



United States Attorney
Southern District of New York

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May 21, 2002

Under Seal

The Honorable Alfred M. Wolin
United States District Court
Martin Luther King Jr. Federal
Building & Courthouse
50 Walnut Street
Newark, NJ 07101-0999

Re: United States v. David Chang,
Crim. No. 99-726 (AMW)

Dear Judge Wolin:

The United States Attorney's Office for the Southern District of New York, in its capacity as Acting United States Attorney for the District of New Jersey in this matter, respectfully submits this letter to advise the Court of the pertinent facts concerning the assistance that defendant David Chang rendered in this Office's prosecution of C. Kenneth Quinones and its investigation of a federal public official (hereinafter the "Public Official") and his 1996 federal election campaign. In light of these facts, and assuming that the defendant continues to comply with the terms of his cooperation agreements, the Government intends to move at sentencing on May 23, 2002, pursuant to Section 5K1.1 of the Sentencing Guidelines, that the Court sentence Chang in light of the factors set forth in Section 5K1.1(a) (1)-(5) of the Guidelines.

I. Background

On or about March 31, 2000, a grand jury returned a 16-count Superseding Indictment against David Chang and co-defendant Audrey Yu. The Indictment charged Chang with conspiracy, obstruction, and witness tampering charges for his alleged participation in shredding documents and deleting computer records that were under subpoena by a grand jury, submitting a false document to the court, and attempting to persuade a witness

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to provide false testimony before the grand jury. In addition, Mr. Chang was charged with conspiracy and false statements charges for his participation in a scheme to circumvent the limits on individual contributions to a federal election campaign.

On June 2, 2000, Chang pleaded guilty before your Honor to Count Sixteen of the Indictment, which charged Chang with a violation of Title 18, United States Code, Section 1512(b)(1) for coaching a potential grand jury witness to give false testimony about a financial transaction with Mr. Chang. Furthermore, Chang pleaded guilty to five misdemeanor counts of conspiring to violate, and violating, Federal election campaign laws set forth in a superseding information for deliberately exceeding the limits on individual contributions to the Public Official's 1996 federal election campaign.

At his guilty plea, Chang admitted that he attempted to persuade Christopher Kim, whom he knew to be a likely grand jury witness, to give a false explanation to the grand jury about a check that Chang provided to Mr. Kim in exchange for the deposit of funds in Korea. Chang also admitted that he reimbursed a number of employees of his company, Bright & Bright, and others for making contributions to the Public Official's federal election campaign in order to circumvent legal limits on the amount that Chang himself could contribute to that campaign.

The witness tampering count carries a maximum sentence of ten years of imprisonment; a maximum fine, pursuant to 18 U.S.C. § 3571, of the greatest of \$250,000, or twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to a person other than the defendant as a result of the offense; a maximum of three years of supervised release; and a mandatory \$100 special assessment. The conspiracy to violate the Federal election campaign laws count carries a maximum sentence of one year of imprisonment; a maximum term of one year of supervised release; a maximum fine, pursuant to Title 18, United States Code § 3571, of the greatest of \$100,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to a person other than the defendant as a result of the offense; and a mandatory \$25 special assessment. Finally, each of the four counts of making illegal campaign contributions carries a maximum sentence of one year of imprisonment; a maximum term of one year of supervised release; a maximum fine, pursuant to Title 18, United States Code § 3571, of the greatest of \$25,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to a person

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other than the defendant as a result of the offense; and a mandatory \$25 special assessment.

Chang entered his guilty pleas pursuant to a cooperation agreement with the Government. Under the terms of that agreement, the Government and Mr. Chang stipulated that, absent consideration of his assistance to the Government, the defendant's applicable offense level would be 16, yielding a Guidelines sentence of 21 to 27 months.

II. Chang's Cooperation

In late May 2000, shortly before the scheduled trial of the charges contained in the Indictment, Chang's attorney informed the Government that he wished to meet with the Government pursuant to a proffer agreement. During the proffers that preceded his plea and in many dozens of subsequent interviews, Chang provided credible information regarding the Public Official, Quinones, and numerous others who were subjects of Government investigation.

(a) The Federal Public Official

During his meetings with the Government, Chang admitted that, from 1995 through 1998, he provided tens of thousands of dollars of cash and other things of value to the Public Official in exchange for the Public Official's assistance with business projects. In dozens of subsequent meetings, Chang provided a detailed account of his relationship with the Public Official and these payments. According to Chang, this relationship began in 1995, after the Public Official wrote letters of recommendation on behalf of Chang to U.S. and foreign government officials from whom Chang was seeking government business. Soon after sending the letters, according to Chang, the Public Official explained to Chang that the letters were examples of what the Public Official was capable of doing for Chang.

Soon afterwards, according to Chang, the Public Official requested that Chang provide him with \$25,000 in cash, which the Public Official said he would use for the Public

The cooperation agreement recited that the Government was considering filing an additional charge against Mr. Chang related to an investigation being conducted by the U.S. Customs Service and Internal Revenue Service. The Government has determined not to file an additional charge.

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Official's campaign. When Chang asked whether it was legal for him to provide cash, the Public Official assured Chang it was legal. According to Chang, he then asked Audrey Yu, his bookkeeper, to prepare \$25,000 in cash from Bright & Bright funds. After obtaining this amount of cash with Yu's assistance, Chang drove with Yu to the Public Official's home and delivered an envelope containing \$25,000 in cash.

After this initial delivery, from about 1996 until about December 1998, Chang claimed that he provided the Public Official with things of value worth many thousands of dollars, including antiques, jewelry, clothing, electronic equipment, and decorative items, as well as tens of thousands of dollars of additional cash payments. As Chang disclosed, most of these items were solicited by the Public Official at times when Chang was seeking his official assistance with business projects and when the Public Official was providing or offering assistance to Chang. In this time period, Chang admitted, the Public Official provided many forms of assistance to Chang and his companies, including recommending Chang's companies for government contracts, introducing Chang and his business associates to foreign business leaders, and attempting to enlist the assistance of State Department and National Security Council officials in recovering a large debt that the North Korean government owed to one of Chang's companies, Nikko Corporation.

In addition to Chang spending hundreds of hours recounting the details of his relationship with the Public Official to prosecutors and agents, Chang spent countless more assisting the Government in locating and compiling documentary evidence that corroborated Chang's claims and identifying witnesses who could do the same. For example, Chang traveled with agents to New York in order to identify an antique shop where he purchased thousands of dollars of sculptures for the Public Official. Similarly, Chang traveled with agents to an oriental carpet shop where he purchased a carpet for the Public Official's former wife. Chang also traveled with agents to appliance shops, jewelry shops, and other locations where he went in the company of the Public Official or to purchase items requested by the Public Official. In addition, Chang spent many hours reviewing credit card records and other records that disclosed the locations where he purchased items for the Public Official and the amounts that he paid for these items.

By providing this assistance to the Government, Chang exposed himself to unusual hardship. Because of the public interest in the Government's investigation of the Public Official

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and Chang's pivotal role in the investigation, Chang's privacy was compromised to an unusual degree. Almost everywhere he went, members of the press pursued Chang and sought to interview him. Once certain allegations made by Chang were reported in the press, moreover, the Public Official and his defenders launched a public campaign to vilify and discredit Chang, referring to him in press statements as a delusional perjurer and suggesting that his allegations were manufactured for political reasons. Because he was a potential witness, Chang, on the advice of his counsel, refrained from responding to many of these accusations. Thus, some of the accusations against Chang went undefended in public and had a great impact on Chang's reputation, personal relationships, and ability to find a job and make a living. In addition, whether well founded or not, Chang feared that supporters of the Public Official might do him harm in order to protect their own interests or those of the Public Official. As a result of this fear and the extraordinary press attention that he was receiving, Chang moved from his home to an apartment in a distant location for a period of several months.

(b) C. Kenneth Quinones

Chang provided information concerning his relationship with C. Kenneth Quinones, an influential State Department North Korea analyst, that was similar in detail and scope as that which he provided concerning the Public Official. In numerous meetings with the prosecutors and agents, Chang described how he made payments and provided gifts to Quinones and members of Quinones's family in order to build goodwill with the State Department and win Quinones's support for business projects.

Quinones served a "desk officer" on the North Korean desk at the State Department's Office of Korean Affairs in a period when Chang was actively seeking the assistance of the State Department to recover the debt that the North Korean government owed to Chang's company and when Chang was seeking licenses to engage in various forms of trading with North Korea. From 1991 until 1997, Chang and his representatives frequently consulted with Quinones concerning Chang's efforts to recover the outstanding debt from North Korea, including requests that the State Department support the release of North Korean assets frozen by the United States, so that those assets could be used to repay North Korea's debt to Chang's companies. As Chang disclosed, Quinones also processed numerous requests of Chang's companies for advice on matters that required State Department approval. In addition, Chang asked Quinones for support in his bid to have one of his companies become project coordinator for

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the construction of the light water nuclear reactors in North Korea and supply fuel oil to North Korea. Finally, during 1996 and 1997, while serving as a State Department liaison to the Department of Defense, Quinones recommended one of Chang's companies for a Defense Department contract and oversaw the performance of that contract by Chang's company.

Chang disclosed that, throughout this period, Chang provided numerous things of value to Quinones and his family, including a luxury automobile, a job for one of Quinones' daughters, and payment of the college tuition of another of Quinones' daughters. Moreover, Chang disclosed that Quinones was overseeing the performance of Chang's company under the Defense Department contract while negotiating for future employment with that same company. Chang produced records, including the fax of a draft employment contract and checks to Quinones' wife, that substantiated most of these claims. Chang also identified numerous witnesses who corroborated his claims regarding the projects noted above, including Chang's former attorneys and lobbyists who worked for Chang.

Quinones ultimately pleaded guilty to a violation of the criminal conflict of interest laws and to making false statements to law enforcement agents relating to his dealings with Chang.

(c) Campaign Organizers and Others

During his interviews with the Government, Chang also provided information relating to several other individuals who were the subject of Government investigation, including associates of the Public Official and employees of the Hudson County Jail, where Chang was incarcerated and allegedly threatened after his arrest in December 1999.

III. The Impact of Chang's Cooperation

The evidence provided by Chang was critical to the Government's successful prosecution of Quinones for violating federal conflict of interest laws and making false statements to law enforcement officials. Most of the evidence that the Government developed in its investigation of Quinones came from Chang or leads provided by Chang. The Government found the information that Chang provided concerning his relationship with Quinones to be credible in all material respects. Notably, Chang did not overstate or exaggerate the extent of the assistance that Quinones provided to Chang or the extent of Quinones's

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participation in government projects in which Chang or his companies had an interest.

Although the Government did not ultimately bring a prosecution against the Public Official, the Government also found Chang's statements concerning the conduct of the Public Official to be credible in most material respects. Further, the information which Chang provided greatly advanced the Government's investigation. This information led to the discovery of substantial corroborating evidence, including documentary evidence and the testimony of numerous witnesses. Notably, the information concerning Chang's cash payments to the Public Official was corroborated in significant respects by Audrey Yu, his former bookkeeper; the information concerning Chang's purchases of items of value for the Public Official was corroborated by many vendors from whom Chang purchased these items; and the information concerning the assistance that the Public Official provided to Chang in connection with business projects was corroborated by several other witnesses, including several whose credibility was not in doubt.

However, some critical aspects of Chang's account of events -- including most of the cash payments and the circumstances and understandings upon which Chang provided things of value to the Public Official -- were uncorroborated and necessarily rested on Chang's own credibility. As a result, the Government concluded that Chang was a necessary witness in any prosecution of the Public Official. Chang, however, engaged in conduct, both before and after his plea, that greatly compromised the Government's ability to call him as a witness.

To begin with, over the course of his business career and in his personal life, Chang engaged in fraudulent and deceptive conduct which undermined his credibility. For example, in an effort to promote his business interests, Chang made false claims about his business affiliations, the number of employees of his companies, and the size and scope of his business activities. Chang also provided false testimony in a civil deposition during a business dispute and in a civil proceeding in New Jersey state court.

Further, as Your Honor is aware, for example, during his presentment, Chang agreed with a statement by his attorney (who had been hired at the Public Official's recommendation) that Chang had no knowledge of wrongdoing on the part of public officials, including the Public Official. Chang made similar statements in memoranda that he submitted to his attorney, many

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of which sharply contradicted Chang's subsequent claims to the Government. In addition, in an appearance before Your Honor in April 2000 relating to the recusal of one of his attorneys, Chang lied about his dealings with that attorney and his statements to others about the attorney to ensure that the attorney remained on the case.

While cooperating with the Government, moreover, Chang agreed to be interviewed by a reporter, who subsequently reported that Chang had advised her that he was in the Witness Protection Program, that he had given the Public Official numerous Rolex watches (as opposed to the one Rolex watch which Chang had mentioned in discussions with the Government), and that he thought the Public Official was trying to kill him. Chang had been instructed not to have any contact with the press, and his statements as reported by the reporter, whether accurate quotes or not, further undermined his credibility and his usefulness as a witness.

Equally significantly, Chang had difficulty accepting responsibility for his own conduct and wrongdoing. At times, for example, Chang incredibly claimed that he did not realize until 1998 that it was unlawful to provide money and other things of value to a public official in exchange for government assistance and influence. Chang also denied that he deliberately shredded documents that were subject to subpoena, although overwhelming evidence demonstrated that he had done so. In addition, Chang dismissed as "business lies" many of the false claims he made in an effort to obtain business. In a similar vein, Chang displayed a tendency to blame others for Chang's own conduct. At various times, for example, Chang blamed his lawyers for the false testimony that he provided in a civil deposition.

The Government viewed these issues as creating serious credibility problems that would have completely undermined Chang's testimony before the jury. Thus, although the Government found Chang's statements regarding his dealings with the Public Official to be credible, the Government ultimately determined that the available evidence, including Chang's testimony and the corroboration, would not persuade a jury beyond a reasonable doubt that the Public Official committed criminal violations.

IV. Conclusion

In sum, Chang provided substantial assistance in the prosecution of Quinones and in the Government's investigation of the Public Official and others. Chang offered that assistance

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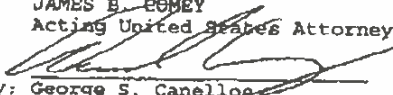
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against strong pressure from the Public Official and subjected himself to very significant personal hardship in doing so. Moreover, Chang devoted hundreds of hours to assisting the Government and did so without reluctance or regard for his own convenience. However, Chang's conduct, including statements and actions after criminal charges were filed against him, impaired his value as a potential witness. Accordingly, the Government plans to move at Chang's sentencing, pursuant to U.S.S.G. § 5K1.1, for a downward departure to permit Chang to be sentenced by the Court in light of the factors set forth in U.S.S.G. § 5K1.1(a)(1)-(5).

Because this letter refers to the conduct of uncharged third parties, we respectfully request that it be filed under seal.

Respectfully submitted,

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