

A Modern Day Blood Libel

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ment cited the fact that a recent Supreme Court ruling determined that prosecutors who file identity-theft charges must prove that the defendant knew that the identity used belonged to another person. Knowing that their case was doomed and in response to a motion filed last week by Rubashkin's lawyer, the prosecutors asked a federal judge to dismiss seven counts of aiding and abetting aggravated identity theft.

Defense lawyer Guy Cook hailed the request as a victory for his client and a government admission of "overreaching in this case."

SIMILAR GOVERNMENTAL OVERREACHING IN STEVENS AND AIPAC CASES

The Rubashkin case has not been the only recent incident of egregious prosecutorial overreaching. Last month, prosecutors dropped all alleged charges against 85-year-old former Alaska Governor Ted Stevens. Everyone remembers how the corruption indictment against Stevens caused him to lose his bid for reelection in the Senate, thereby ending a 40-year Senate career. The fact that charges have now been dropped, of course, will never reinstate his Senate seat.

According to a report in the *Anchorage Daily News*, "The Justice Department moved to dismiss former Sen. Ted Stevens' indictment on Wednesday, effectively voiding his Oct. 27 conviction on seven counts of filing false statements on his Senate financial disclosure forms."

"The decision by U.S. Attorney General Eric Holder comes after a new prosecution team discovered a previously undocumented interview on April 15, 2008, with the star witness in the case that sharply contradicted the most dramatic testimony in the four-week trial. The information had never been turned over to the defense, the Justice Department said in its motion."

"I always knew that there would be a day when the cloud that surrounded me would be removed," Stevens said in a written statement. "That day has finally come. It is unfortunate that an election was affected by proceedings now recognized as unfair. It was my great honor to serve the state of Alaska in the United States Senate for 40 years."

In a written statement, Stevens' attorneys decried the "corrupt" conduct of attorneys and the FBI in the case. "It was a bad judgment to have done so in the first place," said Brendan

Sullivan, the defense counsel for Senator Stevens. "He's a war hero. He served in the Senate for 40 years, and he was the target of prosecutors who wanted to enhance their own reputation."

Two weeks ago, in another high profile case, Federal prosecutors abandoned an espionage-law case against two former AIPAC lobbyists, Steve Rosen and Keith Weissman.

The Atlantic Monthly's Jeffery Goldberg put it succinctly when commenting on the government's decision to abandon the case: "It's about time. It was an idiotic case to begin with; the men were being prosecuted (under an ancient, seldom-used law) for receiving classified information passed orally - not even on paper - from a government stooge, and then passing it on to a reporter and to an official from the Israeli embassy. Rosen and Weissman did what a thousand reporters in Washington do every day - hear about information that's technically classified. The only difference is that these two worked for a demonized lobby."

"It's a sad day for the Walts and Mearsheimers of the world, who believe that AIPAC is a treasonous organization, and it's a sad day for AIPAC too, because it abandoned the two men to the fates when it should have stood by them."

With regard to the Rubashkin, the "Overreaching" of the prosecution in the identity theft case seems to just be the tip of iceberg.

9,311 COUNTS OF CHILD LABOR FROM 25-30 ALLEGED MINOR EMPLOYEES?

On the State level, prosecutors for the Iowa Department of Labor (IDOL) have also been guilty of egregiously overreaching in the child labor violations case, according to a motion submitted by Rubashkin's lawyers last week. On September 9, 2008, a Complaint and Affidavit was filed in Allamakee County accusing Sholom Rubashkin and others with 9,311 counts of claimed "child labor" violations in Chapter 92 of the Code of Iowa.

Rubashkin Attorney Monty Brown, who filed the motion, told the *Yated* in a telephone interview that the government alleges that there were between 25 and 30 child laborers working at Agri.

When the *Yated* asked how an alleged 25-30 laborers could produce a complaint containing 9,311 counts of child labor violations, he explained that the government counted every day that each alleged child worked there and multiple alleged violations

each day. The motion clearly charges that the government was using a "shock and awe" tactic that was certain to illicit maximum outrage.

Those who were closely following the Rubashkin saga from the outset will no doubt remember that it was that indictment of 9,311 counts of child labor violations that caused a tremendous uproar in the press and in cyberspace, and, according to many, set into motion the ultimate bankruptcy of the company.



Shalom Mordechai Rubashkin

The current motion, however, charges that the government, in its zeal to extract the ultimate price from Rubashkin, broke its own child labor laws, endangered the very children it has sworn to protect, and was guilty of outrageous government conduct, all, of course, to try targeting Rubashkin in the most derogatory fashion.

The allegations put forth in the motion clearly depict that a prosecutorial blood libel has been perpetrated against Rubashkin. In many ways, it makes the prosecutors in the above mentioned Ted Stevens and AIPAC cases look meek...

AGRI PROVES THAT IT PREVIOUSLY FIRED UNDERAGE EMPLOYEES WHO LIED ABOUT THEIR AGE... BUT IDOL WITHHELD THE FACTS

Let us return to April 2, 2008, when the IDOL, claiming that they had information that Agri was in violation of child labor laws, was given permission by Sholom Rubashkin to search Agri for minors, without a warrant. Employees were interviewed, but at the end of the process Rubashkin was not informed whether IDOL believed that one or more employees were minors.

In e-mail correspondence with the IDOL on April 28, Rubashkin's lawyers said that to the best of Agri's knowledge, there were no child laborers, and they asked if IDOL had any in-

formation suggesting that there were child laborers at the plant. In the e-mail, the lawyers wrote, "We all agreed that neither the State of Iowa, nor Agriprocessors, wants minors working in Agriprocessor's facility. We asked for the names of those employees believed to be under the age of 18, so Agriprocessors could take appropriate action to terminate their employment. You stated that you did not want to provide those names."

In addition, Agri has documents of numerous occasions where Agri actually fired employees because Agri determined that they had lied about their age and were under 18 years of age.

In effect, the motion says that, "It is provable that IDOL knew specific names or alias names in early April. When asked by Agriprocessors to disclose the suspected minors to assist Agriprocessors in complying with Chapter 92, IDOL refused."

"Instead, IDOL continued with their investigation and presumed planning of their own 'raid.' Meanwhile, human beings known or reasonably known by IDOL to be minors were permitted by the State to continue employ with Agriprocessors. The IDOL intentionally let alleged minors go to work at Agriprocessors, which is a prohibited place of employment for persons under age 18."

"IDOL intentionally and knowingly let minors go to work at the location that Iowa Labor

Commissioner David Neil later claimed, in immigration proceedings on behalf of one minor, subjected them to 'blackmail,' 'extortion,' 'false imprisonment,' 'felonious assault,' 'hostage,' 'involuntary servitude,' 'conspiracy,' 'obstruction of justice,' 'peonage,' 'slave trade,' 'torture,' 'trafficking,' and 'unlawful criminal restraint.'

"The IDOL's investigatory conduct in this case constitutes outrageous governmental misconduct that violates Defendant Sholom Rubashkin's due process rights. The people of this State entrust the IDOL to protect our children."

"It is outrageous to continue to let suspected children earn \$7.50 per hour in a packing plant while an investigation plods on. Particularly, when the likely reason includes a plan to develop a large workforce complaint so the State can assess more fines - money, from Agriprocessors."

"The IDOL willfully concealed from Agriprocessors and Defendant Sholom Rubashkin important facts which were detrimentally relied upon by the Defendants. This willful concealment placed Agriprocessors in a legal 'Catch-22' as Agriprocessors did not have the legal right to guess at ages or fire employees en masse on mere suspicion. The Iowa Civil Rights Act in Chapter 216 prohibits discrimination on the basis of 'age'. Title VII of the Civil Rights Act prohibits 'age' discrimination. Title VI of the

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Civil Rights Act prohibits discrimination on the basis of race and national origin. Agriprocessors and Sholom Rubashkin had a right to rely upon the lack of reported findings from the search on April 2, 2008 at the plant."

There you have it. The motion says that the IDOL was so determined to get its 9,311-count indictment that they refused to let Agri try to comply with the law. Their clear intention was to be able to nail Agri with a 'shock and awe' indictment that would in effect destroy the company.

This is exactly what happened.

That is the 'outrageous governmental misconduct' that Rubashkin lawyers are accusing the government of engaging in. "The conduct is so shocking that due process values necessitate dismissal of the charges as a matter of fundamental fairness."

WHO IS DAVID G. NEIL?

One more interesting point that bears scrutiny, which one person close to the case called a "blood libel" against Rubashkin and Agri, is the conduct of the Labor Commissioner of the State of Iowa, David G. Neil. Neil claimed in immigration proceedings against one minor that at Agriprocessors, the minor was subject to "blackmail, extortion, false imprisonment, felonious assault, hostage, involuntary servitude, obstruction of justice, peonage, slave trade, torture, trafficking, unlawful criminal restraint..." Aside from the fact that according to him, if Agri was doing all of the above, Mr. Neil himself committed the gravest travesty by letting the minors whom he knew were working there to continue working there, these highly exaggerated allegations raise questions of an ulterior motive on Neil's part.

Before assuming the post of Labor Commissioner of Iowa, David Neil was president of the Iowa United Auto Workers Community Action Council, between 1983 and 1985, and a member of the UAW since 1960.

The *Yated* asked Rubashkin attorney Monty Brown if the fact that Agri was not a unionized company and had resisted becoming part of a union could have had any effect on the proceedings that were initiated by the Iowa Labor Commission headed by Mr. Neil, the former union boss, Mr. Brown responded that the motion was not against any particular person but rather about the facts of the case.

Nevertheless, it seems that the question must be asked. In light of the IDOL's extreme way of prosecuting the case, and in light of the fact that they knowingly put the lives of minors in jeopardy in order to present a 'shock and awe' complaint against Agri and Mr. Rubashkin, did Neil's more than a decade as president of a union and more than 40 years of holding senior union positions influence the way the Department of Labor, under his leadership, prosecuted the case?

It is not a comfortable question to ask, but in light of the many questions surrounding the prosecution of the Rubashkin 'child labor' case thus far, it is a question that any person pursuing true justice cannot afford not to ask.

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REPLY TO:
DES MOINES

April 28, 2008

Gail Sheridan-Lucht
Attorney for Labor Commissioner
Iowa Workforce Development
Division of Labor Services
1000 E. Grand Avenue
Des Moines, Iowa 50319

VIA EMAIL AND U.S. MAIL

Re: Subpoena Issued by Division of Labor Services to Agriprocessors, Inc. and On-Site Document Review

Dear Ms. Sheridan-Lucht:

Jay and I very much appreciated the opportunity to meet with you on April 23 to discuss your investigation of Agriprocessors related to potential violations of Iowa Code Chapters, 91A, 91D and 92. As Agriprocessors and we have stated to you several times, Agriprocessors wants to cooperate and provide for your review documentation responsive to your investigation. We understand from our prior discussions, as well as the subpoena itself, the bulk of the information you are requesting will be contained in Agriprocessors' computer systems and personnel files. These sources of information will be available for your on-site review.

In your email dated April 17, you extended the deadline to comply with the sub-
April 30, 2008. We confirmed with you that April 30 is available for you to m-
review of the documents at Agriprocessors's facility in Postville. How-
April 30 is not a date that will work for you or Ginny Still to h-
upon May 20-21, 2008. You may begin reviewing doc-
closes at 5:00 p.m.

Second, although we have told you and provided documents demonstrating that Agriprocessors does not have any reason to believe it is presently employing any employee under the age of 18, you stated last week that you believe there are employees who may be under the age of 18. We all agreed that neither the State of Iowa, nor Agriprocessors, wants minors working in Agriprocessors's facility. We asked you for the names of those employees you believe to be under the age of 18, so Agriprocessors could take appropriate action to terminate their employment. You stated that you did not want to provide those names until you had the chance to review Agriprocessors's records to ensure the individuals in question previously worked or are presently working at Agriprocessors. Without those names, Agriprocessors is concerned that it may be inadvertently continuing to employ underage workers, a situation Agriprocessors would want to stop now. We would respectfully ask that you reconsider your position of not revealing the names until after your May 20-21 on-site review so Agriprocessors can address whatever additional information you have at this time, and terminate employment now of any underage worker if that is happening.

It is our understanding from our meeting last week and your April 14 email that when you are on-site May 20-21, you will not copy information (perhaps only a few things), but rather you will just be looking at the records. We discussed that if you would like to have a document copied, you will mark it and Agriprocessors will either make a copy for you or will discuss with you any copying concerns it may have.

We look forward to hearing from you regarding the matters raised herein. Thank you.

Very truly yours,

Mary E. Funk