

**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 SUPPLEMENTAL BRIEF IN SUPPORT OF ITS OPPOSITION TO
DEFENDANT'S MOTION TO DISMISS INDICTMENT OR FOR A MISTRIAL**

Pursuant to the Court's instruction, the United States of America, by and through its undersigned counsel, submits the following supplemental brief in support of its opposition to defendant Theodore F. Stevens' motion to dismiss the indictment or for a mistrial. The Court specifically advised the government that it could submit a supplemental brief on the issue of whether the decision to send Mr. Williams back to Alaska without first notifying the Court is conduct that should be sanctioned.

DISCUSSION

We respectfully submit that the government has not engaged in any type of conduct warranting a sanction. The government reiterates that there was no Brady-related evidence suppressed by the government, and at no time did the government intend to engage in any type of deception. When Public Integrity Section Chief William Welch authorized Mr. Williams' return to Alaska, the government was not aware of any rule or standing order that required either party to seek the Court's prior approval for its decision. Instead, as we noted in our brief and supporting affidavits, the government was primarily concerned with Mr. Williams' health. See, e.g., Govt. Opp. at Ex. 3 ¶ 11. This decision was made in good faith. Id. ¶ 8.

Most importantly, any perceived harm (and we respectfully submit there is none) has been cured by the Court and the parties through the following steps. First, the Court allowed defendant to recall Cheryl Boomershine to the witness stand to address any billing-related issues relating to Mr. Williams' time spent in Girdwood working on defendant's residence. Second, the parties agreed to a stipulation that certain witnesses who previously testified – John Hess, Mike Luther, Roy Dettmer, and Dan McBirney – were not aware of the total hours that Mr. Williams worked on the Girdwood renovations or the extent to which Mr. Williams was working on other projects for Bill Allen.

Third, we are attempting to contact Mr. Williams for the purpose of determining whether he is able to return to Washington, D.C. to testify in this matter. When we reach Mr. Williams, we intend to advise him that, before coming back to Washington, D.C., we will request that he seek written authorization from one of his physicians indicating he is healthy enough to travel and to remain in Washington, D.C. for the duration of this trial. If Mr. Williams obtains such an authorization, then the government will fly Mr. Williams back to Washington, D.C. at the government's expense, where he will remain until he is either released by the Court after his testimony or by mutual release of the parties.

If his doctor indicates that Mr. Williams cannot travel for medical-related reasons, then we will undertake all efforts to make him available for a deposition pursuant to Fed. R. Crim. P. 15, or to allow trial testimony pursuant to two-way video conferencing should defendant agree. Fed. R. Evid. 611. If there are other measures the Court would like us to take with respect to Mr. Williams, we stand prepared to do so.

CONCLUSION

For the reasons detailed in our opposition brief, the information defendant frames as the basis for a claimed Brady violation is, first and foremost, not Brady material. This information also was not suppressed, is not favorable to the accused, and is certainly not material. Accordingly, defendant's motion should be denied. The government also respectfully submits that the decision to send Mr. Williams home was far from sanctionable conduct and was taken in good faith due to Mr. Williams' health-related issues.

Respectfully submitted,

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Chief, Public Integrity Section

/s/ Edward P. Sullivan
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CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of September, 2008, I caused a copy of the foregoing "GOVERNMENT'S SUPPLEMENTAL BRIEF IN SUPPORT OF ITS OPPOSITION TO DEFENDANT'S MOTION TO DISMISS OR FOR A NEW TRIAL" to be delivered electronically to the following:

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