

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA	)	
	)	
v.	)	CRIMINAL NO. 08-10345-DPW
	)	
DIANNE WILKERSON	)	
and	)	
CHARLES "CHUCK" TURNER	)	

**PARTIALLY ASSENTED-TO MOTION FOR PROTECTIVE ORDER**

The United States of America, by and through Assistant United States Attorney John T. McNeil, with the assent of defendant Dianne Wilkerson, moves the Court pursuant to Fed.R.Crim.P. 16<sup>1</sup> and Local Rules 116<sup>2</sup> and 83.2B<sup>3</sup>, to issue a protective order in the form

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<sup>1</sup> Fed.R.Crim.P. 16(d)(1) reads in pertinent part:

**Protective and Modifying Orders.** At any time the court may, for good cause, deny, restrict, or defer discovery or inspection, or grant other appropriate relief.

<sup>2</sup> Local Rule 116 generally addresses the automatic discovery process under which the government discloses discovery material to a defendant. Among other things, Local Rule 116 provides for a streamlined discovery process, a mechanism by which the government can decline to provide evidence to a defendant, and a mechanism by which the government can seek a protective order from making disclosures under the automatic discovery process. In the absence of the proposed protective order in this case, the government intends to seek protection from certain disclosures under Local Rule 116.6.

<sup>3</sup> Local Rule 83.2B reads in pertinent part:

In a widely publicized or sensational criminal or civil case, the court, on motion of either party or on its own motion, may issue a special order governing such matters . . . likely to interfere with the rights of the accused or the litigants to a fair trial by an impartial jury . . . and any other matters which the court may deem appropriate for inclusion in such an order.

This case has been the subject of substantial attention in the broadcast and written media in the Boston area. While the media coverage has been of an extent and nature that the Court can take judicial notice of that coverage, the government is prepared to submit an index of the print news stories regarding this matter. Among other things, this matter has been the subject of at least seven front page stories in the *Boston Globe* and an equal number of cover stories in the *Boston Herald* since October 28, 2008.

attached hereto. The government has consulted with counsel for defendant Turner and Turner has declined to assent to this motion.<sup>4</sup>

This motion and proposed order seek to restrict the use and dissemination of material (including documents and recordings), and the contents thereof, which will be provided to the defendants by the United States in discovery. The motion and proposed order require that the defendants use the discovery material for the sole purpose of the legal defense of the criminal charges and forfeiture allegation pending in the case captioned above. As grounds for this motion, the government states the following:

In order to avoid unnecessary delay in the commencement of the trial, to assist defense counsel in the evaluation of the evidence and in preparation for trial, to ensure the rights of the litigants to a fair trial by an impartial jury, and to ensure that the interests of justice are served in this matter, the government is prepared to make the early disclosure of certain documents and recordings created and gathered during the course of the investigation of this matter under the conditions set forth in this motion and attached proposed order. Under the applicable Local Rules, a significant portion of the material the government is prepared to disclose is not required to be disclosed until 21 days before trial, or in the case of Jencks Act material, until the close of each witness's direct testimony. Moreover, since the government has yet to make a determination regarding those witnesses it intends to call at trial, some portion of the material the government is currently prepared to disclose may not fall within the applicable Local Rules or other rules governing discovery in criminal cases. In addition, certain documents the government is prepared to disclose contain personal information about the defendants, potential witnesses in the case, and other individuals who have information relevant to the investigation. Other documents the government is prepared to disclose are currently under seal and should remain so with the sole exception of production to the defendants for the legal defense of this case. In addition, much of the material was obtained through grand jury subpoena and relates to

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<sup>4</sup>The government is filing a supplemental memorandum in support of this motion to address issues related to defendant Turner.

matters occurring before the grand jury. The government is willing to make disclosure of this material in advance of its obligations under law, and in addition to its obligations under law, only if a protective order such as that attached to this motion has been entered by the Court.

The proposed order prohibits the disclosure of the documents and recordings, and the content of those materials, except for the purpose of the legal defense of the criminal charges and forfeiture allegation pending in the case captioned above. The proposed order limits disclosure of these materials and their content to defense counsel of record, those individuals employed by defense counsel of record who are assisting in the defense of this matter (such as secretaries, paralegals, and attorneys in defense counsels' firms), attorneys and paralegals in other offices assisting defense counsel of record, those individuals retained by defense counsel of record to assist in the legal defense of this matter (such as private investigators and experts), and the defendants. Defense counsel may show documents to, and discuss the information therein with, potential defense witnesses, provided that a defense counsel of record makes a good-faith determination that such disclosure is necessary to the proper preparation of the legal defense of the criminal charges and forfeiture allegation pending in the case captioned above. Defense counsel may not provide copies of the materials to such potential witnesses.

The initial disclosure of the materials by the government will be made to lead counsel of record after: (1) the Court enters the proposed order; and (2) each defense counsel of record certifies that he has read the order and will comply with its terms. Before a defense counsel of record further discloses the documents, or contents thereof, to any other individual – including a defendant – the individual to whom such disclosure is to be made must also certify in writing, to be filed with the Court, that he or she has read the order and will comply with its terms. Notably, the defendants themselves are prohibited from disclosing the material or the contents thereof to any person for any reason.

The government is also prepared to disclose detailed draft summaries of the recorded conversations related to this case. These draft summaries will assist counsel in locating and evaluating the recordings. However, because these draft summaries are currently in draft form and may contain errors in the descriptions/transcriptions of the recordings, the government is

only willing to make this disclosure on the condition that the defendants not use any draft written summary in the examination or cross-examination of any witness, except after notice to the Court and the government, and only if the district judge, upon motion and after hearing, determines such documents contain exculpatory evidence within the meaning of controlling law.

Finally, with the exception of those portions of the order which relate to the detailed draft summaries and to the prohibition on the defendants' personal disclosure of discovery material, the proposed order remains in effect until 21 days before trial or until such time as the Court may otherwise order.

Accordingly, the government, with the assent of defendant Wilkerson, respectfully requests that the Court enter a protective order in the form attached. With respect to defendant Turner, who has not assented to this motion and order, the government respectfully requests that the order be entered over his objection, if any.

Respectfully Submitted,

MICHAEL J. SULLIVAN  
UNITED STATES ATTORNEY

By: /s/ John T. McNeil  
JOHN T. McNEIL  
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Dated: January 5, 2009

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

January 5, 2009  
Date

/s/ John T. McNeil  
JOHN T. McNEIL  
Assistant United States Attorney