UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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

FINDINGS AND ORDER ON GOVERNMENT'S PARTIALLY ASSENTED MOTION
March 16, 2009

HILLMAN, M.J.

Proceedings

The defendants are variously charged with public corruption crimes. The defendant Dianne Wilkerson ("Wilkerson") is charged with conspiracy to extort, attempted extortion, and theft of services under 18 U.SC. §§1951, 1343 and 1346. The defendant Charles "Chuck" Turner ("Turner") is charged with conspiracy to extort, attempted extortion and making a false statement under 18 U.S.C. §§ 1951 and 1001(a)(2) (1). Both defendants are on conditional pretrial release. Among the conditions of their release is a detailed prohibition against contacting prospective witnesses and destruction of documents.

On January 5, 2009, the government moved for a protective order (Docket No. 38) to restrict the use and dissemination of materials that are to be provided to the defendants pursuant to the government's criminal discovery obligations. The proposed protective order would

essentially prohibit the defendants from using the criminal discovery for any purpose other than for the legal defense of the pending criminal cases. The defendant, Wilkerson, assented to the imposition of the protective order and agreed to be bound by the terms of the government's proposed order. The defendant, Turner, opposes the motion. On February 25, 2009, I held a hearing on that motion.[1] For the reasons set forth below, I grant the motion.

Discussion

The government has moved for the sought after protective order under Fed.R.Crim.P. 16, and this Court's Local Rules 83.2B, and 116. Federal Rule of Criminal Procedure 16(d)(1) provides in part that "[a]t any time the court may, for good cause, deny, restrict, or defer discovery or inspection, or grant other appropriate relief. . ." In addition, Local Rule 83.2B allows the court in high profile cases to issue special orders governing extrajudicial statements by the parties where the rights of the accused, or of the litigants to a fair trial may be implicated.

The government believes that Turner intends to try his case in the court of public opinion by enlisting the media to bolster his character and to attack the government's motive for prosecuting him. In support of its position, the government points to a series of press conferences, interviews, and rallies in which Turner has participated.

Not surprisingly, Turner argues that the proposed protective order denies him the right to defend himself in public against the government's accusations and is a gag order in contravention of the protections afforded by the First Amendment[2]. He alleges that the

[1] On February 12, 2009, I allowed The Motion of the American Civil Liberties Union of Massachusetts ("Amicus") for Leave to File Amicus Brief (Docket No. 52). That brief was helpful and considered carefully in arriving at this decision.

[2] In addition, the Amicus argues that Turner has a constitutional right to publicly proclaim his innocence with the same means and specificity employed by the government in publicly charging the defendant and that there are no factual underpinnings which would necessitate the imposition of such an order.

government's release of photographs to the media of both he and Wilkerson allegedly accepting bribe money was a gratuitous public relations maneuver designed to influence jurors and motivated by a political agenda — since it was the government that brought the case to the media in the manner in which it did, that he must respond in kind.

In *Seattle Times v. Rhinehart*, 467 U.S. 20, 104 S.Ct. 2199 (1984), the Supreme Court held that discovery protective orders are not violative of first amendment protections if three criteria are met: (1) there is a showing of good cause as required by the rules; (2) the restriction is limited to the discovery context; and (3) the order does not restrict the dissemination of information obtained from other sources. *Id.*, at 37. *See also Anderson v. Cryovac*, 805 F.2d 1 (1st Cir.1986). In support of the 'good cause' requirement, the government proffers that: (1) the case has garnered intense media scrutiny which has the potential of prejudicing jurors and intimidating witnesses; (2) Turner has engaged in a series of public events proclaiming his innocence; (3) Turner's prior conduct indicates that any discovery produced will make its way into his publicity campaign; (4) the selective release of discovery material could be used to directly or indirectly intimidate, coerce, or embarrass witnesses; (5) the discovery material contains a large amount of grand jury evidence and other sensitive material; (6) the discovery material contains the identities and other information regarding persons investigated but not charged; (7) the discovery material contains personal privacy information of both defendants and other not charged; (8) the discovery material contains images of undercover agents whose exposure could place them at risk; (9) the discovery material contains information about cooperating witnesses which would subject them to coercion, intimidation, and embarrassment;

and (10) the discovery package contains a great deal of inculpatory information about Wilkerson, the release of which could inhibit her right to a fair trial.

Addressing first Turner's alleged attempts to publicly influence the outcome of his case. The government directs the court to a series of interviews between Turner and members of the local media. I have reviewed the transcript of Turner's interview by Jim Heisler for Talk of the Neighborhood and the video of an interview with Channel 7. While I am not sure that I understand the tactical value of some of the statements that Turner makes in these interviews, I do not find them 'over the top' in the sense that I cannot find that Turner has overtly attempted to influence anyone, nor do I find that his statements would have such an effect[3]. Turner essentially asserts his innocence of the charged offenses and tries to explain his conduct. He also mentions the government's cooperating witness by name, however, at the time of the interviews the cooperating witness had publically identified himself in the Boston Globe. Furthermore, I agree with Turner, Wilkerson, and the Amicus that the government's inclusion of photographs in the applications for their criminal complaints, while clearly permissible, added little to the establishment of probable cause and may have served to ratchet up the publicity. That being said, I do not agree with Turner or the Amicus that they have the right to respond in kind, nor do I agree that the government's inclusion of the photographs warrants such a response. The government surely anticipated that the photographs would become front page fodder and result in a maelstrom of publicity. However, that does not mean that the defendants can engage in a 'tit for tat' in the media. Such conduct would only result in a escalation of charges and countercharges that would infect the fair trial rights of all parties.

[3] Turner tells Channel 7 that he never took money and in his Talk of the Neighborhood interview he argues that any money he may have taken was a campaign contribution.

Of more significance to me is the government's argument that much of the discovery package is too sensitive to risk being released. The government has filed an *ex parte* affidavit detailing references to existing sensitive grand jury material, ongoing grand jury investigations, personal privacy information of defendants and witnesses, and witness security information. Additionally, the government has argued persuasively that given the sheer volume of materials, requiring it to redact all sensitive information would not only be time consuming, but would render many reports incomplete and, in all likelihood, would result in protracted discovery disputes. The government also argues that there is information not germane to the case which would generate media interest and cause needless harm to the defendants and innocent third parties.

The government has supported its arguments with concrete and compelling examples of sensitive information which, if released to the public at this stage of the proceedings, could impair ongoing investigations, prejudice the parties' right to a fair and impartial trial, and cause irreparable harm to the defendants, witnesses and/or third parties. Having reviewed the parties' positions and weighed the applicable interests, I find that the government has established good cause for the issuance of its proposed protective order. I further find that the proposed protective order is narrowly drawn to cover only discovery and that it does not prevent the defendants from discussing information learned from an independent source. Therefore, I am granting the government's motion. The protective order shall be issued forthwith.[4]

Conclusion

The Partially Assented-To Motion For Protective Order is **granted**.

[4]After receiving the discovery material, the defendants are invited to petition the court for a relaxation of the protective order with respect to any items they believe are not private or sensitive.

/s/ Timothy S. Hillman
TIMOTHY S. HILLMAN
MAGISTRATE JUDGE