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Law firm attacks ‘unconstitutional prosecution’ of Cleveland activist

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By **David Gambino, cleveland.com**



New Era Cleveland stages a patrol in the city's Central neighborhood in 2023. Its leader, Antoine "Fahiem" Tolbert, faces felony charges related to the group's activities. (Photo courtesy: Antoine Tolbert)

CLEVELAND, Ohio - The law firm representing a Cleveland activist accused of extortion plans to sue those responsible for what it calls an “egregiously unconstitutional prosecution” as Cuyahoga County prosecutors seek to disqualify the firm from the case.

Defense attorney Peter Pattakos railed against Prosecutor Michael O’Malley’s office this week over the case of Antoine “Fahiem” Tolbert and allegations that his attorney participated in a meeting where Tolbert’s victims were threatened.

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Tolbert, the leader of a neighborhood group called New Era Cleveland, faces felony charges of extortion and intimidation.

Prosecutors said Tolbert threatened the staff of Race Fuel gas station in the Lee-Harvard neighborhood who declined to purchase protection services from his group. The group claims to stage armed street patrols in crime-laden neighborhoods to deter violence.

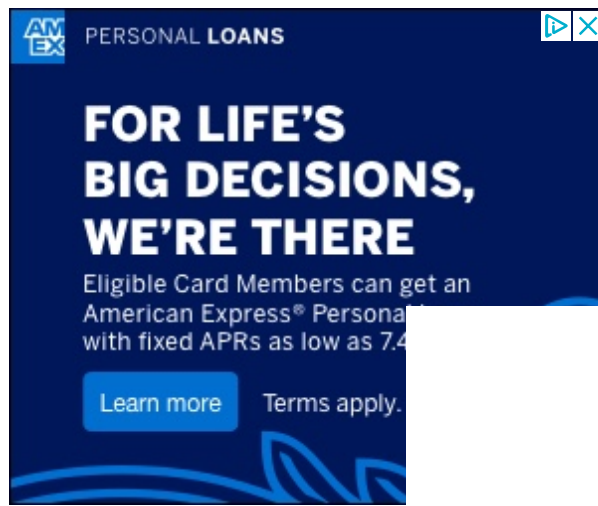
Prosecutors said members of the group then prevented customers from shopping at the store.

Pattakos said the group exercised its First Amendment rights by boycotting the store after staff refused to help the group break up a fight between youths.

The day after Tolbert was arrested, Tolbert's wife, Austreeia Everson, and attorney, Maryam Assar, met with two of the four people associated with the gas station. Shereen Naser, a professor at Cleveland State University who acted as a mediator, and an outside attorney were also present at the Aug. 15 meeting.

"You better drop the charges or we'll bus loads of people from Chicago and Detroit to shut you down," Everson, 39, told the owners at the meeting, according to prosecutors.

She was indicted last month on charges of extortion and intimidation in connection with the meeting. A superseding indictment additionally charged Tolbert and New Era member Rameer Askew, 19, with aggravated robbery and kidnapping for an incident in late July. Assar represents the three who have been charged. They have pleaded not guilty.



'The appearance of impropriety'

On March 28, Assistant Prosecuting Attorney Tasha Forchione requested that Common Pleas Judge William Vodrey disqualify Assar — and any other of attorney in Pattakos' firm — from Tolbert's case over her presence at the meeting.

"Even if no criminal charges are brought against Assar, the appearance of impropriety — that a defense attorney was present when a defendant's spouse extorted and intimidated witnesses — raises serious concerns," Forchione wrote.

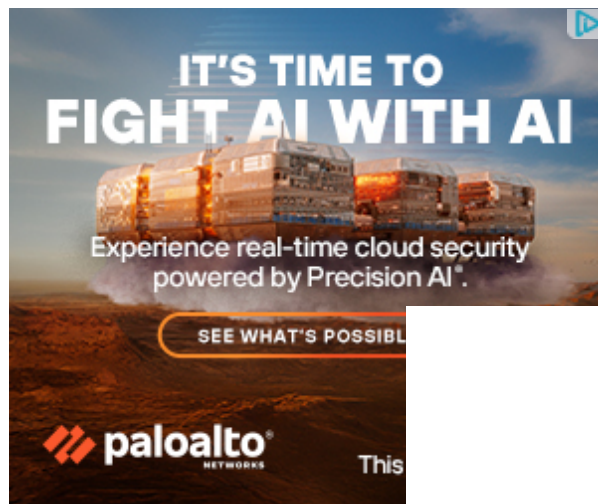
Prosecutors also argued Assar's behavior potentially violated the Ohio Rules of Professional Conduct, which governs standards and practices for attorneys. They said her presence alongside Everson lent an appearance of authority or legal endorsement to Everson's threats.

Vodrey ordered Assar to respond to the motion in writing by Monday.

"Our initial reaction when we saw this motion was to laugh," Pattakos said. "Because it's so pathetic that they can't stand when people fight them. They can't stand when a victim of their abuses actually stands up for their rights."

Pattakos called the move to disqualify his firm "one of the more desperate and pathetic displays" one will see from a prosecutor.

"They're implicating us in criminal conduct for doing our jobs," Pattakos said. "Attorneys go speak with witnesses; we're allowed to call victims of crimes."



A cooling off period

Pattakos provided a roughly hourlong audio recording of the meeting to cleveland.com and The Plain Dealer. He declined to say who created the recording.

The recording opened with Naser, the Cleveland State professor, proposing a 90-day cooling off period between the parties and dropping the charges against Tolbert.

"Then we'll sit at the table with calm heads and decide what it will take to move forward in a way that will bring us closer together instead of farther apart," she said.

The meeting remained calm as the speakers found some common ground between the Black and Palestinian communities. Nearly an hour in, one of the gas station advocates referenced an apparent owner who did not want to speak to Everson and her group.

"He need to change the way he looking at this or he's going to lose everything," said Everson, Tolbert's wife. "... Your business is going to be over. Every single one. And then the relationship between the Black and brown community will never be able to be healed. And I don't want that."

The recording, which apparently ended before the meeting concluded, does not include what prosecutors called Everson's threat of bringing in people from Chicago and Detroit.

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Naser said Everson “absolutely” didn’t say it. She said the meeting lasted between 75 and 80 minutes and ended after the parties realized the gas station owners had no authority to drop the charges.

“I thought it was actually a really powerful conversation where both parties shared their frustrations, not just with each other, but how they’re born of larger systemic inequity. And we left with that camaraderie,” Naser said.

Pattakos, who expressed skepticism over the allegation against Everson, said her words should be considered First Amendment-protected speech if she did, in fact, say them.

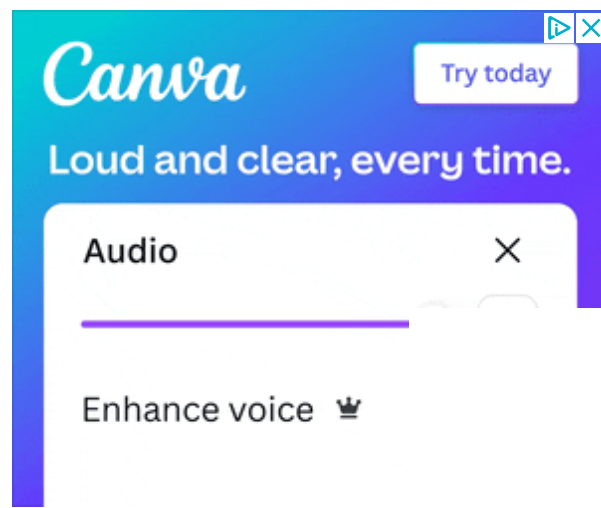
“They’re talking about a boycott,” he said. “We’re talking about community organizers who are trying to spur powerful people to action to help an underserved community.”

With the move to disqualify Assar and Pattakos pending, prosecutors are fighting to keep evidence in Tolbert’s case out of the firm’s hands. Pattakos filed a motion earlier this week that asked Vodrey to compel prosecutors to turn over their evidence.

“The state is apparently displeased with the high quality of representation that their target, Tolbert, is receiving and has therefore concocted a scheme to attempt to disqualify the undersigned attorneys from continuing to represent him,” the motion reads.

New charges

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In addition to addressing the Aug. 15 meeting, the defense motion also touched on last month's filing of new charges of robbery and kidnapping against Tolbert.

Prosecutors alleged the July 27 robbery and kidnapping was captured on video. A 60-minute video posted to New Era Cleveland's Instagram account the same day shows the incident, according to Pattakos.

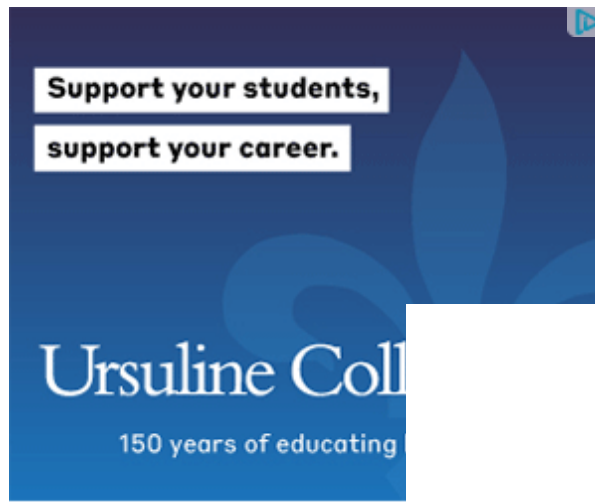
The video appeared to show Tolbert and Askew, with rifles, waiting for a car to arrive at a residential address. A child approached a dark sedan after it arrived, and Tolbert and Askew then confronted the driver. They ordered him out of the car and onto the ground, but the driver managed to run away.

"This (expletive) is selling weed to one of our kids. He popped out the car and took off, left the whip here," Tolbert said to the camera.

Forchione in a Wednesday filing asked Vodrey to allow the state to withhold evidence until he rules on the move to disqualify the firm.

"Discovery shared with an attorney accused of participating in or facilitating witness intimidation could be misused to contact, pressure, or otherwise influence witnesses," the motion reads.

"Defense counsel is not merely alleged to have a potential conflict; counsel is alleged to have participated in the very conduct giving rise to multiple new felony charges. ... Even if counsel now characterizes the meeting as a 'mediation,' the coercive and threatening nature of the exchange cannot be neutralized by semantics."



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Lexi Bauer, a spokeswoman for the prosecutor's office, previously said the motion to disqualify Assar and the firm "speaks for itself" and declined further comment with Tolbert's case.

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