

Jerry Capeci

# Gang Land News

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## This Week in Gang Land October 12, 2017

By Jerry Capeci

### Holy War Fraud Trial Looms For Close Pal Of ILA Prez Harold Daggett



Up until this past July 20, Paul Moe, a dues-paying member of the mob-tainted International



Paul Moe G L

Longshoremen's Association for 38 years, was one of the highest paid workers in America. As a general foreman for APM Terminals, a ship container loading firm on the New Jersey docks in Port Elizabeth, NJ, he pulled down more than \$500,000 a year.

But Moe, 66, of Atlantic Highlands, lost his sweet job that day when he was arrested for a series of missteps, including being in a Florida motel with a woman other than his wife when he was also listed as on the job and working hard. We'll come back to the motel, but the criminal charges include a slew of wire frauds for stealing most of his yearly salary between September of 2015 and March of this year through a variety of alleged schemes.

Those charges, including the motel, are slated to be fully aired at his Newark Federal Court trial that begins next week. And that's where a second high-volume battle is expected to be waged.

Representing the government as lead prosecutor in the case against Moe is assistant U.S. attorney (AUSA) Vincent (Grady) O'Malley, who was Gang Land's **Prosecutor Of The Year in 2016**. Moe's attorney is Gerald McMahon, another Gang Land All-Star, who was our **Defense Lawyer Of The Year in 2012**. And based on court filings,

 <a href="#">Joseph Massino</a>	 <a href="#">Steven "Stevie Wonder" Crea</a>
 <a href="#">John "Sonny" Franzese</a>	 <a href="#">Domenico "Italian Dom" Cefalu</a>
 <a href="#">Vincent "Chin" Gigante</a>	 <a href="#">Carmine "Junior" Persico</a>
 <a href="#">Anthony "Gaspire" Casso</a>	 <a href="#">Liborio "Barney" Bellomo</a>

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the trial will be a humdinger of a Holy War between the Irish Catholic barristers, who have already discussed adultery, mortal sins and the Ten Commandments in pre-trial filings.



Harold Daggett G L

Sources say Moe, who has no known mob ties, is a longtime associate and close friend of [Harold Daggett](#), the powerful president of the ILA. Daggett [was acquitted](#) of labor racketeering charges at his own trial in 2005 during which a mobster codefendant named Lawrence ([Fat Larry](#)) Ricci disappeared, and was later discovered in the [trunk of a car](#), dead of gunshot wounds. Daggett is a former shop steward and President of ILA Local 1804-1, the same longshoreman's local to which Moe has belonged since 1979.

Until his arrest, when he was suspended from his job as general foreman of APM's Rubber Tired Gantry Crane Department, Moe earned a weekly salary of \$9330. But that wasn't all. The job was covered under a Special Packages" provision of the ILA contract that states that every week Moe was on the job for at least 40 hours, he would receive pay for every single hour in the week, i.e. seven days a week, twenty-four hours a day. If you're counting, that's 168 hours in total, which is how Moe came to have one of America's best paying gigs. All of this is detailed in the the 14-count indictment that the feds have filed against him.

The first round in the battle of the lawyers came when the outspoken, in-your-face McMahon opposed a government motion to generously delay the trial until February to enable the defense enough time to absorb 230,000 pages of discovery. McMahon blasted that as a duplicitous move, accusing prosecutors of trying to stall because "the government is not ready and doesn't want to get ready for trial by October 18."

[McMahon](#) wrote that while co-prosecutor Tracy Agnew, a "Special AUSA" was "quick to point to the defense needing time as the reason for a delay, she disclosed in Court that she is due to give birth in late October and will not be able to participate in this trial (to her great disappointment) unless it is postponed."

In addition, he wrote, his "best guess is that 229,000 pages of the 230,000 pages are duplicative" because "for the last approximately 15 years, Mr. Moe's timesheets have been exactly the same, to the minute," wrote McMahon, advising prosecutors "to worry about their own case," not his.

After winning that argument, McMahon turned it up a notch last month. He accused O'Malley and his newly

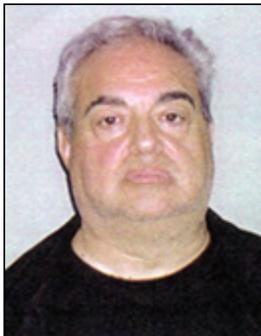
assigned co-prosecutor, Anthony Moscato, of injecting "unfair prejudice" against his client into the case by — and here's where the motel comes in — including five "overt acts" in the 14-count indictment. Those acts, McMahon charged, were designed to alert the jury that Moe had an adulterous relationship with a woman co-worker, identified in the indictment only as "Individual 1."



Of the five "overt acts" which indicate that Moe was not working at APM Terminals, as his time sheets stated, McMahon wrote, "two overt acts make it quite clear that Mr. Moe and 'Individual 1,' a female coworker who is not his wife, were having an extra-marital affair."

"While it may seem hard to believe that in this 21st Century there is any stigma attached to the scarlet 'A,' it is worth noting that adultery is still illegal in 16 states," wrote McMahon, noting that it is a "B misdemeanor" in New York. "And," McMahon continued, "in the eyes of the Catholic Church, adultery was forbidden by God as one of the Ten Commandments and is always considered a mortal sin."

"Informing the jury that that Mr. Moe was in a motel and in the state of Florida with a woman other than his wife," wrote McMahon, would unfairly prejudice his client in the eyes of many jurors, and that evidence should be precluded from the trial.



Lawrence Ricci G L

In asking Judge Katharine Hayden to preclude the evidence, McMahon argued that exactly where his client was when he was supposed to be working was irrelevant. It wasn't necessary for prosecutors to prove where Moe was "while he was being paid, only that he was not present at the terminal" where the time sheets stated he was, McMahon wrote.

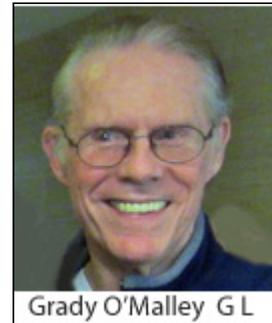
In his reply, [O'Malley](#) accused McMahon of dragging his own client's name through the mud by publicly bringing up the business with Moe's co-worker. The prosecution, O'Malley insisted, had scrupulously avoided mentioning that relationship in the indictment or any pre-trial proceedings. McMahon's motive, the prosecutor maintained, was to claim unfair prejudice against his client.

"In its motion," O'Malley wrote, "the defense acknowledges that Individual #1 is a friend and co-worker" and "makes references to adultery, the Catholic church, and the Ten Commandments in support of its

argument that references to Individual #1 should be stricken" by "creating and attempting to inject prejudice into this case that did not previously exist."

"But stripped of the emotional angst generated by literary allusion, possible B misdemeanor sanctions, self-reproach engendered by the Old Testament, and the guilty conscience only the Catholic Church can take credit for," O'Malley wrote in his own long-winded brief, McMahon's argument comes down to "a naive grasp of what is expected from the Government when tackling a very high standard of proof."

"The defense insinuates that the Government's motives for injecting Individual #1 are at best suspect, at worst unethical, to secure an unfair advantage" but in reality, wrote O'Malley, prosecutors "must persuade the jury of each element of every one of the 14 counts charged, beyond a reasonable doubt."



Grady O'Malley G L

"Consequently," O'Malley wrote, "no piece of relevant evidence is too inconsequential to be part of the Government's arsenal of proofs" and prosecutors have the right to prove that Moe "was not present at work when he was required to be there" with evidence that Moe "was on vacation in Aruba and Florida" and was frequently "spending time not at work with a person referred to in the Indictment as 'Individual #1.'"

O'Malley wrote that Individual #1, whom sources say Moe helped get a \$165,000 job on the docks as a checker several years ago, is a government witness whose expected testimony will show that Moe "was not simply off the terminal but also unequivocally not conducting business" for his employer.

"Finally, the government represents that it will not use references or terms such as adultery, an 'affair', infidelity, mistress, girlfriend, or any other similarly pejorative term intending to intentionally embarrass the defendant," O'Malley wrote, unless McMahon "opens the door" to that line of questioning during his cross-examination.

Trial is slated to begin Wednesday, but the opposing attorneys will be duking it out — legally and professionally we are sure — before Judge Hayden today as they argue their opposing views about the proposed testimony of Individual #1 and various other issues in their upcoming Holy War of a trial.

## Mob Prince Looks To Appeals Court For Birthday Present



Michael Persico celebrated his 61st birthday on Saturday but he didn't get the one present he wants most these days: his freedom for the foreseeable future. He hopes to get that on Tuesday when the Second Circuit Court of Appeals rules on whether he can remain free on bail while he appeals his conviction.

Persico, whose father Carmine still rules the Colombo crime family from prison, caught a break from the Manhattan appeals court seven years ago when another federal judge wanted to hold him behind bars.

This time around, the judges will have to overrule Chief Judge Dora Irizarry's finding that the mob prince is a danger to the community and that his lawyers have not raised any "substantial" issues about his guilty plea or the five year sentence he received to warrant his release on bail.

In court papers, Persico's attorneys take the position that their client has the same right to bail as disgraced New York State legislators Sheldon Silver and Dean Skelos had when they challenged their convictions after trial. All three were free on bail while their indictments were pending, and like Skelos, who was also sentenced to five years, and Silver, who got 12, Persico's conviction is his first. Silver and Skelos are still free as they await retrials following reversals of their convictions by the appeals court.

Persico's lawyers, Marc Fernich and Sarita Kedia, did not mention Skelos or Silver in their papers, but they note that (unlike the convicted elected officials, whose bail pending appeal was opposed by prosecutors) the government consented to Persico remaining free on bail for three months after he was sentenced. They argue that if he wasn't a danger then, he's not a danger now.

In Persico's case, Judge Irizarry permitted him to [remain free](#) in July. But she ordered him to self-surrender and begin his prison term on Friday, October 20. Irizarry, who ruled after a hearing that Persico had gotten away with a 1993 murder, rejected his subsequent request to continue his bail pending appeal.



Asked whether there are different standards for the convicted elected officials and his client, whom the government concedes is not a "made man," Fernich said: "Bail would be a slam dunk if Michael Persico were a politician or Wall Street tycoon. We expect no less here. His last name didn't sway the Court against him the first time around, and he clearly has real appeal issues."

The "first time around" was in 2010, when the [appeals court ruled](#) that Judge Sandra Townes was wrong to detain Persico as a danger because there was no "probable cause to believe that the defendant has committed various specific crimes." This time, Persico has been convicted, and a judge has made findings that Persico committed specific crimes, so it won't be so easy.



Anthony Russo G L

Persico, who [pleaded guilty](#) to a loansharking conspiracy in 2012 with a sweet deal calling for 37-to-46 months in prison that covered him for many crimes, including two murders, has been contesting his controversial guilty plea [since 2014](#). That's when he first moved to take it back due to alleged government misconduct against him.

Persico claims prosecutors breached their agreement not to push for a prison term above 46 months by getting probation officials to include murder allegations in his Pre-Sentence Report (PSR) to not-so subtly suggest to Judge Townes to decide on her own that Persico deserved an enhanced sentence and to give him five years, the statutory maximum he faced.

In their court papers, Fernich and Kedia note that is exactly what Judge Irizarry — who took over the case in 2015 — did in July, after a hearing at which assistant U.S. attorney Allon Lifshitz used turncoat mob capo Anthony (Big Anthony) Russo to convince the judge that Persico had supplied guns that were used by Russo and others to whack a rival wiseguy in 1993.

"This is a paradigm case for bail pending appeal," the lawyers wrote, arguing that Persico, who spent more than seven years on bail with no violations of any kind before and after his sentencing, "poses no flight risk or danger" and is challenging both the legitimacy of "his guilty plea" and a "breach of an expressly bargained-for plea agreement" by the government.

"If either question is resolved in his favor, his conviction would be reversed," the lawyers wrote, arguing "these are precisely the kinds of substantial questions warranting bail pending resolution on appeal."

Prosecutors Lifshitz and Amy Busa counter that neither issue has any merit, and say it's high time Persico finally went to prison for his crimes.

They argue that rulings by Judges Townes and Irizarry denying Persico's push to rescind his guilty plea were correct, and that Irizarry's finding that he took part in a

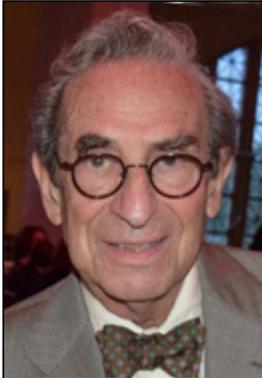


Allon Lifshitz G L

1993 mob murder clearly establishes Persico as a danger to the community.

The prosecutors assert that Persico "has failed to raise a substantial question" about the validity of his guilty plea and has also "failed to show that he is not a danger to the community," and he should begin serving his five year prison term a week from tomorrow, as Irizarry has ordered.

## Appeals Court Calls The Question On Gotti Trial Judge I. Leo Glasser



Judge I. Leo Glasser GL

In a surprise decision, the Second Circuit Court of Appeals has agreed to hear oral arguments in a controversial mob case, one that asks the panel to cast a cold eye on the actions of a legendary fellow judge. The case, due to be argued next week, represents a kind of back-from-the dead legal challenge to a decades-old conviction in the spectacular racketeering and murder trial of late Mafia boss, John Gotti.

As Gang Land [reported exclusively](#) in April, the challenge is based on legal research by Gotti codefendant Frank (Frankie Loc) Locascio, who played his consigliere role to the hilt at the trial and attended many sidebars at the bench. The 85-year-old wiseguy calls into question the actions — more accurately, the non-actions — of the trial judge in the case, I. Leo Glasser, one of the most revered jurists on the Brooklyn bench.

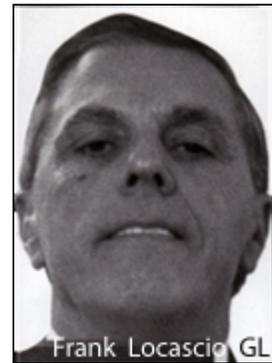
Locascio, who is serving the 27th year of a life sentence for murder, claims that Glasser, who is 93, should have recused himself from presiding over the trial because of an alleged conflict of interest. The conflict, Frankie Loc asserts, was that Glasser's son James was a federal prosecutor in Connecticut when that office had investigated the same Connecticut-based Gambino family illegal gambling ring that Locascio was charged with being part of in his Brooklyn indictment.

In court papers filed by appeals specialist Harlan Protass, Frankie Loc states that he first learned in mid-2015 while in the library of his federal prison hospital where he has been for several years that Judge Glasser's son was a federal prosecutor in the same Bridgeport office that indicted Gambino family members in 1989, a year before Locascio was indicted.

In his 242-page filing, Protass argued that because of their father-son, federal judge-federal prosecutor relationship, Judge Glasser had a "disqualifying conflict of interest" in the case. He has asked the appeals court to

throw out Locascio's conviction and order a new trial before a different judge.

"Locascio's motion is wholly without merit and should be denied," counter assistant U.S. attorneys David James and Michael Keilty, arguing that the Second Circuit's 1993 decision affirming the convictions of Gotti and Locascio should be the final word on the subject.



The prosecutors assert that Connecticut gambling "was a minor part of the government's case" and that "Locascio's insinuations of partiality by Judge Glasser are baseless," adding that "there is no basis to contend that Judge Glasser's recusal would have led to a different outcome."

Protass, however, argued that the trial Judge is a very important player in any trial. To drive home that point, he quoted what the lead prosecutor in the case, John Gleeson, had to say about that subject in *One Tough Judge: On Putting John Gotti Away For Good*, an article that appeared in a 2000 book, [Brooklyn: A State of Mind](#).

"There was nothing more important to the defense lawyers and the prosecution than who would be the judge on the [Gotti trial](#)," said [Gleeson](#), who was then a sitting federal judge, but was speaking as the prosecutor in the case, the only time he has ever done so publicly. "We make arrests, we indict, we prosecute, but the outcome of the case depends on the Judge," he said.



Protass wrote that he has no evidence that prosecutor Glasser shared any information he may have obtained about Locascio with his father. But the lawyer argued that hard evidence "is not necessary for the Court to conclude that Judge Glasser should have recused himself."

Citing affidavits stating that FBI agents and federal prosecutors in the tri-state area shared info about the mob in the 1980s, Protass wrote there was "no doubt" that James Glasser had "actual knowledge" of the investigations of Locascio and the Gambino family in Connecticut and New York in 1989 when Gambino mobsters were indicted in the Nutmeg State. The prosecutor would also have been clued in about the probes when Frankie Loc was indicted in 1990 in Brooklyn.

Regardless of what he knew and when, however, wrote Protass, Judge Glasser should have recused himself, citing a 2007 Second Circuit ruling that stresses the importance of the "appearances" of judicial impartiality and "requires

federal judges to disqualify themselves from 'any proceeding in which his [or her] impartiality might reasonably be questioned.'"

The three judge panel who will hear arguments on the intriguing case — it is scheduled for Wednesday, October 18 — hasn't been announced yet. Judge Amanda Kearse — the only judge who affirmed the convictions of Gotti and Locascio in 1993 still sitting on the Second Circuit — could be one of them.



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