

## PETITION for the Immediate Release from Pre-Trial Detention

Of Jeffrey L. Clemens in US v. Clemens

(USDC #1:2010-mj-01016 and #1:2010-cr-10124)

TO: Magistrate Judge Judith G. Dein

US District Court - Boston

Via Clerk Thomas Quinn

February 5, 2011

The current pre-trial detention of Jeffrey L. Clemens in the reference case is inappropriate, on numerous grounds:

- 1) Legally, it violates the defendant's right to reasonable bail and is intertwined with visible abuses of his right to due process.
- 2) Ethically, it conceals the underlying ethical problems with the prosecution by AUSA David G. Tobin:
  - a. He is a Suffolk Law 1988 classmate of the supposed victim in this case, attorney Stephen C. Pfaff - an attorney representing a prosecution witness against the defendant herein at a trial in Hingham District Court in 2008. The prosecution witness and Pfaff are both defendants in a 2009-2010 federal civil suit spawned from matters related to the Hingham trial in 2008.
  - b. He is a former associate of the Plymouth County DA office involved in the said Hingham District Court matter in 2008 (#05CR0954). In fact, the prosecutor in the DA office is also a defendant in the said civil suit. The associates of Tobin benefited from Tobin's prosecution of Clemens, as the prosecution was noted by USDC Judge William Young just before he dismissed the civil suit at a hearing on April 1, 2010, a dismissal the judge admitted was not based on the merits of the case.
  - c. He has a relative serving as deputy director of security at the Massachusetts state courts, where occurred the prosecution of the defendant herein for disorderly conduct (alleged by attorney Pfaff's client police officer), in which the conviction in 2008 was reversed on July 8, 2010, after excess delays on the part of the state (i.e., Tobin's former associates at the Plymouth County DA Office, who had asked for at least 120 days additional to provide a response to the Appellant Brief).
  - d. He withheld discovery in this pending matter, leading to delays and undermining the defense. For example, documents requested in July were not turned over until mid-September; at the same time the grand jury transcripts were provided incomplete by Tobin, portions directly related to the possible intentional prejudicing of the grand jury.
  - e. He interfered with a DOJ OIG investigation of FBI Agent Boisselle – the original complainant herein – in June 2010 by inappropriately contacting the FBI (the subject of the investigation) on his own accord. The undersigned has requested the email communication from Tobin to the FBI, but has not received a copy to date.

- f. He apparently misconducted himself at the grand jury herein, as evidenced in grand jury transcripts, as he presented admittedly inappropriate information about the defendant's criminal history – a Los Angeles matter involving the very same witnesses in this matter...the Town of Scituate (whose town administrator is also a supposed victim herein), as they provided information (the so-called O'Hara Report, an unchallenged, hearsay ridden piece of literature) to the federal authorities before any federal action was taken against Clemens. Additionally, Tobin failed to properly inform the grand jury of key definitions, leaving the jury to speculate what the law meant.
- 3) Morally, the defendant herein is unable to defend himself – cut off from information, from access to attorneys, from doing follow-on to numerous complaints initiated before the pre-trial incarceration, and is prevented from completing a Supreme Court brief in the related civil case involving attorney Pfaff and District Judge William G. Young and involving Ex Parte communication by attorney Pfaff with the court.
- 4) For the sake of appearance of propriety – an absolute requirement for the courts, as mandated by Canons of Judicial Conduct – the proximity of the BBO's Elisabeth Ditomassi (whose "Report" to the BBO board in November 2010 helped clear a complaint against attorney Pfaff) to the Magistrate Judge herein – Judith G. Dein, as both were attorneys at the firm Kirkpatrick & Lockhart at the same time in the past. Ms. Ditomassi worked with the Massachusetts Division of Insurance (insurance being a major area for K & L) through December 2010, so had an appearance of a conflict of interest in helping the BBO resolve a complaint against attorney Pfaff in the Fall of 2010, a complaint originating in the Fall of 2009, BEFORE this current prosecution by Stephen Pfaff's classmate David Tobin. The Commonwealth faced potential civil liabilities in its malicious prosecution of Clemens for Unlicensed PI and Criminal Harassment, matters that involved the clients and codefendants of attorney Pfaff.
- 5) The problems between the defendant Clemens and federal defender Ian Gold, as implied by the pleadings on the record calling for Gold's dismissal, are evidence of the legal, ethical, and moral dilemmas of this young attorney Ian Gold. So, the judicial system should not be in the business of corrupting young attorneys in order to cover up the abuses of the older attorneys.
- 6) There is no evidence of violence, intentions of harm, or past violent behavior regarding the defendant herein. In fact, the evidence submitted to carry on this prosecution has no threat identified on the face, and should be considered for dismissal as a matter of law. With such probability of dismissal for a number of legal reasons, the detention pre-trial of an innocent man is inappropriate and not a little immoral.
- 7) There is no evidence of a flight risk, as for years Clemens has repeatedly gone to the courts for redress. There has never been a circumstance of Jeffrey Clemens not appearing for a scheduled hearing in any court, except when the federal authorities were detaining him, as in 2005 when the Scituate Police Department made two criminal charges AFTER Clemens was taken into federal custody and AFTER the Department had faxed the Reporting Officer Report of May 12, 2005 to a federal agent (Ralph Sozio of the US Secret Service) one week before an FBI Complaint was filed for an arrest warrant. This state-federal intermingling continues to this day, to the benefit of attorney Pfaff's clients - those caught abusing the rights of Mr. Clemens.

Assistant US Attorney Tobin's prosecution of Clemens has only benefited Tobin's associates and not the public he serves. Tobin's prosecution is fraught with inappropriate prejudicial conduct. The continued detention of Clemens serves only to augment that prejudice, which fails to serve the public.

Sincerely,



Jonathan A. Clemens

PETITION submitted by

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