

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

UNITED STATES OF AMERICA	:	
vs.	:	CRIMINAL NO. 3:14CR227 (AWT)
EARL O'GARRO	:	October 1, 2015

MOTION TO DISMISS

The Defendant, Earl O'Garro, through undersigned counsel, respectfully moves this Honorable Court to dismiss the indictment in this case. This motion is pursuant to the Due Process Clause of the Fifth Amendment to the United States Constitution and based on the ground that because of extensive pre-indictment publicity, Mr. O'Garro was denied his right to an indictment returned by an unbiased grand jury.

FACTS

In or about late 2013, Earl O'Garro received a target letter from the Office of the United States Attorney. Mr. O'Garro contacted the government, in response to the target letter, and agreed to schedule a meeting at the United States Attorney's Office. The meetings lasted 2 days and was conducted on or about November 7 and 8, 2013.¹ The parties discussed amongst other topics the government's pending investigation of potential criminal allegations against Mr. O'Garro and others. No federal charges were pending against him at the time.

On the first day of the meeting, the parties discussed resolving Mr. O'Garro's federal case by way of an immunity agreement, non-prosecution agreement or even sealing any potential

¹ At the meeting the government was represented by at least 2 or 3 special agents from the Federal Bureau of Investigations and an assistant United States attorney. Mr. O'Garro was not represented by counsel.

disposition. On the second day of the meeting, Mr. O'Garro again asked the government its position with respect to resolving the case. In response, the government attorney asserted that he had spoken to the Department of Justice in Washington, D.C., and that given the significant amount of attention already received in the state of Connecticut, the Department of Justice was not willing to dispose of the potential case using a non-prosecution agreement or immunity agreement, or even sealing any disposition. In short, the government attorney explained the United States Attorney's Office and the Department of Justice firmly believed issues surrounding Mr. O'Garro and the potential criminal allegations already received too much publicity, which prevented disposing the matter in the aforementioned ways.

Similarly, the grand jury minutes from October 22, 2014, reveal that a government case agent was not only persuaded by the publicity to investigate Mr. O'Garro, but also first learned about the possibilities of Mr. O'Garro's alleged fraud through the extensive media coverage. The pertinent government discussion is listed below:

Q And how was is that Mr. O'Garro came to your attention?

A Actually I was -- I read the newspaper as most of us do every morning and I noticed there was some money missing from the City of Hartford for insurance policies that they've procured through Mr. O'Garros insurance agency.

Q Okay. And just briefly describe -- and was that an article that appeared in the Hartford Courant?

A Correct.

Q Okay. And just briefly describe the report that you read in the Hartford Courant regarding Mr. O'Garros handling of accounts with the City of Hartford?

A Okay. The City of Hartford the schools and the City itself had gone to Mr.

O'Garro to procure insurance for liability policies for employees and facilities not only for the City but for the schools as well. Most policies are extremely expensive, as one can understand when you're dealing with a municipality.

As part of that they forwarded several hundred thousand dollars approximately 690 almost \$700,000 to Mr. O'Garro's company to pay those policies. So what he does is he's the broker. He goes out to the actual carriers that provide the insurance coverage and he brokers the deal with them on behalf of the City.

So in this case he brokered these policies with a couple of national carriers and received premiums that were meant to then go from him to that carrier to cover it. He at one point met -- he bumped into the treasurer from the City of Hartford and told him Oh by the way they're going to cancel these policies unless you remit to me which is somewhat unusual the amount that's needed to go to the carrier

Q And let me just stop you there. Do you recall Special Agent O'Brien whether that interaction between Mr. Cloud and Mr. O'Garro was described in the article or was that information that you later learned during the course of your investigation.

A That's something I learned later during the course of the investigation.

Q **Okay. So with respect to the Hartford Courant article I take it that the gist of it was that the City of Hartford had forwarded these premium payments to Mr. O'Garro with the expectation that they would then be forwarded onto the carriers?**

A **Correct.**

Q But in fact they were not forwarded onto the carriers is that correct

A Correct. So approximately six weeks went by and the carriers sort of complained that they hadn't received the premium monies that had been forwarded to Mr. O'Garro.

Q **And having read that article did that prompt your interest?**

A **Yes it did.**

(Grand Jury testimony, dated October 22, 2014, pp. 6-9[**bold emphasis added**]).²

ARGUMENT

The Fifth Amendment provides, in pertinent part, that "[n]o person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment to a Grand Jury" The Fifth Amendment's requirement has not been met unless the grand jury which handed down an indictment was free from bias and prejudice. Thus, the decisions of the Supreme Court addressing grand jury indictments hold that defendants in federal court do have a right to an unbiased grand jury.

In *Costello v. United States*, 350 U.S. 359, 363 (1956), the Court stated that "[a]n indictment returned by a legally constituted and **unbiased** grand jury, . . . if valid on its face, is enough to call for trial of the charge on the merits." (Emphasis added).

A number of courts have interpreted a line of Supreme Court cases, including *Costello*, as recognizing a constitutional requirement that an indictment be returned by an unbiased grand jury. See, e.g., *United States v. Burke*, 700 F.2d 70, 82 (2d Cir. 1983), cert. denied, 464 U.S. 816 (1983); *United States v. Serubo*, 604 F.2d 807, 816 (3d Cir. 1979); *United States v. Waldbaum, Inc.*, 593 F. Supp. 967, 970 (E.D. N.Y. 1984); *United States v. Gold*, 470 F. Supp. 1336, 1345 (N.D. Ill. 1979).

Here, the significant publicity and public outcry generated by the case irreparably tainted the grand jury's integrity, thus rendering the Second Superseding Indictment defective. For instance, news of the allegations involving Mr. O'Garro hit early and often, presuming him guilty as charged one year before the formal indictment, and weeks before he even met with the government. Some

² The full grand jury transcript may be furnished upon the Court's request.

of the articles referred to the Defendant's grand jury investigation.

- October 11, 2013 See <http://wnpr.org/post/hybrid-insurance-defaults-state-loan> (Hybrid Insurance Defaults on State Loan);
- October 15, 2013 See <http://wnpr.org/post/financial-problems-work-and-home-ogarro> (Financial Problems at Work, and at Home for O'Garro);
- October 18, 2013 See <http://wnpr.org/post/hartford-controversy-state-files-11-count-complaint-against-hybrid-insurance> (In Hartford Controversy, State Files 11 Count Complaint Against Hybrid Insurance);
- October 25, 2013 See <http://wnpr.org/post/how-well-do-adam-cloud-and-earl-ogarro-know-each-other#stream/0> (How well Do Adam Cloud and Earl O'Garro Know Each Other?);
- October 25, 2013 See <http://foxct.com/2013/10/25/grand-jury-convened-as-feds-subpoena-hartford-records-in-insurance-controversy/> (Grand Jury Convened as Feds Subpoena Hartford Records in Insurance Controversy)
- November 22, 2013 See http://articles.courant.com/2013-11-22/news/hc-op-rennie-hartfords-ogarro-should-sing-to-feds--20131122_1_campaign-finance-law-enforcement-raymond-soucy (Under a Cloud, O'Garro's Best Bet: Sing)
- December 10, 2013 See http://articles.courant.com/2013-12-10/news/hc-ogarro-loan-1211-20131210_1_hybrid-insurance-earl-o-garro-jr-hartford-controversy (Insurance Company in Hartford Controversy Got \$500,000 State Loan)
- December 31, 2013 See <http://wnpr.org/post/message-earl-ogarro-state-coming-its->

[money#stream/0](#) (Message to Earl O'Garro: The State is Coming for Its Money)

- August 11, 2014 See <http://www.courant.com/news/connecticut/hc-ogarro-arrested-0812-20140811-story.html> (O'Garro Charged with Failing to Pay Restaurant Employees)

CONCLUSION

The listings above were just part of the media storm surrounding the Earl O'Garro matter and in no way is exhaustive. Between the year the first story broke, through the grand jury investigation and indictment, countless stories were found in print, electronic media and on television thus influencing the minds of the grand jury, much less the government. As the case agent intimated in his testimony – the government's interest in this case grew as the reported stories gained momentum. Those same stories had an undeniable and irreversible impact on the grand jury. As such, the structural protections of the grand jury have been so compromised as to render the proceedings fundamentally unfair. *Bank of Nova Scotia v. United States*, 487 U.S. 250, 256-57 (1988). Here, only a dismissal of the Second Superseding Indictment is justified to eliminate prejudice to the Defendant. *United States v. Hogan*, 712 F. 2d 757, 761 (2d Cir. 1983).

Respectfully submitted,

THE DEFENDANT,
Earl O'Garro

FEDERAL DEFENDER OFFICE

Dated: October 1, 2015

/s/ Tracy Hayes
Tracy Hayes
Assistant Federal Defender
265 Church Street, Suite 702
New Haven, CT 06510
(203) 498-4200
tracy_hayes@fd.org

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 1, 2015, a copy of the foregoing Motion to Dismiss was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

/s/ Tracy Hayes
Tracy Hayes