IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	)	
	)	
v.	)	Criminal No. 08-231 (EGS)
	)	
THEODORE F. STEVENS,	)	
	)	
Defendant.	)	
	)	

GOVERNMENT'S INITIAL OPPOSITION TO
DEFENDANT'S MOTION TO DISMISS
THE INDICTMENT FOR ALLEGED MISCONDUCT

The prosecutors assigned to this case take all of their disclosure obligations very seriously, and have worked earnestly to meet all of those obligations, even on the accelerated schedule that was established at the defendant's request. Over the course of weeks since the indictment in this matter, the government has worked day and night to produce to the defense tens of thousands of pages of documents, witness statements, grand jury transcripts, and audio and video tape recordings pursuant to Rule 16 and the Jencks Act, and has made several additional disclosures under Brady and Giglio.

Contrary to all of the theatrics and hyperbole from the defense, no one has attempted to hide evidence or hold back any discoverable item. First, the government made the good-faith decision to let Rocky Williams return home to Alaska because of a serious medical condition, rather than for any nefarious motives as suggested by the defense. Second, the redacted information that formed the basis of the defendant's motion to dismiss on October 2, 2008, was cumulative of and consistent with other materials that had been produced to the defense prior to trial, and was redacted through a simple error, and nothing more. Indeed, the government itself

promptly brought the error to the Court's and the defendant's attention as soon as it was discovered.[1]

Having failed in his first and second attacks on the government's conduct in less than a week, defendant now attempts to look behind the scenes of the government's drafting and production, and he weaves from whole cloth a pure fiction about the government's conduct. Sadly, this is not the first time these attorneys have engaged in such wild speculation and unseemly tactics. See United States v. Forbes, No. 3:02 CR 00262 (AWT), 2006 WL 680562 (D. Conn. Mar. 16, 2006) (lead attorneys Brendan V. Sullivan, Jr. and Robert M. Cary admonished by the court for a "pattern of unseemly tactics" that included "engag[ing] in a pattern . . . of arguing, premised on speculation, that opposing counsel had engaged in improper conduct." Id. at *1 and *2.)

Their tactics in this case have included the following:

- Claiming violations of Brady for the government's good-faith decision to send Rocky Williams home to Alaska because we understood that he was seriously ill. The government's decision was the correct one given Mr. Williams' serious medical

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1/ It bears emphasis that defendant's second Brady challenge focused on evidence that is flatly inadmissible – Bill Allen's subjective belief that the defendant ***would*** have paid an invoice ***if*** Bill Allen had sent him one. See, e.g., United States v. Brown, 938 F.2d 1482, 1488 (1st Cir. 1991) (affirming exclusion of witness' opinion about the inchoate state of mind of a defendant as impermissible opinion testimony); United States v. Guzzino, 810 F.2d 687, 698 (7th Cir. 1987) (affirming exclusion of testimony regarding witness' intent to cooperate as irrelevant and inadmissible); United States v. Kupau, 781 F.2d 740, 745 (9th Cir. 1986) (affirming exclusion of witness' opinion about defendant's state of mind while signing a false affidavit as speculation.) Bill Allen never sent the defendant an invoice, and the defendant never paid. Testimony from Bill Allen or any other witness about what the defendant ***would*** have done ***if*** Bill Allen had sent him an invoice is pure conjecture and speculation, and consequently inadmissible.

condition. The Court and the government have since offered several ways to assist defendant on this issue – including Rule 15 depositions, two-way video conferencing, and, possibly, receiving written authorization from Williams' physician to permit his travel. Defendant has not accepted any of these proposals to cure any perceived harm, thus demonstrating the true motivation behind defendant's first motion to dismiss.

- Repeatedly failing to cite on-point, dispositive and controlling cases that fully refuted defendant's position, including Rostenskowski (speech or debate); Quinn (venue); Blackley (vagueness); and Hubbell (duplicity and statute of limitations). See D.C. R. PROF. CONDUCT 3.1 and 3.3(a)(3).

* * *

The defendant's speculation regarding the government's conduct in this case is flatly wrong. Pursuant to the Court's minute order, the government will submit a full response to the defendant's latest allegations by 8:00 p.m. on October 6, 2008.

Respectfully submitted,

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Chief, Public Integrity Section

/s/ Brenda K. Morris
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CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of October, 2008, I caused a copy of the foregoing "GOVERNMENT'S INITIAL OPPOSITION TO DEFENDANT'S MOTION TO DISMISS THE INDICTMENT FOR ALLEGED MISCONDUCT" to be delivered by electronic mail to the following:

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/s/
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