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January 25, 1997

Certified Mail - Return Receipt Requested

Janet Reno,  
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Tenth Street & Constitution Avenue NW  
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Louis J. Freeh,  
Director, FBI  
J. Edgar Hoover Building  
935 Pennsylvania Ave. NW  
Washington, DC 20535

Thomas A. Constantine, Administrator  
Drug Enforcement Administration  
Washington, D.C. 20537

Re: Notice of Claim against the Government  
By Juval Aviv and Interfor, Inc.

Dear Ms. Reno, Mr. Freeh, and Mr. Constantine:

We write (triplicate originals) to formally set forth the claim of our clients, Juval Aviv and Interfor, Inc., against the United States - specifically, against the Department of Justice, the FBI, and the DEA, and certain individual agents, including: FBI Special Agents Christopher Peter Murray, David Edward, and Tim Childs, DEA Special Agent Edward McKulsky, as well as "John Does" 1-10 (representing supervisors of Special Agents Murray, Edward, Childs, and McKulsky and unknown Department of Justice and other agency officials coordinating activity discussed below).

You may already know our clients' names: Juval Aviv was the investigator hired by Pan Am Airlines in connection with the Pan Am 103/Lockerbie bombing, and Interfor, Inc. is his private investigation company. Their report to Pan Am suggested, *inter alia*, that negligence of the CIA/DEA allowed the terrorists to place the bomb on the plane. As you no doubt know, in the civil

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action by the victims' families against Pan Am, Pan Am sought to implead the United States and sought documents bearing on the matter. The government refused to produce documents and sought sanctions against Pan Am and its counsel for pressing the third party complaint and seeking to discover government files.

After Pan Am's counsel defeated the motion for sanctions in the civil Lockerbie case -- the government, working through the agents and former agents named above (as well as others unknown as of this time), undertook a tortious "campaign" to discredit, denigrate, and/or destroy Juval Aviv in retaliation for his report to Pan Am (an exercise of rights guaranteed by the First Amendment of the Constitution), all in violation of the Constitution of the United States and contrary to its public responsibilities.

The culmination of this vindictive retaliation was the malicious prosecution of Mr. Aviv commenced in 1995, premised on a "mail fraud" theory completely bereft of merit. We moved to dismiss the mail fraud indictment, United States v. Juval Aviv, 95 CR 386 (Stanton, J., SDNY), on the ground of selective and vindictive prosecution. (We also tried to have the charges dismissed on the ground that the criminal complaint demonstrated that the case itself was meritless, but were met with the familiar principle that a facially valid indictment requires a trial). We showed in pre-trial motion papers that the indictment was part of a calculated attempt to silence Mr. Aviv in order to indirectly "silence" the allegations of his Pan Am report and punish Mr. Aviv for his having written it.

After we filed the selective/vindictive prosecution motion which detailed much of what is said in this letter (though without the benefit of what was ultimately learned at trial), the government gave our serious allegations the proverbial back-of-its-hand, first filing improper sealed affidavits (ultimately rejected by the District Court) and then filing a false and misleading affidavit supposedly justifying the prosecution.

Thus, after District Judge Stanton commented that we had made an exceptionally "strong showing" of vindictive motivation for the prosecution, the prosecutors, to suggest "actual" legitimate motivations, submitted the sworn declaration of the Chief Assistant

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U.S. Attorney asserting that the prosecution was "unrelated to the Lockerbie bombing" and was premised on the "usual factors" including the so-called "strength" of the case and including especially the victim's [G.E. Capital Corp.] affirmation that it had detrimentally relied upon Aviv's misrepresentations".

Mr. Aviv was acquitted after a week-long trial (at huge expense, especially given that witnesses were brought from the Caribbean for trial). The evidence confirmed that this case was not just a "normal" case, and that FBI Agents Murray and Edward (the case agent) (along with others) had trumped up the charges.

There was no "affirmation" by the "victim" - G.E. Capital Corp. - that it had detrimentally relied on any asserted misrepresentation. Indeed, GE Capital Corp.'s Lawrence Byrne did not even imply that GE Capital Corp. felt cheated in any way by Mr. Aviv or his report to GE. To the contrary, it was clear that GE had been quite content with what Mr. Aviv had provided and that it had put the report away and considered the entire matter closed. The first contact between "victim" G.E. Capital Corp., a Connecticut corporation, and the government, came when Agent Murray ("coincidentally" the Lockerbie agent out of Washington), called G.E. Capital's Security Director and instructed him to send Mr. Aviv's reports. It was only after the FBI "told" it so (according to GE's Lawrence Byrne) that GE first "learned" that it had been "defrauded".

The evidence further showed that the witnesses were manipulated and "programmed" through tactics designed to achieve the government's ends regardless of the truth. The tactics included revealing to witnesses parts of Mr. Aviv's report disparaging of their abilities and showing them not just a "neutral" photo of Mr. Aviv for identification purposes, but rather, a derogatory 60-minute segment where a CIA investigator condemned Mr. Aviv for his Lockerbie report.

The jury acquitted Mr. Aviv after less than an hour and a half of deliberation. Some jurors who spoke to us after the trial expressed the view that the case was "ludicrous", "trumped up", and obviously "in revenge" for his role in the Pan Am 103 case. (One juror jokingly anticipated that the FBI would send the IRS after

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them for thwarting the case against Mr. Aviv" -- something which this case has shown only too graphically to be within the government's capabilities.)

You should know that, in response to the government's argument during the defense case that there was no evidence that the case was anything but a legitimate mail fraud case, District Judge Stanton disagreed, stating (Tr.552):

The chronology of the investigation, the fact that it is resulting from no external complaint whatsoever but simply internally within the FBI as far as any witness has testified, leads to an inference that it was generated from some other source, and the only source in the record so far for which any such purpose could be ascribed is the report in the other case, in the Lockerbie case.

A copy of portions of the transcript is appended hereto as Addendum "A".

It should further be noted that, because the court had denied a hearing on selective prosecution because of the asserted failure to prove that others "similarly situated" had not been prosecuted and because the government had earnestly asserted that its motivation was legitimate and that the case was in all respects a "normal" one, we did not have discovery of the government's documents to further prove the illicit goals the government was pursuing. In the civil case we will be commencing, discovery standards are of course far different from those in a criminal case.

The malicious prosecution itself (and the false arrest that accompanied it) was the culmination of a long-term and obviously coordinated effort on the part of a number of government agencies to punish and destroy Mr. Aviv.<sup>1</sup> Well before the indictment was

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<sup>1</sup>For instance, after the indictment was filed -- which came just before the film *Maltese Double Cross* (concerning what many  
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returned in 1995, government agents took severe, and *illegal*, steps to intimidate Mr. Aviv, to fabricate a case against him, and to ruin Mr. Aviv and Interfor in the eyes of their clients and the world by slandering Mr. Aviv with the manufactured charges and otherwise.

Thus, in 1992, after Time magazine came out with an article supportive of Mr. Aviv's Pan Am/Lockerbie report, the government secretly sent a wired DEA agent to Mr. Aviv to try to entrap him into buying stolen official government documents. Though Mr. Aviv made it plain that he wanted nothing to do with stolen government documents, the government pursued its entrapment scheme at length, going so far as to have the unfortunate agent send the documents to Mr. Aviv unsolicited. Mr. Aviv wrote to the agent that this had surely been a mistake and that he was not keeping these documents. We have now learned that this entrapment operation was run through the government's "FINCEN" offices.

After this, as explained in the pretrial motion papers in the criminal matter, government agents -- specifically Agents Murray and McKulsky, visited clients to degrade and ruin Mr. Aviv and his company as well as to try to build a "case" against Mr. Aviv. Particularly offensive was the DEA's and FBI's outrageous interference in Mr. Aviv's work for and relationship with the FDIC. Mr. Aviv, who had worked satisfactorily with the FBI and IRS (as well as some other government agencies) for some ten years until he authored the Lockerbie report, had thus been hired by the FDIC in the summer of 1992 to locate assets of convicted banker Jacobo Finkielstain. Mr. Aviv worked on the matter for nearly a year when he learned that FBI Agent Murray and DEA agent McKulsky had called and then visited FDIC counsel John Brown and Director of Major Assets Recovery Claude Hall. These government agents told the FDIC officials that Mr. Aviv was under grand jury investigation because

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<sup>1</sup>(...continued)

believe to be a Lockerbie "cover-up") was to be aired in London -- the U.S Information Agency attacked the character and integrity of Mr. Aviv relying on the fact of his indictment. A U.S Embassy official in London also attacked Mr. Aviv's character in a letter dated May 1995 on the "strength" of the indictment.

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of the Pan Am case, and that he was dishonest, unreliable and unpatriotic. The FBI and DEA agents requested information regarding all matters that Mr. Aviv was working on for the FDIC and suggested that FDIC terminate its relationship with him.

The FBI and DEA did not rest with besmirching Mr. Aviv to his client, the FDIC. They took steps designed to damage Mr. Aviv by rendering his work for the FDIC ineffectual. Thus, in May or June of 1993, FBI Special Agent Tim Childs visited the FDIC's "target", Finkielstain, who was serving his sentence in Allenwood Federal Penitentiary. Finkielstain stated in a deposition that the FBI agent revealed to Finkielstain the substance of Mr. Aviv's investigation. This was done although the report of investigation had been sealed by order of the Court in the civil case the FDIC had brought against Finkielstain.<sup>2</sup>

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<sup>2</sup>As was explained in an affidavit of Josephine G. Bachman, Finkielstain's attorney, in support of his motion for a protective order), Agent Childs told Finkielstain that he was being interviewed as a witness in connection with the FBI investigation of Mr. Aviv. Childs explained that Mr. Aviv had been hired by the FDIC to search for his assets and that Mr. Aviv was under investigation for disseminating false information about the CIA. (Of course, no one has ever provided any substantive refutation of Mr. Aviv's conclusions of governmental "involvement" in the Lockerbie/Pan Am matter. Childs then asked Finkielstain questions about Mr. Aviv. In the course of that interview, Agent Childs showed Finkielstain two internal FDIC memoranda from counsel John Brown to Claude Hall, dated November 6, 1992 and December 4, 1992, and revealed that Mr. Aviv had purportedly tracked down some of his bank accounts in Liechtenstein. (Finkielstain denied to Agent Childs that he had any such accounts; however, when later asked about them at his deposition, he refused to answer on Fifth Amendment grounds.)

This is shocking conduct for governmental agents: they obstructed justice, disclosed a confidential investigation, and cost the government millions of dollars that FDIC had been in the process of recovering until they disclosed Mr. Aviv's work to the

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Mr. Aviv learned from both the FDIC and other clients that FBI Agent Murray had sent his clients brown government envelopes containing his business card attached to magazine articles criticizing Mr. Aviv's investigation in the Pan Am case.

Not only has all this been an enormous waste and misuse of taxpayer dollars, but, needless to say - though we will indeed say it in the lawsuit when showing the vast financial damage caused willfully and wantonly by the government here - Mr. Aviv lost a significant amount of business and was threatened with financial ruin.

Indeed, the government tried to make certain that he would not be able to make a living in the future. Thus, by pressing derogatory allegations, they intimidated and scared off potential investors in an entity called "INTERCLAIM", being established by Mr. Aviv and others, in which Mr. Aviv was to have a principal, managerial role. The other principals ended up reluctantly removing Mr. Aviv from that status in order to save the prospective business, albeit at great expense to the business and to Mr. Aviv and his reputation.

There is more: Mr. Aviv suffered illegal break-ins at his home and office, and there is evidence of illegal electronic surveillance of him and of his counsel. Agents went so far as to

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<sup>2</sup>(...continued)  
target. There must have been some pretty high stakes.

But even more, the agents individually involved covered up their misdeeds by denying them. This is revealed by Congressman Henry Gonzalez, the Chairman of the House Committee on Banking, Finance and Urban Affairs, to whom Mr. Aviv registered his complaints in an effort to gain any ear. Thus, Congressman Gonzalez directed his staff to look into the allegation that the FBI had interfered with Mr. Aviv's work with the FDIC by, among other things, showing Finkielstain the two confidential FDIC memoranda. According to a letter from Mr. Gonzalez dated February 25, 1994, the "FBI denied showing the memoranda to Finkielstain."

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recruit a New York City policeman (a Queens robbery squad detective) who, on October 18, 1995, visited Mr. Aviv's place of business in Manhattan, demanded information and records related to any reported break-ins, and threatened that if he did not get what he wanted, witnesses would be "dragged to Washington" to testify on this "federal matter."<sup>3</sup> The break-in had occurred years earlier and in Manhattan, and was in any event not reported to the police.

Mr. Aviv's counsel, Daniel Aharoni, sent a letter about this episode to the New York City Police Department's Internal Affairs Division. Nothing came of it. Indeed, as explained in the district court submission in Mr. Aviv's criminal "case", Mr. Aviv and his attorney, Daniel Aharoni, repeatedly complained, in writing, at every step of the way about the apparent vendetta to the agencies involved -- the Department of Justice, FBI, and DEA. (We attach hereto as Addendum "B" copies of the various correspondence). Consistent with a pattern of nonfeasance, misconduct, and an apparent "need" to hide, nothing ever came of the complaints. Indeed, the complaints to the DOJ or FBI were not even acknowledged. And while the DEA responded in March of 1994 (a copy of which is also part of attached Addendum "A") that "All allegations of misconduct on the part of DEA employees including Mr. Aviv's are thoroughly investigated," to this date the results of that investigation have not been shared with Mr. Aviv.

All of this demonstrates conduct that has no place in any agency of the United States, much less agencies whose purpose is to enforce the law. To say that it is conduct unbecoming a United States government agent hardly *begins* to express it. But it happened, and happened in the face of repeated warnings to the "higher-ups" who should have been watching -- who should have been making sure that this kind of thing does not occur.

It is because of Mr. Aviv's view that the government's conduct is so offensive to the rights and values that he came to learn as

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<sup>3</sup>We suggest that the ploy of sending a policeman was done to avoid the need to create a required FBI report. This tactic, we understand, was uncovered and condemned during the Congressional investigation of the so-called "Ruby Ridge" incident.



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the very basis for our government, that the primary purpose of the lawsuit we will be commencing will be to rid the government of the officials who committed and countenanced such conduct.

We will thus shortly commence suit under the Federal Tort Claims Act premised on: (1) false imprisonment and (2) false arrest, in that the putative defendants arrested and detained Mr. Aviv for the purpose of discrediting him and without legal cause; (3) malicious prosecution, in that the putative defendants instituted and prosecuted the criminal proceedings with knowledge of and disregard for Mr. Aviv's innocence, and for a purpose other than legitimate law enforcement purposes and with intent to do harm; (5) abuse of process, including the issuance and use of the indictment for the purpose of discrediting the claimant and with intent to do harm; (6) "prima facie tort", i.e., intentional acts undertaken for the sole purpose of destroying Mr. Aviv and Interfor; (7) intentional infliction of mental distress, consisting of a longstanding, comprehensive, and outrageous series of acts designed specifically to destroy the claimant's livelihood, reputation, and credibility in his profession, undertaken with a high probability that such actions would cause severe emotional distress and which did cause such distress. We will also bring action under "Bivens" principles premised on First, Fourth, and Fifth Amendment violations, and under civil RICO based on the agents' commission of a pattern of racketeering activity -- i.e., multiple acts of mail and wire fraud in a scheme to defraud the citizens (and Mr. Aviv) of their honest and faithful services -- in the operation of an enterprise -- i.e., the United States government -- resulting directly in substantial damage to Juval Aviv.

In this regard please be advised that, because this letter is submitted for the limited purpose of notifying you of the claims of Mr. Aviv and Interfor, Inc., we have not set forth each and every incident that supports Mr. Aviv's and Interfor's claims. We note, parenthetically, that this type of "pleading" is exactly what is commonly done in warrant applications, including the sealed complaint issued in the criminal matter leading to Mr. Aviv's

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arrest and prosecution.<sup>4</sup>

Our primary goal, as stated, will be injunctive relief to bar the government officials who so breached their duties -- who so audaciously misused their offices and the peoples' funds -- from further working for the United States government. We will ask for orders requiring the government to fire any as yet unnamed agent we learn to have participated in these misdeeds. We will also seek an order requiring the wrongdoing agents to give restitution of their salaries and to forfeit any pension rights.

Courts are customarily called on to issue such "debarment" orders as a remedy in civil RICO actions -- which will be one of the grounds for the lawsuit we will be commencing. We will seek to have government-official defendants who breached duties of honest and faithful services held to the same standards as any criminal defendant against whom the government seeks such remedies, and to have a remedy imposed that will in fact serve as a deterrent to future malfeasance.

Indeed, though we appreciate that no damages can be obtained from a prosecutor performing prosecutorial duties because they are immune from damage actions, our request for injunctive relief will include a request that prosecutors who knowingly participated in the wrongful, vindictive efforts should also be fired and should be prohibited from working for the government in the future, and that restitution of their salaries should also be sought. Simply put, public officials who knowingly act to punish a citizen for expressions protected by the First Amendment do not deserve to be public officials and should not be.

Though Mr. Aviv's first priority is to assure that people who have no business being United States government agents can no longer serve and will not themselves profit from their misconduct, we cannot forget the fact that the government's misconduct caused

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<sup>4</sup>Agent Edward there wrote (p.2, par.1): "Because this affidavit is submitted for the limited purpose of establishing probable cause, I have not set forth each and every fact that I know."

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Mr. Aviv real pain and real suffering for a period of some five years; he has been humiliated, threatened, indicted, caused to lose clients and future business, smeared and belittled in the public eye.

There is in truth no remedy adequate to redress these hurts. But since money damages are the only method of approximating reimbursement for what was taken from Mr. Aviv and Interfor, Inc., we will be seeking damages as well as injunctive relief.

We are in the process of calculating the vast business losses that occurred here. This vicious vendetta to punish a man (and his business) for expressions protected by the First Amendment has caused Mr. Aviv and Interfor, Inc., losses in the many millions, but it has also caused Mr. Aviv to live every day for some five years in great anxiety. We can say now that we will be asking for damages in the sum of \$50 million. (Of course, should they be awarded under civil RICO, they would be trebled). You should also know that we will be seeking punitive damages against all individual defendants including the "John Doe" supervisor defendants who participated in and/or condoned these wrongs, and in all events, we will seek attorneys' fees and expenses of the litigation as well.

Very truly yours

  
Vivian Shevitz

  
Daniel Abarell

Attorneys for Juval Aviv

cc: Potential individual defendants Christopher Murray,  
David Edward, Tim Childs, Edward McKulsky; Offices  
of Professional Responsibility for DOJ, DEA, and FBI;  
Hon. Orrin G. Hatch, Chairman, Senate Committee on the  
Judiciary; Hon. Henry Hyde, Chairman, House of  
Representatives Committee on the Judiciary.