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

UNITED STATES OF AMERICA,	:	CRIMINAL NO. 2:08-cr-1324
Plaintiff,	:	AFFIDAVIT OF ATTORNEY
vs.	:	GUY R. COOK
SHOLOM RUBASHKIN,	:	
Defendant.		

GUY R. COOK hereby declares under penalty of perjury:

1. I was trial counsel for Sholom Rubashkin. I am submitting this Declaration in support of his Motion Under Rule 33(b)(1) of the Federal Rules of Criminal Procedure for a New Trial Based on Newly Discovered Evidence.
2. On November 19, 2008, Magistrate Judge Jon S. Scoles detained Sholom Rubashkin upon Mr. Rubashkin's arraignment on the superseding indictment in case number 08-cr-1324 in the Northern District of Iowa.
3. On November 26, 2008, I was retained on the above matter and joined F. Montgomery Brown as counsel for Sholom Rubashkin.
4. Upon retention, my initial focus was to ensure reversal of Magistrate Scoles's detention decision. To that end, on December 8, 2008, we appealed the magistrate's order of detention to Judge Reade.
5. Upon filing the detention appeal, I had further opportunity to familiarize myself with the case's nuance and, thereby, study the propriety of potential motions to protect my client's interests. The motions I considered initially included, but were not limited to:

- Dismiss for Grand Jury Abuse
- Change of Venue
- Severance
- Suppression
- Recusal

6. A strong factual and legal basis existed to file the first three aforementioned motions; those motions were filed – the severance and the change of venue motions succeeded. Given the law on suppression and the facts underlying this case, the motion to suppress appeared to lack merit and a motion to suppress was not filed.
7. With respect to a potential recusal motion, it was a motion I studied and considered carefully. Indeed, a potential recusal motion was the subject of considerable discussion between co-counsel Brown and me. Integral to our analysis of the potential recusal motion was the court's Order denying recusal in the collateral case of *United States v. De La Rosa-Loera*, N.D. Iowa No. 08-CR-1313-LRR.
8. In the *De La Rosa* Order, Judge Reade critiqued the defendant's argument for recusal by asserting the defendant and others critical of her involvement in the May 2008 raid and the efficient prosecutions thereafter did not understand the "true" facts surrounding the same: "Put simply, one should not believe everything that is written in newspapers, press releases, letters or accept as true the misinformed speculation of those who lack personal knowledge of all the facts." 08-CR-1313-LRR, Document No. 60 (Order Denying Motion to Recuse).
9. In the *De La Rosa* Order, Judge Reade asserted "the Waterloo cases [were] no different than other multiple-defendant cases" and her involvement was "logistical."

I believed the court's assertion she was not involved in an any executive function – including, but not limited to, charging strategies for Postville defendants.

10. At bottom, however, I believed the court's assertion the evidence supporting recusal was contrived and there was no further evidence to support recusal.

11. Given Judge Reade's decision in *De La Rosa*, Mr. Brown and I predicted the likelihood of success on a recusal motion for Mr. Rubashkin was low. Nevertheless, we were concerned by her presiding over Mr. Rubashkin's trial, but – on balance – we decided our energies were best focused on motions where Judge Reade had not previously ruled.

12. That said, neither Mr. Brown nor I had an inkling 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 on January 28, 2008, and on March 17, 2008.

13. Neither Judge Reade, nor any representative of the United States Attorney's Office for the Northern District of Iowa, informed us of Judge Reade's attendance at, and participation in, these planning meetings.

14. Had we been fully informed of Judge Reade's involvement in the May 2008 raid, there is no question we would have moved to recuse. The only reason a recusal motion was not filed is that we were unaware of the planning meetings attended and participated in by Judge Reade because we believed that full disclosure of her involvement had been made in her Order of September 29, 2008, in the *De La Rosa-Loera* case.

15. Any reasonable "average person on the street" who knew (a) that Judge Reade

attended meetings in January 2008 and March 2008, with the law-enforcement team that was planning the May 2008 raid on Agriprocessors, (b) that she was briefed at these meetings would seriously question her impartiality in a criminal prosecution of Sholom Rubashkin growing out of that raid.

16. I filed a Freedom of Information ("FOIA") request on behalf of Mr. Rubashkin on February 5, 2009. FOIA law requires the government agency to provide the requested information within specific periods of time subsequent the date of the request. Notwithstanding repeated letters and calls from my office, the government did not follow the law. Eventually, I was forced to sue the Department of Homeland Security to obtain production of the documents which should have been provided initially. It is these documents that subsequently revealed Judge Reade's previously unknown involvement with the government prior to the raid on Agriprocessors and prosecution of Sholom Rubashkin.

17. Due to the pending FOIA lawsuit, production of the requested FOIA materials occurred on the following date:

- March 31, 2010 - first response/release
- April 16, 2010 – second response/release
- May 21, 2010 – third response/release
- June 18, 2010 - fourth response/release
- July 16, 2010 - fifth and final response/release

18. Mr. Rubashkin's two-day sentencing hearing occurred April 28 – 29, 2010.

19. Given the stage of proceedings, FOIA materials were forwarded to appellate counsel.

20. Upon review of the extensive FOIA materials, on July 13, 2010, appellate counsel

Nathan Lewin informed me that there were references to Judge Reade's presence and participation in the FOIA documents.

21. I then verified with Mr. Brown that neither he nor I had ever been told of Judge Reade's participation in these meetings by the Judge or by the prosecutor.

FURTHER AFFIANT SAYETH NOT.

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

Guy R. Cook 8/4/2010

GUY R. COOK DATE

Subscribed, sworn to, and acknowledged before me by the said, Guy R. Cook, on this the 4th day of August, 2010.

NOTARY PUBLIC

MARY T BOWE
Commission Number 745802
My Commission Expires
March 13, 2013