pioneer Press May. 11, 2004

A drug manufacturer being investigated for possible antitrust violations because it cut off shipments to Canadian mail-order pharmacies has to turn its records over to the Minnesota attorney general's office, a judge has ruled.

Hennepin County District Judge Peter Albrecht also gave a boost to Gov. Tim Pawlenty's drug-importation Web site, ruling that not all drug importation is illegal.

"It's the first court decision in the country to declare there's no blanket prohibition on the importation of Canadian drugs," Attorney General Mike Hatch said. The ruling was in response to a lawsuit Hatch filed against GlaxoSmithKline PLC, the British pharmaceutical company that makes Paxil and Flonase, among other drugs. The judge ordered colluded with other drug companies to shut off supplies of medicine to Canadian GSK to turn over Canadian and British records that Hatch believes shows it mail-order pharmacies selling to U.S. customers.

The importation of Canadian drugs into the United States has become a major economic and political issue. The Canadian government negotiates the price of medicine with manufacturers so prescriptions often cost less there. Pawlenty's administration has even set up a Web site, MinnesotaRxConnect.com, to show residents how to buy drugs from two Canadian druggists. But the U.S. Food and Drug Administration has threatened the governor over the Web site. The FDA claims that importation of drugs into this country is illegal and possibly unsafe.

GSK has admitted that its Canadian subsidiary, GSK Inc., stopped shipments to the suspect pharmacies, but claimed it did so on its own and didn't conspire with other drug companies. The company also had the right to stop those shipments under the terms of contracts those pharmacies signed with GSK, said company spokeswoman Nancy Pekarek.

"In our view, antitrust laws do not protect illegal activity," said Pekarek. "And it is illegal to bring drugs across the border of the United States. We believe GSK Canada was acting legally when it reminded our customers of our terms of the contracts."

Albrecht disagreed. "First, not all drug importation is illegal," he wrote in his ruling. "Second, if it can be demonstrated that GSK has acted in concert with other drug manufacturers to stop Canadian imports to the United States, such activities would not be immune from antitrust scrutiny, even if the FDA's position were clear, which it is not. Enforcement of federal law is the responsibility of the FDA, not of GSK."

Pekarek said GSK's attorneys are trying to decide whether to appeal Albrecht's ruling or hand the records over to Hatch. The company had offered to allow lawyers for the state limited "viewing" and "note-taking" of the records in Canada and Great Britain, but Albrecht ruled that "a grossly inadequate substitute for production."

Hatch said he believes the records will show GSK and other pharmaceutical companies conspired to boycott distributors and pharmacies that sold drugs to American customers via mail. He noted that GSK was one of at least five companies that took similar actions against Canadian druggists in a three-month period. "They say they're all doing it separately," said Hatch. "We think that's too much of a coincidence."

Asked if drug company executives would reduce such potentially incriminating information to writing, Hatch says he's seen parallels between the pharmaceutical industry and the tobacco industry. "When an industry is that arrogant, you can be assured they'll have documents going back and forth," he said. "He may think that, but he's wrong," Pekarek said of Hatch. "There was no collusion between GSK and any other company. This decision was made independently by GSK Canada and doesn't relate to decisions made by any other company."

4. Missouri Attorney General accuses credit repair company of defrauding local residents

May 10 2004 St. Louis Post-Dispatch

All Cynthia Ross wanted was to pay a little less interest on her next loan. She was a high school guidance counselor here with a car on its last legs. And she was about to get married and needed a new house.

A friend told Ross about a "credit repair" company that promised to remove negative information from credit reports - even information that was true.

Ross contacted the company and handed over \$200 to Kevin G. McDaniel. He operated the firm he called New Start Credit Solutions. The company promised her "A-1" credit within 90 days or a refund of "150 percent" of her fee.

"Please," the University City woman recalls telling McDaniel in December 2001, "my daughter's birthday is in four days and Christmas is six days after that. And I'm giving you money that I can't afford. "And he assured me that this was all on the level."

On Monday, Attorney General Jay Nixon said it was all just a scam. He sued McDaniel and his company, saying they had defrauded at least 29 people and possibly hundreds more in Missouri and Illinois.

The suit, filed in St. Louis County Circuit Court, seeks full restitution for consumers, civil penalties of up to \$5,000 for each violation of the state consumer fraud law and an injunction barring more violations.

Nixon said there's no way to remove negative, truthful information from a credit report - and any company that claims to do so is perpetuating a fraud.

"They were selling something that couldn't be sold," he said. McDaniel couldn't be reached. Neither he nor his company, which also goes by the name NuStar Enterprise, had a listed phone number. Credit repair scams are among the most common of consumer frauds. Last year, both Illinois and Missouri sued AmeriDebt, an Internet credit counseling company with about 300,000 clients.

Fraud experts warn that credit repair services often charge high fees and usually don't do anything that consumers cannot do for themselves at little or no cost.

Since at least 2000, New Start has charged clients from \$175 to \$600 in advance for services that were not performed, the state's suit says.

Disillusioned, Ross sought the refund promised in McDaniel's newspaper and radio ads. "'Look at your contract,'" Ross says he replied. " 'We have a whole year before you get a refund.' " More than 28 months later, Ross says she is still waiting.

5. California Attorney General gives up three-strikes case

(AP) Apr. 29, 2004

California will not appeal a federal court's decision overturning a three-strikes sentence of 25 years to life imposed on a repeat shoplifter.

Last week, ruling 2-1, a panel of the 9th U.S. Circuit Court of Appeals said the 25-year term handed to a California man convicted of stealing a \$199 VCR violated the Eighth Amendment constitutional ban on cruel-and-unusual punishment. The appellate court said the punishment did not fit the crime even though the U.S. Supreme Court last year upheld the same sentences for two California shoplifters. The appeals court said the life sentence triggered under the three-strikes measure was unjust and more severe than a sentence for "murder, manslaughter or rape." The San Francisco-based appeals court said the Supreme Court's precedent did not apply to every third-strike defendant convicted of a felony. California Attorney General Bill Lockyer agreed in a decision announced Thursday.

The Supreme Court last year upheld California's three strikes law allowing petty crimes to be the third strike triggering a 25-to-life term. Two serious or violent felonies are required for the first two strikes. In its rulings, the Supreme Court said California had a right to adopt such a policy for public safety. But the 9th Circuit panel said the Supreme Court's decision allowed for "rare" circumstances in which a long sentence would not fit the crime. "Under these unique circumstances, sending Isaac Ramirez to prison for 25 years to life is unjust. "Therefore I've exercised my discretion to not appeal this matter further."

The appeals court said Ramirez's two priors that triggered the life term on his third conviction were minimal: two unarmed robbery convictions. The defendants the Supreme Court dealt with last year had lengthy and violent criminal pasts. Lockyer said the

Ramirez case was unique and there was "no reason" to think the court's decision would "apply to any other defendant" sentenced under the three-strikes law. The case is Ramirez v. Castro, 02-56066.

6. Attorney General: Insanity standard needs reform

(AP) May 06, 2004

Texas Attorney General Greg Abbott told a Senate committee Thursday that the state's insanity standard needs to be reformed, citing the case of a Beaumont man charged with murder for placing a 6-year-old in an oven.

"Our current laws in how we deal with the criminally insane have failed," Abbott said. "A life was needlessly lost because of the way our system works or perhaps didn't work."

Kenneth Pierott was found not guilty by reason of insanity in 1998 for using a dumbbell to fatally beat his 25-year-old sister, who suffered from cerebral palsy. He was released after four months in a state hospital. "Last month, Mr. Pierott put his girlfriend's 6-year-old son in the oven, turned the heat up to 600 degrees and left the boy to die," Abbott said. The pilot light wasn't on in the oven so it didn't heat, but the child died of asphyxiation.

Abbott also pointed to the case of East Texas mother Deanna Laney, who was found not guilty by reason of insanity in the stoning deaths of two of her sons. A judge has committed her to a state hospital at least through July. "The public is justifiably suspect about a system that allows an insane killer to go free," Abbott said. "Changes must be made to existing laws. ... What we need is a system that allows the state to continue to supervise dangerous, mentally ill criminals."

Dr. Mary Alice Conroy, speaking on behalf of the Texas Psychological Association, said cases such as Pierott's aren't the norm. She said about two-thirds of defendants found innocent by reason of insanity have not committed a violent crime. James Smith, chief executive officer of the North Texas State Hospital, which cares for those acquitted based on insanity, said the Legislature needs to address what happens to the acquitted once they leave the hospital. "My experience has been that it is possible to lose track of them fairly quickly," he said.

Sen. Jeff Wentworth, R-San Antonio, said Smith's observation is less than comforting. Wentworth's Jurisprudence Committee is reviewing the state's insanity statute and the issues surrounding it. Smith would like to see the state move toward allowing a person acquitted based on insanity to be recommitted if they fail to follow certain conditions of their release, such as taking their medication. "With that type of setup, some of the situations that break all of our hearts would not have occurred," he said. As of Tuesday, Smith said 67 people being cared for at state hospitals had been acquitted by reason of insanity. While some at the public hearing called for the verdict to be changed to "guilty but insane" or "guilty except mentally ill," Smith said there is a system in place in the state's prisons to deal with mentally ill inmates.

Texas Department of Criminal Justice spokeswoman Michelle Lyons said three psychiatric units house more than 1,500 inmates with mental illnesses. Keith Hampton, a lobbyist for the Texas Criminal Defense Lawyers Association, said jurors should be told what happens to a person found innocent by reason of insanity. Current law prevents attorneys and judges from telling jurors that a person acquitted based on insanity must be committed to a state hospital at least three months with annual checks thereafter.

Others, such as Joe Lovelace of the National Alliance for the Mentally Ill, would like criteria established for experts who testify in trials involving mental health issues. Lovelace would also like some changes to the insanity defense itself that requires a defendant to prove he suffers from a severe mental disease or defect and didn't know his actions were wrong. Smith County District Attorney Matt Bingham, who prosecuted Laney, said he wants safeguards to make sure a person who claims insanity meets the legal definition. "I think the goal of every person in this room... is to make sure no little boy ever gets put in an oven again," he said. Smith, the hospital administrator, said there are no guarantees when it comes to those who suffer from mental illnesses. "The science is not to the point where we can ever say with absolute certainty if the person will ever be violent again," he said.

7. Bruning: NU Broke the Law

05/07/2004

The University of Nebraska has violated the state's public records law, said Attorney General Jon Bruning Thursday while ending a legal fight that began in the bar of a Kansas City, Mo., airport hotel. The attorney general demanded that the university release the names of all eight candidates who met privately with a presidential search committee at the airport hotel or on the University of Nebraska at Omaha campus last month. Late Thursday afternoon the university complied. The four still in the running already have been identified. Here are the four candidates who didn't make the final cut: Cynthia Milligan, dean of UNL's business college; Chester Gardner, a vice president at the University of Illinois; Dan Angel, president of Marshall University; and William Hogan, a University of Minnesota regent.

Bruning disagreed with the university's assertion that all eight candidates' names weren't public record. NU's lawyer and other officials also had said the committee was doing nothing wrong by attempting to secretly meet with potential replacements for President L. Dennis Smith, who is leaving the office but will be returning to the classroom.

Bruning may have set the stage for a battle during the next legislative session. Sen. Kermit Brashear of Omaha promised to reintroduce his bill making public job searches a closed process, while the president of the Nebraska Press Association said a legislative compromise might be possible.

Bruning also clarified what kind of interaction public bodies may have with candidates at certain points in the hiring process.

His decision often veered into legal complexities, but its overall message was simple: Face-to-face meetings such as those at the airport hotel or at UNO last month constitute interviews. The acceptance of an interview triggers the public's right to know who is being interviewed.

"Common sense has to prevail," Bruning said Thursday. "It's a public job. Their names have to be made public."

University counsel Richard Wood said the committee warned some but not all of the eight candidates that they may be stepping into public records hot water by agreeing to the meetings. He said he never guaranteed anyone anonymity throughout the process, although the understanding was that NU would release the names of finalists only after they'd agreed to be finalists.

Hogan, reached at his office, would say only that he had pulled his name out of the

running before the committee picked its four finalists. Milligan and Angel didn't return phone calls. Gardner was unavailable to comment.

The four finalists are Adm. James Ellis, commander of U.S. Strategic Command; Peter Hoff, University of Maine president; James "J.B." Milliken, a University of North Carolina vice president; and Kim Robak, an NU vice president. "I guess we looked at it from the standpoint that what happened was a meeting and not an interview of these people," Wood said. "(The law) is certainly clearer now based on this opinion."

The university's public records trouble started when the Journal Star learned the search committee, an 18-person group that included University of Nebraska-Lincoln Chancellor Harvey Perlman and Wood, was attempting to meet secretly with candidates at the Kansas City Airport Marriott.

Wood has since argued that the Kansas City meetings were informal meet-and-greet sessions and has denied open-records requests from several news media organizations. Media of Nebraska, a statewide organization that includes the Journal Star, appealed to Bruning, saying the meetings were interviews and asking him to force the release of names. He did so Thursday.

There seems to be agreement about the need to avoid future such skirmishes.

There is little consensus, though, about the proper way to change the records law.

Brashear introduced a bill during the Legislature's recently completed session attempting to all but close the process of hiring public officials such as university presidents and school superintendents.

That bill, which died without making it to the Legislature's floor, would have allowed NU to announce the name of only one person the regents hoped would be president.

The hire would have been made official only after a public response period.

That's a far better situation than the current silly one, Brashear said Thursday.

"We don't have oceans, we don't have mountains, we don't have a lot of dynamic growth going on," he said. "Sometimes we have to do things a bit differently to hire people here.

"I understand all the ivory tower theory about (public records). But where are the facts?"

Allen Beermann, president of the Nebraska Press Association, heralded Bruning's decision and thanked him for "putting the issue on the front burner."

He also floated the idea of a slightly altered law. Under it, the regents or their representatives could have interviewed eight semifinalists without releasing their names, then announced the names of four finalists. In other words, just about what the committee did illegally.

"This isn't the time for the media to gloat, or the university to hide in shame," he said.

"The most important lesson to come out of this is we can all work together to make the law better."

Bruning doesn't want to see a Brashear-style closed process. He also doesn't want to see another public records case involving the definition of the word "interview" back on his desk anytime soon.

Mostly, he doesn't want to see Nebraska's commitment to public records waver.

8. Mississippi Attorney General May Target Former WorldCom Execs

May 4, 2004 Mississippi Attorney General Jim Hood said Tuesday that his office is investigating some former WorldCom executives.

Hood told 16 WAPT News that his office is considering filing criminal charges or a civil suit in the case.

"At this point, we are looking at actually how to proceed," Hood said. "It's a tax issue with the state. The state is owed a lot of money." Hood did not identify the executives, saying he is planning a specific announcement in the next three months.

The feds have charged former WorldCom Chief Executive Officer Bernie Ebbers in a three-count federal indictment. Five other former executives have pleaded guilty to federal fraud charges. Ebbers pleaded not guilty to the charges against him.

9. Attorney General Steps In To Make Sure Diddy Gets His Due

Joe D'Angelo MTV News May 4, 2004

It's hard to imagine anyone not being able to find P. Diddy, given the fact that he's a well-regarded music mogul, runs a popular clothing company, starred in his own TV show, made headlines by running the New York Marathon for charity, and currently has the starring role in a Broadway play.

But when his record company owed him some back royalties, it said it didn't know where to send the check.

Diddy, David Bowie, the Dave Matthews Band and Gloria Estefan are among the artists who'll be receiving back royalties in accordance with a deal reached Tuesday (May 4) by the five major-label conglomerates and New York State Attorney General Eliot Spitzer, according to his spokesperson. The labels agreed to return nearly \$50 million in unclaimed artist royalties, half of which they already have sent out.

A two-year investigation found that artists and writers weren't getting their rightful dues because record companies lost contact with some of them and therefore withheld payment. Besides the more recognizable names, which also included Elvis Presley (who's owed approximately \$9,659), John Mellencamp (approximately \$18,771) and Dolly Parton (approximately \$17,568), the list of owed artists mostly contains thousands of lesser-known musicians and one-hit wonders.

Spitzer applauded the record companies for their cooperation in the matter, noting that they could have fought the initiative.

"Record companies aggressively and proactively search for artists and others who are owed royalties and have not claimed them," Steven Marks, general counsel for the Recording Industry Association of America, said in a statement. "In recent years, the Internet has made this task easier, particularly where artists have moved without providing updated contact information. When artists cannot be located because, for example, they or their estates have moved without providing contact information, the royalties are held by the company for the artist to claim them."

As part of the deal, the labels agreed to list online the name of artists and writers to whom they owe payments, post advertisements in trade magazines outlining procedures for unclaimed royalties, work with music-industry groups and unions to find artists, and share contact information with other record companies.