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ERIC MCDAVID
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7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,)
11 Plaintiff,)

12 v.)

13)
14)
15 ERIC MCDAVID,)
16 Defendant.)

Case No. CR.S-06-0035-MCE

**DEFENDANT ERIC MCDAVID'S
OMNIBUS MOTION TO DISMISS
THE INDICTMENT**

DEFENDANT'S NOTICE OF MOTION
AND "**OMNIBUS**" MOTION TO
**DISMISS THE INDICTMENT BASED
UPON VIOLATION OF THE DUE
PROCESS CLAUSE AND
OUTRAGEOUS GOVERNMENT
MISCONDUCT**; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF; REQUEST FOR
EVIDENTIARY HEARING.

Date: February 6, 2007
Time: 8:30 A.m.
Judge: Hon. Morrison C.
England

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22 To: McGregor W. Scott, R. Steven Lapham, attorneys for
23 plaintiff: PLEASE TAKE NOTICE that on the above date in the
24 above entitled action, defendant, through counsel MARK J.
25 REICHEL, will move this Honorable Court to issue an order
26 dismissing with prejudice the indictment in this matter.
27

28 Omnibus Motion to dismiss indictment

1 This motion is made upon the grounds that the due
2 process clause prevents the prosecution of the defendant in
3 the instant matter.

4 This motion is based on the United States Constitution,
5 the Federal Rules of Criminal Procedure, the Points and
6 Authorities submitted in support, and such argument and
7 evidence of counsel at the hearing on the motion.

8 Respectfully submitted
9 DATED: December 19, 2006.

11 MARK J. REICHEL
12 ATTORNEY AT LAW
13 Attorney for defendant

14 /S/ Mark Reichel

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 SUPPORTING FACTS¹

3 This case is the result of an intersection between the
4 lives of 2 individuals who met during a very distinct period
5 in modern American history, the years 2002-2005, immediately
6 after this country had endured the worst loss of civilian
7 life ever inflicted upon it by a hostile foreign force, in
8 September of 2001.

9 In that time frame, August 2004, college student Eric
10 McDavid met "Anna" an undercover FBI informant. McDavid
11 believed that "Anna" (not her true name) was someone who
12 shared similar interests in lawful political dissent from the
13 present political views and positions of this country.
14 McDavid assumed Anna was who she said she was: a young
15 student also exploring herself and learning about the world
16 while traveling and attending political demonstrations.

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19 ¹ This factual background comes from the discovery
20 provided by the government, defense investigation conducted
21 to date, and the anticipated testimony and evidence to be
22 submitted at the hearing of the motion. The criminal
23 complaint also sets forth the government's version of events
24 in detail.

25 A succinct account is that the defendant Eric McDavid
26 first met "Anna," not her real name, who was an untrained
27 full time government informant in the Summer of 2004.
28 Defendant was at that time traveling in Des Moines Iowa and
was committing no crime but was actually "targeted" for
contact and infiltration by Anna as part of a "profile" she
used for the FBI to meet, maintain contact with, provide
information on and collect data about. From 2004 until June
of 2005, defendant McDavid and Anna kept in contact via e
mail and otherwise. At some time, but at least by June of
2005, Anna informed the FBI that McDavid was involved in a
conspiracy to commit certain crimes. McDavid was arrested in
Anna's presence in January 2006 and charged in the instant
case.

1 McDavid did not know that Anna was targeting him for her work
2 infiltrating and conducting investigations on people and
3 groups for the FBI, very much like the "secret police." Anna
4 was a well paid but untrained informant who had no law
5 enforcement training but who nevertheless had carte blanche
6 approval to engage in high level law enforcement
7 investigation, with the authority to commit violent and
8 illegal acts. When the dust settled a year and a half later,
9 defendant McDavid was indicted in this case.

10 Eric Taylor McDavid. Eric is one of 3 children raised in
11 a wonderful, highly functioning and loving household in the
12 Forest Hills, California area. Eric, as with all 3 McDavid
13 children, was a healthy and law abiding adolescent throughout
14 high school, playing on the high school football team. After
15 high school, Eric wandered from local community college
16 classes to part time and full time jobs, living off and on at
17 home with his parents. He was well known and liked, without
18 an enemy.² He was active in church groups, youth groups,
19 community service, and quite a valued member of his family-so
20 handy as a carpenter and with a hammer that he literally did
21 most of the major building projects on the beautiful and
22 stately family home by himself.

23 "Anna" the informant. At present, not much is known
24 about Anna. The important information is that the FBI alleges
25 that she went to work for them in 2004 as an informant for
26

27 ² An appropriate Jewish proverb states that "If you want to know the true character of someone,
28 don't ask his mother, ask a neighbor." In this case, as was heard at the bail hearing, Mr. McDavid has a
large number of great citizens who have known him for years, through church and community, and who
vouch for his great character.

1 pay, that she has no prior record, that she has successfully
2 assisted in at least 12 undercover "anarchist"
3 investigations.

4 The defense has uncovered numerous persons who advise
5 that "Anna" was involved in trying to talk people into
6 committing criminal acts as early as 2003; thus, Anna either
7 worked earlier than the FBI states or else she was in
8 actuality a criminal at that point.

9 In 2004, Anna was traveling around numerous parts of the
10 United States attempting to infiltrate legal and legitimate
11 protest and politically motivated groups. Although she did
12 not limit herself to any particular type of political
13 protestor, she did target young males, those who identify
14 themselves as "anarchists" or "green anarchists."

15 By that time, 2004, the Attorney General of the United
16 States had designated "eco terrorism" to be the number one
17 domestic threat to "National Security" in the nation, *above*
18 *that of Al Qaeda*. In a statement before the Senate Judiciary
19 Committee in May 2004, John E. Lewis of the FBI's
20 Counterterrorism Division noted the "upswing in violent
21 rhetoric and tactics" among ecoterrorists and said that in
22 recent years ALF and ELF "have become the most active
23 criminal extremist elements in the United States."

24 The shockingly sad result. As a result of the foregoing,
25 the following illegal acts of the Department of Justice,
26 through their informants, the FBI and the U.S. Attorney's
27 Office, occurred against the defendant and the justice
28 system. Most require exclusion of all evidence, many require

1 a dismissal of the charges. To the extent that not all
2 evidence is suppressed, or the indictment is not dismissed,
3 it cannot seriously be doubted that the prosecution is an
4 extremely corrupt one, one that the court should not
5 countenance. In other words, to the extent that the
6 indictment survives, to the extent that evidence is not
7 suppressed, the combined effect of the illegality in this
8 case by the government and their agents is that the
9 indictment should be dismissed for the "combination of
10 factors" render the prosecution of the defendant in this
11 instance repugnant to our notion of fundamental fairness. As
12 such, there can be no appropriate relief other than for a
13 complete dismissal of the charges to remedy the illegality.

14 The intersection of Anna and Eric's lives, in the times
15 they lived in, resulted in the indictment of Eric McDavid in
16 violation of his many rights as follows:

- 17 1. His First Amendment Rights were violated.;
- 18 2. There was outrageous misconduct in attempting to make
- 19 an explosive device;
- 20 3. There was outrageous misconduct in the general manner
- 21 of investigation;
- 22 4. There were illegal general searches of property and
- 23 possessions.
- 24 5. There were illegal searches of e mail and computers.
- 25 6. There was illegal video and audio surveillance
- 26 7. There was an illegal search in violation of curtilage
- 27 8. There was an illegal search of a car and contents

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1 9. There was an illegal warrantless arrest and
2 warrantless search on date of arrest

3 10. There was illegal contact with a represented party

4 11. There was illegal interference with the right to
5 counsel of choice and disparaging of defense counsel

6 12. There was misconduct in inflammatory public remarks

7 13. There may be late filed discovery by the government.

8 14. There must be an exhaustive and complex "taint"
9 hearing, such that no witnesses may be competent to testify
10 as they may have been exposed to evidence obtained
11 unlawfully.

12 **LEGAL ARGUMENT**

13 United States v. Barrera-Moreno, 951 F.2d 1089, 1091
14 (9th Cir. 1991) holds that a district court may dismiss an
15 indictment either to remedy outrageous governmental conduct
16 amounting to a due process violation, or under the court's
17 supervisory powers to remedy a constitutional violation, to
18 protect judicial integrity, or to deter future illegal
19 conduct.

20 It is best articulated that outrageous misconduct occurs
21 when "...the challenged conduct violates commonly accepted
22 norms of fundamental fairness and is shocking to the
23 universal sense of justice." United States v. Russell, 411
24 U.S. 423, 431-432 (1973). As such, Anna's conduct must be
25 judged according to "commonly accepted norms..."

26
27 The investigation of Eric McDavid is the result of a
28 corrupt executive branch decision which was and is illegal,

1 and it resulted in an extremely large number of errors by
2 that executive branch in the investigation and prosecution of
3 the defendant, a number of legal errors so significant that
4 their combined weight compels the dismissal of the indictment
5 with prejudice.

6 CONCLUSION

7 For the reasons stated above, defendant respectfully
8 asks that the Court grant his "omnibus" motion to dismiss the
9 indictment.

10 Respectfully submitted

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12 DATED: December 19 2006.

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14 MARK J. REICHEL
15 ATTORNEY AT LAW
16 Attorney for defendant

17 /S/ Mark Reichel
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