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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

Estate of JUDI BARI and
DARRYL CHERNEY,

No. C-91-1057-CW (JL)

Plaintiffs,

**PLAINTIFFS' OFFER OF PROOF
Re: The Raid on Seeds of Peace**

v.

FBI Special Agent FRANK DOYLE, et al.,)
And the UNITED STATES,)
Defendants.)
_____)

Trial Date: April 8, 2002
Judge WILKEN

1.

Plaintiffs maintain that the raid on the Seeds of Peace house ordered by defendant Sims was part and parcel of the plot to discredit them and Earth First!, and disrupt the Redwood

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Summer program, by means of a sensational false arrest and bombing/terrorism scandal. Given that there was no honest justification for the arrest of plaintiffs, or for the purported belief they were knowingly in possession of the bomb in their car rather than victims of it, the raid also had no justification, in point of fact. But if there is an argument that circumstances justified an emergency protective or “safety” search — supposedly to ensure that no other bomb or bombs, or a ‘bomb factory’, were present in this house the plaintiffs were said to have visited the day before — the raid, including the search that was made, and particularly the groundless arrest of several persons present in and returning to the house, was carried far beyond what the law allows.

Thus, there is a fair inference that defendants’ true purpose for the raid was not only to look for “supporting evidence”, as one of the raiders testified (see below), but to build up the sensation for the news stories being generated about bombing; and that their OPD colleagues—whether as un-sued co-conspirators, conscious agents or mere subordinates of Sims—shared or adopted defendants’ animus and readily obliged them in the way the operation was carried out.¹

On defendants’ motion to exclude reference to this part of the story at trial, the Court said the raid would not be relevant unless it could be shown that “bad things” done at the house were directed or “encouraged” in some way by Lt. Sims. Reporter’s transcript, 8/31/01, p.8, 41. Obviously plaintiffs could never get direct evidence that the raiders were told by Sims to ‘beat

¹ As the Court of Appeals has taught us, “[d]irect evidence of an improper motive or an agreement... to violate... constitutional rights will only rarely be available. Instead it will almost always be necessary to infer such agreements from circumstantial evidence...” *Mendo II*, 192 F.3d 1283, 1302 (cites omitted); and, likewise, “...a showing (of) acts that ‘are unlikely to have been undertaken without an agreement’” similarly permits the inference of a conspiracy. *Id.*, at 1301, quoting *Kunik v. Racine County*, 946 F.2d 1574, 1580 (7th Cir. 1991). The fact that the raiders are not named as defendants is immaterial. See, e.g., *Bell v. City of Milwaukee*, 746 F.2d 1205, 1276-77 (7th Cir. 1984)(“We cannot accept the proposition that the racial animus of an individual who in the course of his employment is involved with the investigation of an unconstitutional killing and conspiracy to conceal the truth, and who may or may not have knowledge of the racial motivations behind the conspiracy, is irrelevant merely because the individual was not named as a co-conspirator.”)

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2 the people up or tear the house apart', as the Court suggested; the Code of Silence police live by
3 would categorically prevent that, as everyone knows. Nevertheless, there is cogent direct and
4 circumstantial evidence which quite competently shows that the flagrant violations against these
5 friends and associates of plaintiffs — and the systematic destruction of Redwood Summer
6 organizing materials found in the house, including work resulting from the meeting plaintiffs
7 attended the night before — flowed directly from defendants' commission to their departmental
8 henchmen.

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2.

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11 The evidence will show that, in the event, a large force of Oakland and Berkeley police
12 officers and ATF and FBI agents descended on the house, illegally arrested four occupants at
13 gunpoint — along with three or four other people who approached the house during the early
14 stage of its approximately 16-hour occupation by the police (plus one stranger passing by, who
15 officers accosted, knocked down, and then arrested for battery on a police officer and resisting
16 arrest). Then they searched the house, a separate house at the rear of the property with a
17 different address, and a large trailer parked in the yard. An Oakland officer, Sgt. Maddux,
18 recorded a large portion of these proceedings on videotape, and there is also TV news footage,
19 showing Maddux himself making a statement to reporters while the raid was in progress, and the
20 Seeds of Peace members sitting outside in handcuffs; then, in a sequence that was broadcast
21 repeatedly on local news shows, officers exploded an unseen object taken from Darryl's van —
22 which one of the 'detainees' arrived at the house in — with what was described as a water
23 cannon. TV broadcasts reported the raid as a big part of the bombing story, at the top of the
24 news, and several stations had reporters posted there throughout the day. See videotape, Exhibit
25 A.²

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27 ² This exhibit has has two unlabeled parts: a short beginning segment containing sample
28 news stories including reports of the raid, followed by the OPD search footage taken by Sgt.
Maddux in its entirety (as received by plaintiffs).

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A Berkeley officer, Craig Chew, now an investigator with the Alameda County District Attorney’s Office, wrote in his report of “Out Aid to Oakland Police Department” that day, that “OPD wanted to search the (Berkeley) residence and detain the occupants/residents for questioning”, and that several persons who approached the house were also detained and turned over to OPD. See report, Exhibit B. Chew testified he was assigned to this detail by BPD Inspector Michael Wolke, and that, before the raid, he and Wolke met defendant Sims and Sgt. Maddux at a location in Berkeley, where “we were briefed on what was going on” in preparation for the raid. (Chew depo, p.7-8) No evidence of any bombs, bomb-making or other criminal activity of any kind was found, but the raid had just begun, and its true purposes now began to unfold.

The police videotape contains extended footage taken by Sgt. Maddux as he assisted then-OPD Sgt. Ron Zein — who defense counsel reports has disappeared from the ken of the OPD and the City of Oakland, without a trace — with a detailed search of the group’s office and its entire contents, which began after the protective ‘sweep’. On tape, the officers carefully inspect, display and describe various desk drawer contents, files, lists, calendars, notebooks, charts, books and artwork. They linger over a desecrated American flag, and a record album, standing up on a shelf, entitled “More Dead Cops”, comment sagely as the inspection progresses about the (constitutionally protected) activities reflected in the materials being perused, and apparently filch at least one piece of mail, which Sgt. Zein is seen slipping into his pocket. Tellingly, Sgt. Maddux testified recently that the purpose of the search was to look for “supporting evidence”. (Maddux dep, 11/29/01, p.43-45 (45:25), Exhibit C) He said he had turned the videotape over to defendant Sitterud when he returned to OPD headquarters late that afternoon, but no mention of this search was included in any of the officers’ reports of the raid; to plaintiffs’ knowledge, the videotape (provided in discovery) is the only record.

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The persons “detained” at the house were handcuffed, several at gunpoint, held under guard for a time (shown on the video) and finally taken away — although some had cuffs removed before they left, in aid of a lame pretense that they were going “voluntarily”— to OPD headquarters, supposedly for “questioning”.³ There they were held in locked rooms for several hours, then released without being questioned at all. It is now reported that a dispute arose at the end of the detention, between defendant Sims and members of the FBI contingent working on the case, as to whether the ‘detainees’ could be interviewed without being given Miranda warnings, since they had been locked up all afternoon. This part of the story was left out of Sgt. Sitterud’s report of the case, however—and indeed was not made known to plaintiffs until the deposition of FBI Special Agent John Lohse, in December, 2001—while Sitterud wrote in his log simply that those detained had been released at the request of an Assistant U.S. Attorney. No subsequent effort to interview any of these or other Seeds members was ever made by any defendant or anyone else from the FBI or OPD.

After their release, the Seeds members were still prohibited by police from returning to their house, which was under police guard, but they were told by officers they could regain possession the next morning at 9:00 a.m., and, specifically, that it would be kept secure until that time. When some of them went back at 6:00 a.m. the next day, however, the house was empty, standing open, and completely torn apart inside. Bookshelves were cleared onto the floor, drawers dumped, mattresses slashed, furniture broken and tipped over, etc, and “months of

³ Clearly these associates of plaintiffs (like several others) were arrested that afternoon, as a matter of law. See, e.g., *Florida v. Royer*, 460 U.S. 491 (1983). Removal to the police station (*inter alia*) is decisive, *Hayes v. Florida*, 470 U.S. 811, 816 (1985); *Gonzalez v. City of Peoria*, 722 F.2d 468, 477 (9th Cir. 1983), overruled on other grounds in *Hodgers-Durgin v. De la Vina*, 199 F.3d 1037 (9th Cir. 1999). As to the pretense that the subjects went “vountarily” — besides the obvious contradiction that they were locked up for hours after got there — coercion is not required in any case, so long as there are words or acts by officers which the subjects ‘feared to disregard...’ See, *Asgari v. City of Los Angeles* (1997) 15 Cal.4th 744, 754-55.

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work” on Redwood Summer destroyed. To be sure, no part of this follow-up blitzkrieg appeared on any OPD videotape; but some of the results were recorded by the press, who Seeds invited in later that day to see the police handiwork. See Exhibit A (video composite) and clipping, Exhibit D.

4.

It is undisputed that there was no judicial warrant authorizing the search that was made at the start of the raid, shortly after the bomb exploded in Judi’s car, as shown on the videotape. Sgt. Maddux testified he and others returned to the OPD Homicide office, where he gave Sgt. Sitterud the videotape showing the search the raiders had carried out, as noted. Sgt. Dave Politzer, whose pager number and related info show prominently on a page that appears to be Lt. Sims’ notes for the afternoon of May 24th (Exhibit E) — and who is also reported as no longer available or reachable through the City of Oakland — wrote in his report of the day’s activities that he left the house with Maddux and Zein at 1745 hours, and “returned to OPD for preparation of search warrant.” Politzer said in his report that the raiders had been instructed beforehand “to look for victims / and or suspects, connected to the bombing which had just occurred in Oakland.” Exhibit F.

A warrant to search the house at 3247 California Street was obtained by defendants along with the warrant to search Judi’s home, both on the basis of Sgt. Chenault’s Affidavit, at 2:21 a.m. that night. A report by OPD Sgt. Ralph Lacer listing property removed from the house says the search was conducted by him, Zein, Politzer and Sgt. Engler — a Berkeley P.D. bomb technician who testified he had little or no memory of this later part of the event — between 0422 and 0530 hours on May 25, 1990, a half-hour before the residents came home and found the house empty and trashed. Exhibit G. It will be noted that Lacer, obviously aware of the need to cover-up the earlier, warrant-less search shown on the tape, styled his narrative to read as if the search at 0422 hours was the first police entry into the house after the purported protective

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sweep — although he wrote nothing, of course, about the destruction of the household and the materials Seeds members had assembled for Redwood Summer — and that he listed Lt. Sims as his supervisor in the assignment. Counsel for the City of Oakland has refused to produce Sgt. Lacer for deposition during the recent discovery phase, on the (inaccurate) grounds that he was not included on the witness list filed in September.⁴

5.

To sum it up: after deciding so precipitously to arrest the plaintiffs for the bombing, and learning of their connection to the Seeds of Peace house, defendants sent their OPD brethren to raid the house, “detain” the occupants, and search the premises — without a search warrant — for evidence to support their (bogus) charges. This was done, and played out before the TV reporters, and the raiders brought back eight or nine persons, whose detention would swell the sensation of the news stories — along with the videotape which should have shown defendants there was no basis to suspect the Seeds people of any wrongdoing, let alone keep them locked up for four or five hours. Only several hours later did the defendants seek a search warrant for the house, without disclosing to the Magistrate that the search they were seeking judicial authorization for *had already been carried out, and nothing of the kind of bomb and bomb-making evidence they were swearing to her they had probable cause to believe was on the premises had been found!*

⁴ The sergeant actually was included on the list, not by name but in an OPD raiders catchall item. Please see plaintiffs’ Notice of Status, etc., filed herewith, for plaintiffs’ request for leave to take the deposition.

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In these circumstances, it is clear that the wholesale First and Fourth Amendment violations which occurred in the course of the raid and occupation of the Seeds of Peace house flowed from defendants’ decision to mount their unconstitutional political assault on plaintiffs and their movement, and the acceptance and performance by the other officers — through a clear ‘meeting of the minds’, whereby they formed a conspiracy within the conspiracy — of their illicit assignment and role in that attack. There is explicit connection of the defendants to the raid itself — which was groundless to begin with — to the illegal arrest and detention of the occupants and visitors, and to the unconstitutional search of the house shown on the videotape. The reports of Chew and Politzer show that Sims was behind the illegal ‘detention’ of the residents and others; Maddux’s testimony that they were looking for supporting evidence, and his delivery of the videotape to defendant Sitterud, can be taken to show that defendants ordained the illegal search, and the knowing deception of the magistrate with respect to the prior occurrence of the search with negative results—compounded on the many other false and deceptive statements in the affidavit regarding plaintiffs and the bomb—shows defendants’ disposition to carry out the assault on the rights of plaintiffs’ and their associates without compunction, both directly and through the raiders as proxies.

Thus the only particular from this repulsive little subplot which is not explicitly linked to defendants in the known evidence is the destruction of the office full of Redwood Summer organizing materials and the rest of the household by the officers who re-entered in the wee hours with the search warrant, since plaintiffs obviously have no ‘fly on the wall’ or turncoat witness, to describe the meeting of the minds and actions arising from it at that point. As a matter of causation, however, these actions are quite as clearly derived from defendants’ orders for the raid as the illicit arrest of the occupants and the illegal first reconnaissance search, and they are equally a part of defendants’ political assault on plaintiffs and their movement. “One who orders an act to be done is liable for its consequences as he would be for his own personal

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conduct if he has or should have knowledge of the conditions under which it is to be done.”⁵
Therefore, there can be no fair restriction on the plaintiffs’ proofs regarding the raid the
defendants caused to occur, as part of their plot against plaintiffs, at Seeds of Peace.

DATED: January 21, 2002. Respectfully submitted,

Dennis Cunningham
Attorney for plaintiffs

CERTIFICATE

I certify that I served the within Offer of Proof on defendants by E-mail and personal
delivery to the offices of R. Joseph Sher in Washington D.C., and Maria Bee in Oakland,
respectively, on January 22, 2002.

Dennis Cunningham

⁵ See Restatement (Second) of Torts § 877, Comment a (1979), “Directing or
Permitting Conduct of Another”.