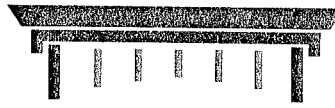


SACCO | TYNER
CRIMINAL DEFENSE LAW



MARK J. SACCO

www.SACCOTYNER.com

JAMES E. TYNER

August 5, 2015

Clerk, Albany County Court
Judicial Center
6 Lodge Street
Albany, New York 12207

PEOPLE V. BARBARA BOUCHEY
INDICTMENT #:34-7323

Dear Clerk:

Enclosed for filing please find the defendant's Reply to the People's Affirmation in Opposition.

Very truly yours,

SACCO TYNER, PLLC

By: 

Mark J. Sacco

MJS/slt
Enclosure

cc: Hon. Stephen J. Herrick
Holly Trexler, Esq., Special Assistant District Attorney
Barbara Bouchey

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11 NORTH PEARL STREET
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NEW YORK CITY
111 BROADWAY, SUITE 615
NEW YORK, NEW YORK, 10004
TEL | (212) 203-0936

PLEASE DIRECT ALL CORRESPONDENCE TO SCHENECTADY OFFICE

THE PEOPLE OF THE STATE OF NEW YORK,

-against-

**REPLY TO PEOPLE'S
AFFIRMATION IN OPPOSITION**

**Judge Stephen W. Herrick
Indictment No.: 34-7323**

BARBARA BOUCHEY

Defendant.

PLEASE TAKE NOTICE, the Defendant replies to the People's Affirmation in Opposition as follows:

1. Contrary to the People's allegations in paragraph 4, the Omnibus Motion filing contains a plethora of sworn allegations of fact, including signed, notarized affidavits from Investigator Roger Kirsopp and Katherine Ethier. Additionally, please find an affidavit from Barbara Bouchev containing sworn allegations of fact, annexed hereto as Exhibit "A".
2. In People's paragraph 5 of their response that the evidence presented to the Grand Jury was legally sufficient is conclusory and unsupported. The People's statement regarding the grand jury presentation is conclusionary at best. For example, the audio tape will bear that Defendant Bouchev never admitted to logging on without authorization nor looking at proprietary information. Furthermore, the People did not even advise the Grand Jury of the fact that Defendant Bouchev had written authorization from NXIVM to use Svetlana Kotlin's password.

3. In People's paragraphs 8 and 9 of their response, they allege that the indictment is not defective. However, the defense has argued that the Indictment is based on materially false evidence. Therefore, a review of the Grand Jury minutes should lead to dismissal.
4. People's paragraph 17 of their response is erroneous. The Defendant was never advised of her Miranda warnings prior to making a statement to the police. A review of the audio-taped statement of Defendant Bouchey is proof that she was not mirandized.
5. In People's paragraph 19 of their response, it should be noted that as of the date of this reply, the Defendant has not received a reply to her request for a Bill of Particulars. Additionally, the Defendant, as noted in the Omnibus Motion papers, has been given access to a very small amount of relevant discovery material.
6. In People's paragraph 22 and 23 of their response, the People allege Defendant has made an insufficient showing for the Court to grant her motion for severance. However, the defense has made it clear that it will essentially prosecute and demonstrate the misconduct of the co-defendants in order to prove its case that Barbara Bouchey has no criminal liability. Essentially, the co-defendants will be used a measuring stick to calculate criminal culpability.
7. Furthermore, this case should not go to trial joined because of the potential Bruton and Cruz issues. Thus, the Defendant's would have conflicting defenses and would not have been able to protect themselves against the others and bring about a defense.

8. In People's paragraph 24 of their response, the People have not complied with their Brady obligation in that they have failed to divulge exculpatory evidence. For instance, the People are in possession of the NXIVM activity log data that will clearly show Defendant Bouchey did not assess any proprietary information. This exculpatory evidence negates an essential element of the crime of computer trespass. Furthermore, this evidence was never provided to the Grand Jury even though it was in the possession of the Prosecutor and Inv. Trooper Kirsopp who testified. Thus, the People have not lived up to their Brady obligations.

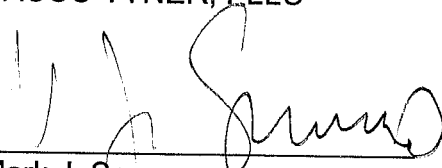
CONCLUSION

For the foregoing reasons, Defendant Barbara Bouchey respectfully requests that this Court grant her motion in its entirety and dismiss the indictment against her with prejudice, together with such other and further relief as the Court deems appropriate.

Dated: August 5, 2015
Schenectady, New York

SACCO TYNER, PLLC

By:


Mark J. Sacco
Attorneys for Barbara Bouchey
38 North Ferry Street
Schenectady, New York 12305
(518) 374-7411

cc: Clerk, Albany County Court
Holly Trexler, Esq. – Special Assistant District Attorney
Hon. Stephen W. Herrick
Barbara J. Bouchey

EXHIBIT A

THE PEOPLE OF THE STATE OF NEW YORK

-against-

BARBARA BOUCHEY,

Defendant

**AFFIDAVIT IN SUPPORT OF
DEFENDANT'S MOTION
TO DISMISS**

Ind. No.: 34-7323

Hon. Stephen W. Herrick

AFFIDAVIT OF BARBARA J. BOUCHEY

Barbara J. Bouchey, being duly sworn, swears to the following under penalty of perjury:

1. On March 25, 2014, NYS Trooper Investigator Roger Kirsopp called me and told me that a long-standing NXIVM member, Kristin Keeffe, had disappeared from a domestic violence center Inv. Kirsopp placed her in six weeks earlier, because she was afraid for her, and her son's, well-being. Ms. Keeffe had provided him information about NXIVM having illegally hacked into my financial planning firm's computer server. Inv. Kirsopp asked if I was experiencing computer problems, which I stated I had.
2. I spoke to Inv. Kirsopp because he stated the purpose of his call was Ms. Keeffe's disappearance.
3. Inv. Kirsopp, never gave me any Miranda Rights warnings nor did he mention I was a target, or a suspect, in any criminal investigation.
4. Inv. Kirsopp stated he knew that I had moved out of New York State. I was a resident of Seattle, Washington, which is a two-party consent state. He never

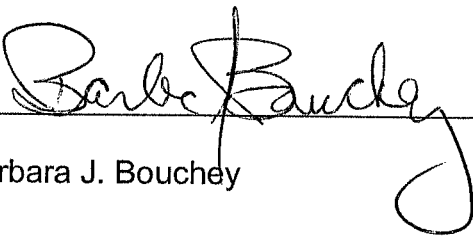
asked my permission, nor even mentioned, that he was audio-taping our conversation.

5. I had four different forms of permission to login to NXIVM's social website. (1) by NXIVM as a Student (2) by NXIVM as I was a Field Trainer and Coach given access of member passwords, (3) by NXIVM's Privileged Computer Person, Benjamin Myers, with Emails granting me authority to use Svetlana Kotlin's username and password who was a NXIVM Student (See Attached: Exh. #1 - Myers Email), and (4) by Svetlana Kotlin, who gave me verbal permission along with an understanding to be able to continue using her password. None of these forms of permission were ever revoked.
6. During the nine years that I was a NXIVM student, I was not aware of their ever revoking anyone's permission to login to their social website, even if they had left on bad terms and or were hostile.
7. Inv. Kirsopp's incident report states, "she (Bouchey) acknowledged that she did not have the authorization from Kotlin to do so (login on)" and "confirmed areas of the website she looked at including the Humanities (analogous for social calendar), the calendar (analogous for workshop calendar) and coach list." However, this statement is false. I have never acknowledged that I did not have authorization to login to the NXIVM social website to Inv. Kirsopp. I never had a conversation about a Coach List with Inv. Kirsopp, nor did I ever confirm, as the tape will bear me out, that I looked at a Coach List. This statement is not accurate nor true. I considered these forms to be my authority - along with the other forms of authority that I had. (See Inv. Kirsopp CD Audio provided in Discovery).

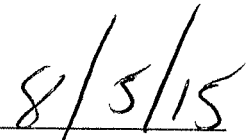
8. The information that I was able to assess on NXIVM's social website using Student Kotlin's assess, only granted the most basic level of non-proprietary information. In my audio-taped conversation with Inv. Trooper Kirsopp, he also confirms the NXIVM activity log reveals my only looking at non-proprietary information.
9. There were no NXIVM activity logs or forensics provided in discovery reflecting my one-time login activity from January 8, 2014. However, Inv. Kirsopp's incident report does reflect pageload data provided by Mr. Myers on January 13, 2014, which reveals that I only accessed non-proprietary information as stated above, and reflects no activity for a "coach list."
10. In March 2009, Ms. Kotlin requested that I get her username and password from NXIVM, because she had forgotten it.
11. I requested Ms. Kotlin's username and password from NXIVM's privileged computer person, Benjamin Myers. On March 20, 2009, Mr. Myers sent two emails to me containing Ms. Kotlin's information granting both me, and her, permission telling me to "give it a try" to login to NXIVM's social website. Said permission was never revoked.
12. When I lived in Saratoga Springs, New York, my residence address was 19 Kempton Place. I logged onto NXIVM's social website from this Saratoga address, and not from Albany County. The entire time I was associated with NXIVM, their computer server was located in Saratoga Springs County.
13. Inv. Kirsopp's incident report reflects that this criminal investigation surrounding the alleged logins using Mary Jane Pino's password without permission began in 2011 with the Saratoga Springs County District Attorney, while Inv. Kirsopp's role

began in March 2012. Nowhere in Inv. Kirsopp's report from 2011 right up until January 2014 (when I did my one-time login) is there is any evidence against me relative to logging in assessing information using Mary Jane Pino's, no mention that I was a suspect or target, no mention of any search warrants and arrest, nor anything to support that I participated in the activities surrounding this criminal case with my co-defendants.

14. I never logged on using Mary Jane Pino's password assessing information on NXIVM's social website.
15. In August 2014, *NXIVM vs. Foley et al*, NXIVM served a civil lawsuit in the Northern Federal District Court of New York against the co-defendants, and reporters from *Vanity Fair* magazine and the *Albany Times Union* newspaper, claiming damages from the co-defendants alleged activities using the Mary Jane Pino password in this criminal case. It is critical to note that I am not a Defendant, my name is not mentioned anywhere in that lawsuit, nor am I even listed as one of the 59 potential John Does with computer IP Addresses.
16. On December 7, 2014, I met with Ms. Kotlin at Kathy Ethier's home. I asked Ms. Kotlin if she remembered the Dalai Lama doing a joint event with NXIVM in Albany in early 2009, which she did. I showed her the email from NXIVM's privileged computer person, Mr. Myers, dated March 20, 2009, which contained her username and password giving us permission to log on to NXIVM's social webpage asking if she remembered that, too. Ms. Kotlin then remembered giving me permission to obtain her username and password, to log on, and that there was an understanding after I had resigned from NXIVM that I could continue to use it.

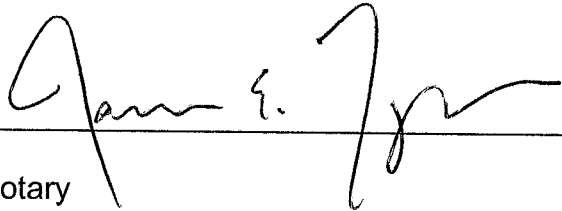


Barbara J. Bouchey

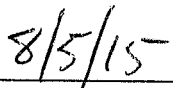


DATE

Signed and Sworn to me this 5th day of August, 2015.



Notary



DATE

JAMES E. TYNER
Notary Public, State of New York
Qualified in Schenectady County
No. 02TY6104231
Commission Expires Jan. 20, 2016

Exhibit A

From: Ben Myers [mailto:ben@nxian.net]
Sent: Friday, March 20, 2009 11:07 AM
To: Barbara Bouchey
Subject:

Ok, so she has a username and password in our system, so she doesn't need to use the lower part where she enters her full name, nxian number, and year of birth. Instead she just needs to enter her username and password.

Username is: svetlana (all lowercase)
Pword is what I previously sent you!

Give it a try!

b

Ben T. Myers
Solsys Integrated Technologies
[518.429.7754](tel:518.429.7754)
ben@solsystech.com
<http://www.solsystech.com>

From: Ben Myers [mailto:ben@nxian.net]
Sent: Friday, March 20, 2009 11:05 AM
To: Barbara Bouchey
Subject: login

Pword: just2night