

Banking and Finance Law Daily Wrap Up, CRIMES AND OFFENSES—U.S.: Government opposes convicted bank officer's petition on bribery statute conviction, (Jul. 25, 2024)

Banking and Finance Law Daily Wrap Up

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By Justin Marcus Smith, J.D.

The government argues that the services Trump associate Paul Manafort provided to Calk satisfied the meaning of the phrase “anything of value” under the financial institution bribery statute.

On July 24, 2024, the United States filed its opposition to bank officer Stephen Calk’s petition for a writ of certiorari. Calk’s petition seeks review of his conviction for financial institution bribery and intention to commit the same crime, a conviction the United States Court of Appeals for the Second Circuit affirmed in 2023. The government’s [brief](#) opposes the premise that Calk had no basis in law for questioning whether the predicate facts of his bribery conviction satisfied the “anything of value” element of 18 U.S.C. § 215(a)(2). The government also said the case was a poor vehicle for determining the meaning of “corruptly” because Calk would be unlikely to prevail (*Calk v. United States of America*, No. 23-1149 (U.S. July 24, 2024)).

Background. Stephen Calk, formerly the Chairman and CEO of The Federal Savings Bank (TFSB) and a principal shareholder of National Bancorp Holdings, Inc., which owned TFSB, was tried by jury and convicted of financial institution bribery and conspiracy to commit financial institution bribery. The government had charged Calk of using his influence to obtain loans for Trump Associate Paul Manafort despite the fact that Calk ultimately did not secure a position with the Trump administration.

Calk moved to set the conviction aside on the basis that the evidence did not show that he received a “thing of value” or acted “corruptly” in violation of the financial institution bribery statute, 18 U.S.C. § 215 (the bribery statute). The trial court denied the motion, sentenced Calk to 366 days in prison with two years of supervised release, and fined him \$1.25 million.

The U.S. Court of Appeals for the Second Circuit rejected all of Calk’s arguments on appeal. Calk then petitioned the Supreme Court for a writ of certiorari. Calk argued, first, that political influence, having no commercial or objective value, should not be construed as a “thing of value” per 18 USC §215. Second, Calk submitted that the status of corrupt acts should not be met by acts, even if otherwise improper, undertaken in a good-faith belief that the acts would benefit the bank in question (see [Banking and Finance Law Daily](#), Apr. 29, 2024).

Government opposition. The government opposed Calk’s petition, characterizing Calk’s two questions as follows:

1. Whether the phrase “anything of value” in 18 U.S.C. § 215(a)(2), which criminalizes the receipt of gifts for procuring loans, excludes intangible items whose value is measured in ways other than direct market ex-changes.
2. Whether the definition of acting “corruptly” under § 215(a)(2) is limited solely to circumstances in which a bank officer breaches a legal or fiduciary duty.

The government said the Second Circuit correctly determined that Manafort’s assistance in obtaining a position with the Trump administration was a “thing of value.” The government noted the word “any” has expansive meaning, albeit applicable case law on-point is sparse. It said the bribery statute would have a major gap if an intangible benefit on one side of the exchange would not qualify as something valuable. The government cited several cases for the proposition that the value could be subjective, and it contended the evidence permitted the jury to find that the value here could be “monetarily translatable” in satisfaction of the \$1,000 threshold under

the bribery statute “based on the substantial personal and financial risk that [Calk] undertook to secure it by approving the loans to Manafort.”

The government continued that Calk’s stated due process concern, in light of putative ambiguity in the bribery statute, was erroneous. Calk’s due process concern would not turn on the doctrine of vagueness, but instead on whether the government had proved beyond a reasonable doubt that the disputed benefit was worth \$1,000. The government said the Second Circuit’s interpretation of anything of value was not in conflict with other circuits. The government made arguments to distinguish the cases Calk cited. Last, the government distinguished the legislative history of the conversion statute, which Calk had argued did not apply to “intangible goods.”

As to Calk’s second claim about construction of the word “corruptly,” the government again argued that there was no circuit conflict. In any event, Congress defined “corruptly” to mean “acting with an improper purpose” in 18 U.S.C. § 1505(b). Accordingly, it did not refer, as Calk urged, to any breach of an independent, clearly defined legal duty. There was no vagueness here, either, because Congress responded to the vagueness ascertained in *United States v. Poindexter*, 951 F.2d 369 (D.C. Cir. 1991) by establishing the 18 U.S.C. § 1505(b) definition of “acting with an improper purpose[.]” The government contended “corruptly” otherwise has the natural meaning normally associated with wrongful conduct. The government said Calk did not point to any other case after *Poindexter* that found the word “corruptly” “unconstitutionally vague in any other context.” The government again offered detailed criticism of cases Calk cited.

The government concluded the case was a “poor vehicle for addressing the interpretation of ‘corruptly,’ because [Calk] would be unlikely to prevail even under his own narrowing construction.” The government deemed the fact that Federal Savings ultimately profited from the loans “legally insignificant.” The government analogized that, just as a judge cannot accept bribes in exchange for legally sound rulings, “so too a bank official cannot accept bribes simply because the corrupt transactions turn out to be profitable for the bank...”

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Companies: National Bancorp Holdings, Inc.; The Federal Savings Bank

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