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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Bharara Wins A PR Victory After Bruising Newman Loss

By **Ed Beeson**

Law360, New York (October 23, 2015, 9:42 PM ET) -- After losing his battle against an insider trading decision that cost him marquee convictions, U.S. Attorney Preet Bharara on Thursday was able to score public relations points when he announced he would exonerate six cooperating witnesses in a show that his office acts fairly, particularly to those who help the government out.

Mere weeks after the Supreme Court refused to hear the government's appeal of the blockbuster decision known as U.S. v. Newman, the top Manhattan federal prosecutor made a somewhat unexpected move when he **released six people from guilty pleas** they entered in connection with the Newman case and another matter brought against former hedge fund manager Michael Steinberg.

Doing so enabled Bharara, who is known for his media savvy, to send a strong public message about how his office operates.

"It does provide the U.S. attorney's office with an opportunity, from a public relations perspective, to say, 'We did the right thing,'" said Michael Weinstein, chairman of the white collar defense and investigations practice at Cole Schotz Meisel Forman & Leonard PA and a former federal prosecutor.

"From a PR standpoint, Preet can take advantage of this," he said.

Bharara said he made this move because after the Second Circuit overturned the insider trading convictions of former hedge fund managers Todd Newman and Anthony Chiasson and ultimately forced him to drop charges against Steinberg as well, it wouldn't have been "in the interests of justice" to maintain the guilty pleas of cooperators who were central to the government's prosecutions.

The six cooperators included former Sigma Capital Management analyst Jon Horvath, who along with others admitted to funneling insider tips about technology stocks that ultimately landed in the hands of former managers at the now-shuttered hedge fund firms Diamondback Capital Management LLC, Level Global Investors LP and SAC Capital Advisors LP. None of the cooperators had been sentenced yet.

Attorneys said it is only fair that the government cut these people loose, particularly when the law had shifted after the Second Circuit's decision last year.

"It isn't always the case that cooperators are let off when the case against the main defendant fails," noted Richard J. Holwell, a former federal judge and co-founder of Holwell Shuster & Goldberg LLP. "But here, there was arguably a change in the law. As a matter of

fairness, it was clearly the right thing to do.”

That Bharara’s office acted without further litigation or public prodding from defense attorneys representing the cooperators is a positive sign, attorneys said.

“It’s to the Southern District’s credit that they moved so quickly to dismiss,” said Jonathan Schmidt, counsel at Ropes & Gray LLP and a former assistant U.S. attorney in the Northern District of California.

The move also sends a reassuring message to potential cooperators. While the circumstances that led to the dismissal of charges against the six cooperators in the Newman, Chiasson and Steinberg cases are exceedingly rare, any resistance to waiving their guilty pleas could have had a chilling effect on others.

“They have to always think about future cases,” said Robert Appelton, a partner at Day Pitney LLP and former assistant U.S. attorney. “If you are going to treat cooperators differently than defendants, it’s going to be difficult to persuade people to cooperate.”

“Why punish the cooperators and give the benefits only to the guys who challenged them?” he added.

Bharara has cultivated a public persona as a Wall Street sheriff who has rooted out corruption at hedge funds and in corporate America. When it comes to insider trading, it is often noted his office has secured more than 80 guilty pleas or criminal convictions, including against the likes of former billionaire hedge fund manager Raj Rajaratnam and ex-Goldman Sachs Group director Rajat Gupta.

That image, however, took a bruising in December when the Second Circuit found that the prosecutions of Newman and Chiasson were faulty.

Specifically, the court said the government failed because it didn’t show that the sources of tips about Nvidia Corp. and Dell Inc. received any significant personal benefit in return for their information. Furthermore, the government hadn’t established that Newman and Chiasson, as downstream tippees, knew of any benefits given to these tippers, the court ruled. That led to the court overturning their convictions and dismissing their indictments.

Bharara waged a monthslong campaign to get the decision reconsidered, warning that it could undermine a range of government prosecutions. At one point, Chiasson likened the prosecutor in court papers to a **“petulant rooster”** whose dominion has been disturbed.”

And when the Supreme Court this month rejected a petition for certiorari from U.S. Solicitor General Donald Verrilli, Newman became the law of the land, at least within the Second Circuit.

In recovering from the defeat, Bharara noted that his office’s strong victory rate on insider trading likely will remain around 90 percent when all is said and done. He has also defended the decision to bring the tossed cases in the first place.

“These prosecutions were all undertaken in good faith reliance on what this office and others, including able defense counsel for all those who pled guilty, understood to be the well-settled law before Newman,” he said in a statement on Thursday.

In conceding defeat, and without further fight, it appears Bharara has won some people over.

“They did the right thing on their own initiative, God bless them for it,” said Roland Riopelle, an attorney who represents Danny Kuo, one of the cooperators who was

exonerated Thursday. "When they do the right thing, they've got no bigger ally than me."

--Editing by Kat Laskowski and Christine Chun.

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