

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA)
)
 v.)
)
 THEODORE F. STEVENS,)
)
 Defendant.)
 _____)

Crim No. 08-231 (EGS)

GOVERNMENT'S MOTION FOR RECONSIDERATION

The United States of America, by and through the undersigned counsel, respectfully moves the Court for reconsideration of its October 8, 2008, oral ruling. The United States objects to the Court's analysis and proposed remedy.

First, we respectfully request that the Court permit the government to make formal application for reconsideration of the Court's ruling at a time after the government concludes its last witness but before the government formally rests its case-in-chief. We believe that the additional witness testimony from a former VECO foreman, who will offer eyewitness accounts of the work performed at defendant's residence by himself and others, will provide the jury, the parties, and the Court with an alternative to sole reliance on any VECO Corporation corporate records concerning the work done at the Girdwood residence between summer 2000 and spring 2001. That testimony will further permit the defendant an opportunity to cross-examine the former VECO foreman on time that he, and likely others, spent at defendant's Girdwood residence.

Second, we respectfully request that the Court reconsider its proposed jury instruction to the extent that it comments on the Court's reasons for excluding certain testimony and evidence. District courts have been cautioned not to comment in front of the jury about why they are admitting or excluding evidence. See, e.g., United States v. Lance, 853 f.2d 1177, 1182-1184 (5th Cir. 1988); United States v. Peters, 791 F.2d 1270, 1284-1286 (7th Cir. 1986); United States v. Frazier, 479 F.2d 983, 985 (2d Cir. 1973); United States v. Allegretti, 340 F.3d 243, 247 (7th Cir. 1964). We respectfully submit that an analogous approach should be adopted here.

In the alternative, should the Court ultimately decline to reconsider its rulings, we believe that a decision to strike certain evidence is more than sufficient amelioration for any harm suffered. Permitting the jury an insight into purely legal matters and the Court's rationale for striking evidence is, we submit, not necessary.

CONCLUSION

For the foregoing reasons, the government respectfully requests that the Court reconsider its October 8, 2008, ruling.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of October, 2008, I caused a copy of the foregoing "GOVERNMENT'S MOTION FOR RECONSIDERATION" to be delivered by electronic mail to the following:

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