

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF SOUTH CAROLINA**  
**COLUMBIA DIVISION**

<b>UNITED STATES OF AMERICA</b>	)	<b>CR. NO. 3:05-1256 (MJP)</b>
	)	
<b>-vs-</b>	)	<b>MEMORANDUM IN SUPPORT OF</b>
	)	<b>DEFENDANTS ALLEN DEAN RAITT'S</b>
	)	<b>AND JEANNINE RAITT'S</b>
<b>ROBERT BYRON GREEN, JOHN</b>	)	<b>MOTION TO SUPPRESS STATEMENT</b>
<b>RAYMOND HOY, GARY JOSEPH</b>	)	
<b>HOY, ALLEN DEAN RAITT,</b>	)	
<b>JEANNINE RAITT, AND STEVEN C.)</b>	)	
<b>DUBOSE</b>	)	

**I. INTRODUCTION**

On May 9, and 10, 2006, the court heard testimony from Agents Ryan Shiplett and Paul Lee of the Secret Service and from Allen and Jeannine Raitt concerning statements made by the Raitts on June 20, 2005. This memorandum will attempt to summarize the testimony and the law applicable to coerced confessions, such as the ones involved in this case.

**II. FACTS**

Jeannine Raitt is a 35-year-old female, with no prior experience being questioned as a suspect in a criminal case. She testified that she felt obliged to answer law enforcement's questions because her father was a highway patrolman and her godfather was a judge. Jeannine Raitt testified that her husband, Allen Raitt, was also ill-equipped to resist the intense

interrogation they were subjected to in this case because he was a recovering drug addict. The Raitts were on their way to a meeting of Narcotics Anonymous when they were approached by Agents Shiplett and Lee. Ms. Raitt described her husband as “extremely fragile” psychologically on the day of their questioning.

Agents Lee and Shiplett approached Ms. Raitt in her yard and told her that they wanted to ask her about her co-defendant, Johnny Hoy without revealing that the real purpose of their visit was to question the Raitts about their own possible criminal behavior. They requested permission to come in the Raitts’ home, which was granted. The Raitts live in a modest one-story ranch house of slightly more than 2000 square feet. Present in the home at the time of this interrogation were the Raitts and their two daughters, 3-year-old Rachel and 10-year-old Jessica. All of the witnesses testified that these young girls were in and out of the room where the questioning took place and would have heard much of the questioning as it took place. Allen Raitt testified that at one point he had to carry Rachel from the room and she asked him if he was going to have to go to jail. Later, Jessica asked him, “why is that man yelling at you?” Ms. Raitt described her daughter as looking “terrified” at one point in the interrogation.

Allen and Jeannine Raitt described the following threats if they failed to cooperate with the investigators. First, they would receive thirty (30) years in jail for bank fraud. Second, since they would both be going to jail, their kids would be placed in foster care. Agent Lee told them that the nearest federal prison is in Edgefield, South Carolina, so it would be unlikely that

their children would even be able to visit them while they are incarcerated. Third, the Raitts' license to perform appraisals, the family's sole source of income, was "already gone." The Raitts stated that Agent Lee told them that he knew Ed Coleman, an investigator for the South Carolina Board of Appraisers, personally, from prior cases he had discussed their case with him. Agent Lee testified that defined cooperation as providing a written statement. (**Agents' Testimony at p. 117/ hereinafter A.T.**). The Raitts also testified that they were led to believe if they cooperated with the agents, i.e., gave a statement, they would not be charged in the case.

**A. THIRTY (30) YEARS IN JAIL FOR BANK FRAUD**

There can be little doubt that the Raitts were in fact threatened with thirty (30) years if they failed to cooperate with the agents. Both Raitts testified to this threat. Agent Shiplett did not deny this threat but claimed not to recall hearing it. (**A.T. at p. 40**). Agent Lee conceded that it was "possible" that he told the Raitts this specific amount of jail time. (**A.T. at p. 110**). A violation of 18 U.S.C. §1349, Conspiracy to Commit Bank Fraud does, in fact, carry a maximum possible penalty of thirty (30) years.

**B. CHILDREN WOULD BE PLACED IN FOSTER CARE**

Both of the Raitts testified that Agent Lee told them that if they were imprisoned, their children would be placed in foster care. This threat was made more than once

during the interrogation. Allen Raitt testified that Agent Lee specifically stated, “you have such beautiful children, it would be a shame if they had to go to foster care.” The agents obviously orchestrated this interview so that it could be done in the Raitts’ home while the children were present. They chose to arrive at 5:30 p.m. when you would expect the whole family to be there. They did not offer the Raitts an opportunity to come discuss this case at the Secret Service Office as they did with co-defendant Stephen Dubose. Even Agent Lee had to admit that this was “not an ideal situation for the Raitts.” **(A.T. at p. 101)**. In connection with the placement of their children in foster care, Allen and Jeannine Raitt both testified that Agent Lee stated the nearest federal prison was in Edgefield, South Carolina and that this distance would make it unlikely that they would get to see their children. This statement is extremely credible because there is, in fact, a federal prison in Edgefield. Agent Lee admitted on cross-examination that he “could have” told them that about the federal prison in Edgefield. **(A.T. at p. 113)**. Agent Lee admitted that he knew that there was a federal prison in Edgefield. Common sense dictates that ordinary citizens would not know the location of the nearest federal prison unless they were threatened with being sent there by their interrogators.

### **C. LOSS OF RAITTS’ LICENSE TO APPRAISE**

Allen Raitt testified that he began appraising as an apprentice in 1998 and opened his own business in 2000. Jeannine Raitt went to work for him almost immediately as his

apprentice and office manager. She eventually also became a licensed appraiser. They had a thriving business that performed 500 to 600 appraisals per year. This business was the sole source of income for the family and all of their resources are tied up in it. The Raitts' license to perform appraisals is critical to the survival of this family and one would expect that these Secret Service agents would be aware of that fact.

The Raitts testified that Agent Lee threatened them with the loss of their license. He told them that he knew Ed Coleman, an investigator for the South Carolina Board of Appraisers, from prior cases and that their licenses were "already gone." Agent Lee admitted that he did, in fact, know Ed Coleman and may have told the Raitts that he would be discussing their case with him. **(A.T. at p. 131).**

#### **D. BENEFITS OF COOPERATION**

Allen and Jeannine Raitt both testified that they were told that if they gave a statement, they would not be prosecuted. They both described a very intense interrogation with a great deal of yelling and threatening by Agent Lee. They also testified that they were told it was "now or never" if they wanted to cooperate. Jeannine Raitt likened the experience to the type of high pressure sales pitch one would expect at a condominium time share sale. Agent Lee described his interview technique as "frank and adamant." **(A.T. at p. 110).** He admitted that "I told them it would be in their best interest to cooperate." **(A.T. at p. 110).** He promised to tell the Assistant

United States Attorney assigned to their case of their cooperation so that they could receive a “downward departure.” (A.T. at p. 110).

**E. AGENTS TOLD THE RAITTS HOW AND WHAT TO WRITE IN THE STATEMENT**

\_\_\_\_\_ Allen Raitt testified that the agents did not read or explain the rights at the top of his statement and that he could not recall reading it. Agent Lee admitted that he did not explain the defendant’s right to remain silent or have a lawyer to the Raitts and never inquired if they understood those rights. (A.T. at p. 100). Mr. Raitt states that as he began writing he was allowed to write what he believed to be true. He denied receiving any additional money or gifts, other than his normal \$400.00 fee as he wrote things the agents did not want to hear. Agent Lee became more angry and more loud. Agent Lee became incensed when Mr. Raitt wrote that he “would push the values a bit higher to help the purchase take place.” Mr. Raitt testified that agent Lee became so accusatory at that point, that Raitt threw down the pen and said, “what do you want me to write?” Agent Lee told Mr. Raitt virtually word for word what to put in the last paragraph of his statement.

Mr. Raitt’s testimony was corroborated by his wife. She was sitting in the next room and heard the whole exchange. She testified that she was so intimidated by Agent Lee’s behavior that she subconsciously included some of the same things that Agent Lee was telling her husband to write in her own statement. Ms. Raitt stated that she did not want Agent Lee to shift his attention to her.

Agents Lee and Shipllett both testified that they told the Raitts what areas to write about in their statement. (A.T. at pp. 57, 122). Agent Lee also admitted that he confronted Mr. Raitt about his “pushed the values” comment and told him he was “sugar-coating” or “sidestepping” the issue. Agent Lee told Mr. Raitt that he inflated values that needed to go in the statement. Lee also admitted that “inflate” was his word not Mr. Raitt’s word. Raitt used that word in the statement at his instance. (A.T. at p. 125). Agent Lee was asked whether he would have left the Raitts’ house without a statement that they “inflated values.” Lee replied, “that was important, yes sir.” (A.T. at p. 127).

\_\_\_\_\_The structure of Mr. Raitt’s statement suggests that it was given just as he said. There is a gap between the first page and the a half of his statement and the portion of the statement where he admitted, “I inflated some values for Johnny Hoy.” Agent Lee was asked whether he remembered Mr. Raitt throwing down the pen and asking what he wanted Raitt top put in the statement. Predicably, he did not recall.

### **III. THE LAW**

It is well-established in the law that in order to be admissible, a statement must be voluntarily made. The requirement that a statement be voluntary derives both from the right against self-incrimination and the standards of due process embodied in the Fifth Amendment. Involuntary statements are inherently untrustworthy, and their use violates our fundamental sense

of decency. Spano vs. New York, 360 U. S. 315, 320 (1959). The cases make clear that the government bears the burden of proving the voluntariness of the statement. The test is whether, under the totality of the circumstances, the government obtained the statement by physical or psychological coercion or improper inducement so that the suspect's will was overborne.

This test can sometimes be difficult to apply in the real world. Fortunately, the Supreme Court has spoken on this issue in a case with facts remarkably similar to the case *sub judice*. In Lynumn vs. Illinois, 372 U. S. 528 (1963), the Supreme Court vacated a conviction because an involuntary confession was admitted at trial. Ms. Lynumn was accused of selling marijuana to an informant. Like the Raitts, Lynumn was questioned in her home by more than one officer. The Raitts' situation is more aggravated because their children were present and heard the interrogation. Lynumn was threatened with ten (10) years' imprisonment where the Raitts were threatened with thirty (30) years in jail. Police intimidated Lynumn by telling her that if she was charged with this offense, her ADC (Aid to Dependent Children) would probably be cut off. Similarly, the Raitts were threatened with the loss of their appraisal license and all of the financial hardship that would entail. The defendant in Lynumn and the Raitts were all relatively inexperienced when dealing with law enforcement. There was no friend or advisor available to Lynumn or the Raitts. Allen Raitt was particularly vulnerable as a recovering drug addict who was attempting to go to a Narcotics Anonymous meeting at the time of the inquisition. Both Lynumn and the Raitts were threatened with the fact that if they failed to cooperate, their children could be

taken from them. This seems to be the factor that most heavily influenced the Lynumn court. It is repugnant for law enforcement to use the loss of a person's children as leverage to secure a confession.

In United States vs. Tingle, 658 F.2d 1332 (9<sup>th</sup> Cir. 1981), a confession was also found to be involuntary where law enforcement referred to the loss of the defendant's child if she did not cooperate. In Tingle, the threat was not explicit. The defendant was told "she might not see the child for a while if she went to prison." The officers' stated purpose was to show the defendant she "had a lot at stake." Id. at 1333. These comments are reminiscent of Agent Lee's statement that "you sure have pretty children, it would be a shame if they went to foster care." The Tingle court held:

The relationship between parent and child embodies a primordial and fundamental value in our society. When law enforcement officers deliberately prey upon the maternal instinct and inculcate fear in a mother that she will not see her child in order to elicit "cooperation," they exert the "improper influence" proscribed by Malloy. The warnings that a lengthy prison term could be imposed, that Tingle had a lot at stake, that her cooperation would be communicated to the prosecutor, and that her failure to cooperate would be similarly communicated, and she might not see her two-year-old child for a while must be read together, as they were intended to be, and as they would reasonably be understood. Viewed in that light, (the officers') statements were patently coercive. Id. at 1335.

Likewise, the techniques and statements made by the Agent Paul Lee to Allen and Jeannine Raitt were patently coercive.

#### **IV. CONCLUSION**

The Supreme Court has repeatedly recognized that coercion can be mental, as well as physical. In Arizona vs. Fulminante, 499 U. S. 279 (1991), the court stated that a “finding of coercion need not depend upon actual violence by a government agent; a credible threat is sufficient. . . (afterall) the blood of the accused is not the only hallmark of an unconstitutional inquisition.” Id. at 287. Therefore, based on the totality of the circumstances, the government has failed to meet its burden of proving the statements of Allen and Jeannine Raitt are voluntary by a preponderance of the evidence. The statements should be excluded from the trial of this case.

Respectfully submitted

s/ALLEN B. BURNSIDE

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Assistant Federal Public Defender

c/o BB&T Bank Building

1901 Assembly Street, Suite 200

Columbia, South Carolina 29201

Telephone: (803) 765-5070

Attorney ID #1620

E-mail Address: Allen\_Burnside@fd.org

**ATTORNEY FOR ALLEN DEAN RAITT**

s/JACK B. SWERLING

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Attorney at Law

1720 Main Street, Suite 301

Columbia, South Carolina 29201

Telephone: (803) 765-2626

Attorney ID #4406

E-mail Address: Jacklaw@aol.com

**ATTORNEY FOR JEANNINE RAITT**

Columbia, South Carolina

May 17, 2006