

REPORT AND RECOMMENDATION OF THE
COMMISSION ON JUDICIAL CONDUCT

APPENDIX K

EXHIBIT AA

AA
10/25 11C



U.S. Department of Justice

Andrew E. Lelling
United States Attorney
District of Massachusetts

Main Reception: (617) 748-3100

John Joseph Moakley United States Courthouse
1 Courthouse Way
Suite 9200
Boston, Massachusetts 02210

November 8, 2018

Robert L. Peabody
Jackson Lewis P.C.
75 Park Plaza, 4th Floor
Boston, MA 02116

Re: David Jellinek

Dear Mr. Peabody:

This letter confirms that the United States Attorney for the District of Massachusetts will consider an accurate and complete proffer from your client, David Jellinek, in connection with an investigation into events that occurred on April 2, 2018, at Newton District Court. The terms under which the contemplated proffer will be received are as follows:

1. No statements made or other information provided by Mr. Jellinek will be used by the United States Attorney directly against him, except to rebut any evidence offered, or factual assertions made, by or on behalf of Mr. Jellinek at any stage of a criminal or civil proceeding (including but not limited to detention hearing, trial, or sentencing) which is inconsistent with, or contrary to statements made during the proffer, or in a prosecution of, Mr. Jellinek based on false statements made or false information provided by Mr. Jellinek.

2. The government may make derivative use of, or may pursue any investigative leads suggested by, any statements made or other information provided by Mr. Jellinek in the course of the proffer. Any evidence directly or indirectly derived from the proffer may be used against him and others in any criminal case or other proceeding. This provision is necessary in order to eliminate the possibility of a hearing at which the government would have to prove that the evidence it would introduce is not tainted by any statements made or other information provided during the proffer. *See Kastigar v. United States*, 406 U.S. 441 (1972).

The United States Attorney is not hereby agreeing that he will subsequently enter into a plea or immunity agreement with your client. The foregoing is the complete agreement between your client and the United States Attorney with regard to your client's proffer.

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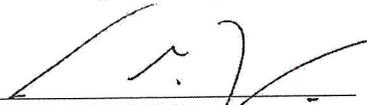
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Very truly yours,

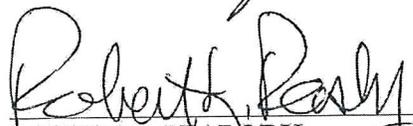
ANDREW E. LELLING
United States Attorney

By: 
CHRISTINE J. WICHERS
Assistant U.S. Attorney

Acknowledged and agreed to:


DAVID JELLINEK

11.8.18
Date

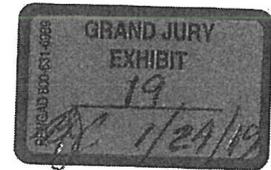

ROBERT L. PEABODY
Counsel for David Jellinek

11/8/18
Date



U.S. Department of Justice

Andrew E. Lelling
United States Attorney
District of Massachusetts



Main Reception: (617) 748-3100

John Joseph Moakley United States Courthouse
1 Courthouse Way
Suite 9200
Boston, Massachusetts 02210

January 17, 2019

Robert Peabody, Esq.
Jackson Lewis P.C.
75 Park Plaza
4th Floor
Boston, MA 02116

Re: David Jellinek

Dear Mr. Peabody:

This letter sets forth an Agreement between the United States Attorney for the District of Massachusetts and your client, David Jellinek. The terms of the Agreement are as follows:

1. Your client agrees to cooperate fully with law enforcement agents and government attorneys. He must provide complete and truthful information to all law enforcement personnel. If his testimony is requested, he must testify truthfully and completely before any grand jury, and at any hearing and trial. Your client must answer all questions put to him by any law enforcement agents or government attorneys and must not withhold any information. He must not attempt to protect any person or entity through false information or omission, or to implicate falsely any person or entity. Upon request, he must furnish all documents, objects and other evidence in his possession, custody or control that are relevant to the government's inquiries.

2. In return for your client's full and truthful cooperation, as set forth above, the United States Attorney agrees not to use any statements made, or other information provided, by your client pursuant to this Agreement, or any information directly or indirectly derived therefrom, against your client in any criminal case except in a prosecution: (1) for perjury, obstruction of justice, or making a false statement premised on statements made, information provided, or actions taken, after the execution of this Agreement; or (2) for an act of physical violence against the person of another, or conspiracy to commit any such act of violence.

3. If, after executing this Agreement, your client knowingly provides false or misleading testimony or information, commits any crime chargeable as a felony under state or federal law after the date of this Agreement, or otherwise violates any term of this Agreement, then this Agreement shall be null and void. In such an event, any testimony or other information

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provided by your client may be used against him without limitation for any purpose in any proceeding.

4. The determination whether the client has violated the Agreement and that therefore this Agreement is null and void, will be made by the United States Attorney and is not subject to appeal or review, and any restrictions imposed by this Agreement on the use of any statements made, or other information provided by your client pursuant to this Agreement, will similarly be null and void.

5. This Agreement cannot bind the Attorney General of the United States, the United States Attorney of any other District, or any state or local prosecutive authority.

This letter contains the complete agreement between the parties. No promises, representations or agreements have been made other than those set forth in this letter and the proffer letter dated November 8, 2018. This Agreement supersedes prior understandings, if any, of the parties, whether written or oral with the sole exception of those contained in the proffer letter dated November 8, 2018. This Agreement can be modified or supplemented only in a written memorandum signed by the parties or on the record in court.

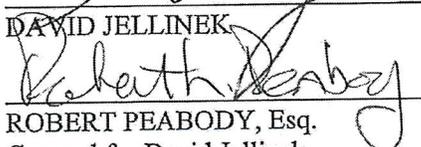
If you and your client agree that this letter accurately describes the entire agreement between your client and the United States Attorney, please confirm this by signing in the appropriate place below and returning the letter to Assistant U.S. Attorney Dustin Chao.

Very truly yours,

ANDREW E. LELLING
United States Attorney

By: 
ZACHARY R. HAFER
Chief, Criminal Division
KARIN M. BELL
Deputy Chief, Criminal Division

Acknowledged and agreed to:


DAVID JELLINEK

ROBERT PEABODY, Esq.
Counsel for David Jellinek

1-24-19
DATE
1-24-19
DATE