

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA,	:	
	:	CRIMINAL NO. 2:08-cr-1324
Plaintiff,	:	
vs.	:	AFFIDAVIT OF ATTORNEY
	:	F. MONTGOMERY BROWN
SHOLOM RUBASHKIN,	:	
Defendant.	:	

F. MONTGOMERY BROWN hereby declares under penalty of perjury:

1. In August of 2008 I was retained to represent Sholom Rubashkin in the anticipated forthcoming state child labor prosecution and anticipated federal offenses relating to undocumented workers at Agriprocessors and other matters referred to in "target" letters sent by the U.S. Attorney's Office for the Northern District of Iowa to Sholom Rubashkin.
2. By this time I was familiar with the raid, publicized consequences of the enforcement action, and with the prosecution of undocumented workers and supervisors Martin De La Rosa and Carlos Guerrero. Mr. Rubashkin was notified that he was a "target" of the federal criminal investigation in late May of 2008 and again in approximately August of 2008. I knew that the U.S. Attorney's Office deemed Mr. Rubashkin the putative "CEO" of Agriprocessors and that they believed he controlled the "day-to-day" operation and management of the business.

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3. In early September of 2008 Mr. Rubashkin was charged in state court with 9311 counts of child labor violations. My work on the case then began in earnest. Such work included reviewing the House Subcommittee transcripts and I familiarized myself with Attorney Rockne Cole's letter included in the House Subcommittee record.
4. Sometime around this period, I personally met with AUSA Peter Deegan in Cedar Rapids to discuss issues relating to Mr. Rubashkin's forthcoming federal prosecution.
5. Sometime in the summer of 2008, I attended a CLE seminar in Des Moines in which attorney Al Willett spoke of his participation in representing employees of Agriprocessors arrested in the raid. Mr. Willett told the assembly how sometime before the raid (which I recall from memory as about two weeks) he received a call from Judge Reade "asking for a favor" as I recall Mr. Willett putting it. Specifically, the favor involved attorney services in something big but unspecified to occur in the near future. I inferred from this story that Judge Reade had at least two weeks notice of the ICE enforcement action.
6. I also familiarized myself with the Order issued by Judge Reade on September 29, 2008, in *United States v. De La Rosa-Loera*, N.D. Iowa No. 08-CR-1313-LRR relating to Mr. De La Rosa-Loera's motion requesting that Judge Reade recuse herself. After Mr. Rubashkin was arrested the first time on federal charges on or about October 30, 2008 the issue of whether to pursue a similar or identical motion as that filed by Mr. De La Rosa-Loera was seriously contemplated. After Mr. Rubashkin was arrested the second time in

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November of 2008, and detained following formal detention hearing, attorney Guy Cook was hired to serve as additional counsel.

7. During the pre-trial proceedings leading up to the "detention appeal" proceedings before Judge Reade, Mr. Cook was specifically asked by Judge Reade on the record whether a recusal motion was going to be filed, and if so to please file such motion promptly. Judge Reade did not take the opportunity to discuss any additional information she possessed that may have borne on such a motion.
8. We decided not to file a motion before Judge Reade asking that Her Honor recuse herself.
9. The decision was premised upon the fact that any claimed basis for such a motion would have been identical to that filed in the De La Rosa-Loera matter. Neither Mr. Cook or I had any additional material information suggesting that additional factual basis existed for such a motion beyond what Mr. De La Rosa-Loera had presented to the Court. Accordingly, since Judge Reade had already decided the issue and in light of the fact that we had no additional information to support the motion or contradict Her Honor's account, we decided not to file the motion.
10. I had no further information to challenge the account provided by Judge Reade in her Order of September 29, 2008, and I concurred that it would be useless and counter-productive to seek to recuse Judge Reade even though Her Honor had sentenced some of the undocumented workers arrested in the raid as well as Mr. Guerrero and De La Rosa-Loera and had plainly been

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involved in some capacity in planning for the aftermath of the enforcement action.

11. At no time did Judge Reade or the U.S. Attorney's Office provide me or Mr. Cook with any of the additional factual detail contained in the materials obtained in the FOIA litigation. None of this additional pre-raid factual detail relating to Judge Reade's involvement was ever contained in the Rule 16 "criminal discovery" that was part of the federal prosecution.
12. Neither I nor Mr. Cook or Sholom Rubashkin had any inkling of the nature and extent that Judge Reade had participated in planning meetings with law-enforcement personnel from Immigration and Customs Enforcement ("ICE") and from the Office of the United States Attorney from October of 2007 through April of 2008 as revealed in the exhibits attached in support of the Motion for New Trial. I had no knowledge that the date of the raid was determined by Her Honor's "scheduling needs." I had no knowledge Judge Reade participated in surveying and approving the Cattle Congress facility. Nor did I know that Her Honor attended meetings with the law enforcement team that was planning the raid and stated that she would "support" it.
13. Although I presumed Judge Reade knew the nature of the raid, participated in establishing judicial logistical requirements, and was privy to the search warrant application, I did not know that the U.S. Attorney's Office briefed Judge Reade on "the ongoing investigation" which at the time included undercover infiltration efforts of Agriprocessors (partially revealed in the trial). Nor do I know whether the "ongoing investigation" discussion included

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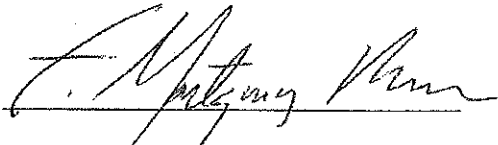
references to the arrest or prosecution of Shoim Rubashkin. Nor did I know that Judge Reade participated in a discussion of “an overview of charging strategies, numbers of anticipated arrests and prosecutions, logistics, the movement of detainees, and other issues related to the CVJ investigation and operation.”

14. Neither Judge Reade nor any representative of the Office of the United States Attorney told us of Judge Reade’s attendance at, and participation in, these planning meetings, much less details relating to what Judge Reade was told about “the ongoing investigation” and “overview of charging strategies, numbers of anticipated arrests and prosecutions, logistics, the movement of detainees, and other issues related to the CVJ investigation and operation.”
15. Had Judge Reade or the U.S. Attorney’s Office fully informed me of Her Honor’s full involvement in the planning for the raid and the nature and content of briefings relating to the “the ongoing investigation” and “charging strategies” and “other issues related to the CVJ investigation and operation” referred to without further explanation in the ICE materials acquired pursuant to the FOIA litigations, I believe we would have had no choice but to file a motion for Her Honor to recuse herself as the Judge in Mr. Rubashkin’s case for all purposes including the detention appeal. I would have also moved for Judge Reade to recuse herself from the companion civil case brought by First Bank Business Capital, Inc. in the Northern District of Iowa (NDI No. 2:08-cv-01035).

16. I first learned of Judge Reade's expansive participation in these law-enforcement meetings when Nathan Lewin, Esq., informed me on the telephone on July 13, 2010, that he had found references to Judge Reade's presence and participation in documents we obtained in a civil lawsuit to enforce rights under the Freedom of Information Act ("FOIA").

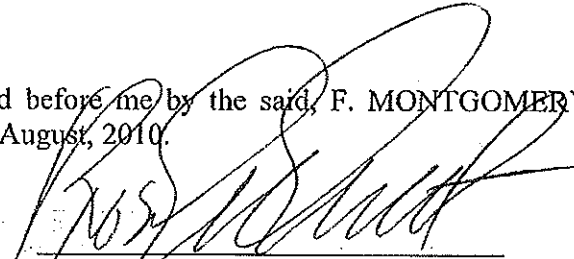
Further this Affiant Sayeth Not.

Pursuant to 28 U.S.C. Section 1746 I declare under penalty of perjury that the foregoing is true and correct.



F. MONTGOMERY BROWN

Subscribed, sworn to, and acknowledged before me by the said, F. MONTGOMERY BROWN, on this the 14th day of August, 2010.



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