

IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA  
CRIMINAL DIVISION

UNITED STATES,

v.

DYLAN M. WARD,  
JOSEPH R. PRICE,  
and  
VICTOR J. ZABORSKY,

Defendants.

Criminal No. 08-CF1-26996  
Criminal No. 08-CF1-27068  
Criminal No. 08-CF1-26997

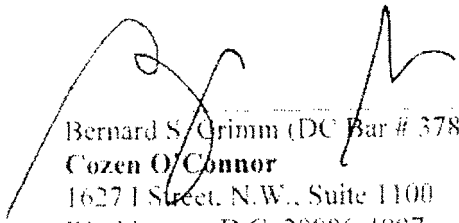
Judge Frederick H. Weisberg

Status Hearing – Sept. 11, 2009

**NOTICE OF FILING**

Defendants, by and through counsel, respectfully requests that the attached discovery letter, dated June 4, 2009, be made a part of the record in this case.

Respectfully submitted,



Bernard S. Grimm (DC Bar # 378171)  
**Cozen O'Connor**  
1627 I Street, N.W., Suite 1100  
Washington, D.C. 20006-4007  
Telephone: 202-912-4835  
Facsimile: 877-260-9435  
Email: [bgrimm@cozen.com](mailto:bgrimm@cozen.com)

*Counsel for Defendant Joseph R. Price*

IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA  
CRIMINAL DIVISION

UNITED STATES.

v.

DYLAN M. WARD,  
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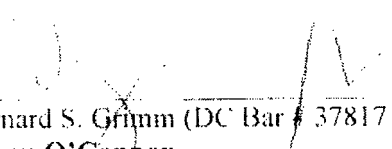
Judge Frederick H. Weisberg

Status Hearing – Sept. 11, 2009

NOTICE OF FILING

Defendant Joseph R. Price, by and through counsel, respectfully requests that the attached discovery letter, dated June 17, 2009, be made a part of the record in this case.

Respectfully submitted,

  
Bernard S. Grimm (DC Bar # 378171)  
**Cozen O'Connor**  
1627 I Street, N.W., Suite 1100  
Washington, D.C. 20006-4007  
Telephone: 202-912-4835  
Facsimile: 877-260-9435  
Email: [bgrimm@cozen.com](mailto:bgrimm@cozen.com)

*Counsel for Defendant Joseph R. Price*

IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA  
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DYLAN M. WARD,

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**Defendants.**

**Criminal No. 08-CF1-26996**

**Criminal No. 08-CF1-27068**

**Criminal No. 08-CF1-26997**

**Judge Frederick H. Weisberg**

**ORDER**

After consideration of Defendants' Renewed Motion to Compel, it is hereby ORDERED this \_\_\_\_ day of July, that Defendants' Renewed Motion to Compel, is GRANTED; and it is hereby

FURTHER ORDERED that the government is to produce to Defendants no later than July \_\_\_\_, 2009, the following documents, items and information (the "Discovery") (reference is made to the Request numbers of Defendants' "Outstanding Discovery Requests" chart, attached at Exhibit A to Defendants' \_\_\_\_\_ Joint Motion to Compel):

<u>Req. No.</u>	<u>Discovery To Be Produced</u>
7-9	PD 119s of EMS responders;
12, 13	Complete copies of documents that were partially produced;
14, 15	Subpoena issued to various cell phone/email providers, to the extent not already produced;

- 22 Robert Wone's cell phone records (to the extent not already produced) and cell phone;
- 24 Image of Robert Wone's work computer hard drive;
- 25, 36 All Emails for July 27 - Aug. 3, 2006, from Robert Wone's home computer;
- 26-28 All of Robert Wone's emails for July 27 - Aug. 3, 2006, from any email account of Robert Wone;
- 31, 41 Robert Wone's personnel file from Radio Free Asia;
- 36 All of Katherine Wone's emails for July 3 - Aug 3, 2006, from any email accounts of Katherine Wone;
- 62 All forensic test results not already produced to the Defendants, including but not limited to test results for Item 51 (swab from dryer temperature dial), Item 65 (a comforter), Items 244-245 (three plastic containers, containing green liquid), Item 247 (a baster used to collect the green liquid in Items 244-245);
- 62-63 A legible copy of the FBI Laboratory's complete case file with all records pertaining to all forensic testing in this case, as delineated in "Exhibit C" to Defendants' Renewed Motion to Compel. For materials that are represented in any format other than black and white copies, copies that are equivalent in content and quality (e.g., x-ray film copies of x-ray films, photographic quality copies of photographs, color copies of electropherograms, and CD-ROM copies of electronic data) shall be produced. The records to be produced include, but are not limited to the bench notes and all communications between the United States Attorney's Office ("USAO") and the FBI Laboratory, as well as all records related to any forensic testing, even if located separate from the FBI Laboratory's "Case File";
- 64, 75 Any and all materials furnished to any government expert, including but not limited to all correspondence (including email) between the USAO and the expert(s);
- 69-70, 73-75 Complete Rule 16(a)(1)(E) Expert Disclosures to include "witnesses' opinions, the bases and reason for those opinions, and the witnesses qualifications";
- 73 Certifications for cadaver dog(s) used at 1509 Swann Street;
- 71 Exact location of the partial palm print found in the second floor office of 1509 Swann Street; and
- N/A The date and time that each of the crime scene photos was taken, that have been produced by the government to the defense.

It is FURTHER ORDERED that for any Discovery that the government anticipates it cannot produce by July \_\_\_\_, 2009, the government is to file no later than July \_\_\_\_, 2009, a motion specifying which item(s) of Discovery it anticipates it cannot produce by July \_\_\_\_, 2009, and showing good cause as to why the government contends it cannot produce the item(s) of Discovery by July \_\_\_\_, 2009, and a statement as to when the government can produce the item(s) of Discovery.

Entered this: \_\_\_\_ day of \_\_\_\_\_, 2009

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Judge Frederick H. Weisberg  
Superior Court for the District of Columbia

ND: 4839-5943-7827, v. 5

IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA  
CRIMINAL DIVISION

UNITED STATES,

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DYLAN M. WARD,

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VICTOR J. ZABORSKY,

Defendants.

Criminal No. 08-CF1-26996

Criminal No. 08-CF1-27068

Criminal No. 08-CF1-26997

Judge Frederick H. Weisberg

**ORDER**

It is hereby ORDERED this \_\_\_\_ day of July, that Defendants' Joint Request for an Expedited Order, is GRANTED; and it is hereby

FURTHER ORDERED that any response by the government to Defendants' Renewed Motion to Compel, shall be filed no later than July \_\_\_\_, 2009.

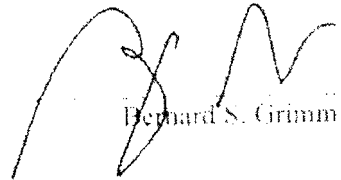
Entered this: \_\_\_\_ day of \_\_\_\_\_, 2009

\_\_\_\_\_  
Judge Frederick H. Weisberg  
Superior Court for the District of Columbia

**CERTIFICATE OF SERVICE**

I certify that on this 4<sup>th</sup> day of June the foregoing discovery letter was sent via 1<sup>st</sup> class mail, postage pre-paid to:

Glen Kirschner  
Assistant United States Attorney  
Chief Homicide Section  
555 4<sup>th</sup> Street, NW  
Washington, DC 20530



Bernard S. Grimm

**IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA  
CRIMINAL DIVISION**

**UNITED STATES,**

**v.**

**DYLAN M. WARD,**

**JOSEPH R. PRICE,**

**and**

**VICTOR J. ZABORSKY,**

**Defendants.**

**Criminal No. 08-CFI-26997**

**Judge Frederick H. Weisberg**

**Status Hearing – Sept. 11, 2009**

**Exhibit A**





SCHERTLER & ONORATO, L.L.P.

David Schertler  
*DC & IL Bars*

Danny C. Onorato  
*DC & CA Bars*

Vincent H. Cohen, Jr.  
*DC, MD & NJ Bars*

David H. Dickieson  
*DC, MD, VA & PA Bars*

Lisa Fishberg  
*DC, MD & NY Bars*

Mark E. Schamel  
*DC, MD & NY Bars*

Robert J. Spagnoletti  
*DC, NJ, NY & TX Bars*

Claire Morris Clark  
*VA Bar*

Veronica Renzi Jennings  
*MD Bar*

Habib F. Ilahi  
*DC & TX Bars*

Michael Starr  
*DC Bar*

Peter V. Taylor  
*DC Bar*

June 3, 2009

Glenn Kirschner  
Assistant United States Attorney  
Office of the United States Attorney for the District of Columbia  
555 Fourth Street, N.W.  
Washington, D.C. 20530

Re: *U.S. v. Joseph Price, Victor Zaborsky and Dylan Ward*  
*2008-CF1-27068; 2008-CF1-26997; 2008-CF1-26996*

Dear Mr. Kirschner:

I am writing to memorialize our various conversations of May 22, 2009 concerning discovery matters in the above-captioned matters. Your willingness to discuss these matters in advance of the court hearing helped speed us along to the Memorial Day weekend.

1. Misapplication of Ashley's Reagent

You confirmed that the government's disclosure that Ashley's Reagent was used in a manner not intended by the manufacturer was based on government counsel's understanding of how that chemical was used at 1509 Swann Street. You further confirmed that no forensic expert produced a report concluding that the chemical was misapplied, and that the only known remediation efforts were made by the FBI as disclosed in the reports you produced on May 15, 2009.

2. Evidence of Sexual Assault and Torture

You confirmed that the government has produced all physical, scientific and documentary evidence in its possession, as required by Rule 16, relating to the alleged sexual assault and torture of Robert Wone. You further confirmed that the government may rely on the testimony of experts which will be disclosed as required by Rule 16(a)(1)(E).

ATTORNEYS AT LAW

601 Pennsylvania Avenue, N.W.  
North Building, 9th Floor  
Washington, D.C. 20004-2601

202.628.4199  
202.628.4177 fax  
www.schertlerlaw.com

3. Redacted Police Officer Notes

You confirmed that the government is willing to submit unredacted copies of police officers notes taken during interviews of the defendant to the Court for *in camera* review. The government provided redacted copies to the defendants. The defendants are prepared to submit a motion requesting *in camera* review and we understand that you would not oppose such a motion.

4. Mr. Wone's Personal and Work E-mails

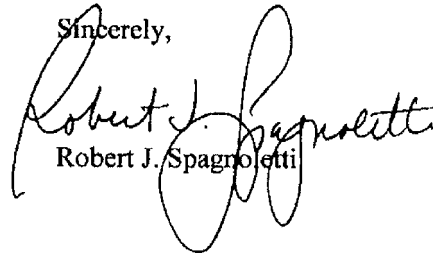
You confirmed that the United States Secret Service is analyzing images of Mr. Wone's personal and work computers and that the government will provide the defendants with copies of Mr. Wone's e-mails from both computers during the requested time periods.

5. Forensic Testing Case Files

You confirmed that the government will provide the defendants with copies of the relevant FBI case file documents associated with the forensic reports issued in this case. We would ask that you produce this information as soon as possible, and no later than July 1, 2009, to permit the defendants the opportunity to consider whether they will request any additional forensic testing.

Thank you again for your cooperation. We look forward to receiving the remaining discovery materials.

Sincerely,

  
Robert J. Spagnolotti

CC: David Schertler  
Thomas Connolly  
Bernard Grimm

**IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA  
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VICTOR J. ZABORSKY,**

**Defendants.**

**Criminal No. 08-CFI-26997**

**Judge Frederick H. Weisberg**

**Status Hearing – Sept. 11, 2009**

**Exhibit B**



A PROFESSIONAL CORPORATION

THE ARMY AND NAVY CLUB BUILDING SUITE 1100 1527 I STREET, NW WASHINGTON, DC 20004-4507  
202.912.4800 800.549.1111 202.912.4830 FAX www.cozen.com

June 4, 2009

**Bernard Grimm**  
Direct Phone 202.912.4835  
Direct Fax 202.912.4830  
bgrimm@cozen.com

Glenn Kirschner  
Assistant United States Attorney  
Chief Homicide Section  
555 4<sup>th</sup> Street, NW  
Washington, DC 20530

Re: United States v. Joseph Price, et al., Case No. 08-CF1-27068

Dear Mr. Kirschner:

In conjunction with Mr. Spagnoletti's correspondence of June 3, 2009, this letter serves to delineate outstanding discovery due to the defense and other discovery matters requiring action by the government.

**Discovery to Be Produced**

The government has agreed to produce the following discovery to the defense (reference is made to the Request numbers of Defendants' "Outstanding Discovery Requests" chart):

<u>Req. No.</u>	<u>Discovery To Be Produced</u>
7-9	PD 119s of EMS responders
12, 13	Complete copies of documents that were partially produced
14, 15	Subpoena issued to various cell phone/email providers, to the extent not already produced
22	Robert Wone's cell phone records (to the extent not already produced) and cell phone

- 24 Image of Robert Wone's work computer hard drive
- 25, 36 All Emails for July 27 - Aug. 3, 2006, from Robert Wone's home computer
- 26-28 All of Robert Wone's emails for July 27 - Aug. 3, 2006, from any email account
- 31, 41 Robert Wone's personnel file from Radio Free Asia
- 36 All of Kathy Wone's emails for July 3 - Aug 3, 2006, from any email accounts
- 62-63 All forensic test results and the FBI "case file associated with each of the forensic reports [the FBI] issued in this case," to include bench notes and all communications between the USAO and FBI Laboratory
- 64, 75 Any and all materials furnished to any government expert, including but not limited to all correspondence (including email) but the USAO and the expert(s)
- 69-70, 73-75 Complete Rule 16(a)(1)(E) Expert Disclosures to include "witnesses' opinions, the bases and reason for those opinions, and the witnesses qualifications."
- 73 Certifications for cadaver dog(s) used at 1509 Swann Street
- 71 Exact location of the partial palm print found in the second floor office of 1509 Swann Street

We request that all of the above discovery be produced to us no later than June 15, 2009.

We have agreed that discovery responsive to Defendants' Req. Nos. 1 and 16 will be submitted to the Court for *in camera* review. We also ask that the following additional redacted items, produced subsequent to the filing of Defendants' Joint Motion to Compel, be submitted to the Court for *in camera* review:

<u>Req. No.</u>	<u>Discovery To Be Submitted For <i>In Camera</i> Review</u>
1	Redacted notes from custodial interrogation of Defendants (P344-P352). As indicated in Mr. Spagnoletti's June 3, 2009 letter, the defense will prepare an appropriate motion for the Court.
16	Warrant Attachment (P51)
#	Emails between Det. Bryan Waid and Kathy Wone regarding the missing Blackberry (included in May 8, 2009 production which has no production page numbers)
#	Emails between Robert Wone and others (included in May 8, 2009 production which has no production page numbers)

# Notes taken by government interviewers of statements made by Dylan Ward and Victor Zaborsky (produced on May 15, 2009, P1477, P1479-P1483, P1486, P1488-P1491).

We have agreed that the following is *Jencks* material that need not be produced now, but which we request be produced -along with all other *Jencks* material- no later than two weeks before trial is to commence:

Req. No.	<u>Jencks Material To Be Produced</u>
5, 105	Redacted PD 119 (P353-P356)

We have also agreed that the government will produce *Lewis* material, including but not limited to *Lewis* material for all Metropolitan Police officers and EMS responders involved in this matter. We ask that all *Lewis* Material be provided no later than July 31, 2009. See Req. Nos. 103-104.

#### **Brady Requests**

We have not resolved, and the Court has not yet considered, Defendants' *Brady* requests (Req. Nos. 78-102).

However, we renew our requests that the government provide all *Brady* material from interviews of and grand jury testimony by all individuals interviewed and/or called by the government. The government has offered to provide the defense with a list of names of interviewees who said favorable things about the Defendants. We view this as insufficient to meet the government's *Brady* obligations as Defendants are entitled to copies of the actual *Brady* material from the notes and/or testimony from all individuals interviewed or called by the government. We ask that this specific *Brady* material be provided to the defense no later than June 30, 2009.

In addition, given the improper forensic processing of 1509 Swann Street, pursuant to *Brady*, we also request that the government produce all FBI report PD-302s (like the one produced for August 10, 2009, at P1555 - P1570), along with all attachments and related notes for each day the FBI was present at 1509 Swann Street. In light of the improper forensic processing of 1509 Swann Street, as identified in-part in the FBI's Aug. 10, 2006 PD-302, we believe all such reports are properly discoverable under *Brady*. Accordingly, we request that these reports be provided to the defense no later than June 15, 2009.

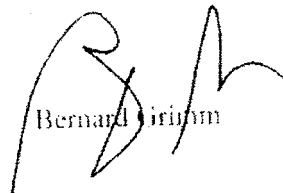
#### **Items To Be Transferred to Defense**

We await transfer of the items subject to the Court's May 26, 2009 order, and request that all such items be transferred to the defense no later than June 15, 2009.

Glenn Kirschner  
June 4, 2009  
Page 4

Thank you in advance for your prompt attention to these matters.

Sincerely,



Bernard Kirshin

cc: Superior Court Case File  
David Schertler, Esq.  
Thomas Connolly, Esq.  
Veronica Jennings, Esq.  
Amy Richardson, Esq.

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

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**VICTOR J. ZABORSKY,**

**Defendants.**

**Criminal No. 08-CFI-26997**

**Judge Frederick H. Weisberg**

**Status Hearing – Sept. 11, 2009**

**Exhibit C**





A PROFESSIONAL CORPORATION

THE ARMY AND NAVY CLUB BUILDING SUITE 1100 1227 15 STREET NW WASHINGTON, DC 20004-4007  
202 912 4800 800 549 1355 202 912 4830 FAX www.cozen.com

June 16, 2009

**Bernie Grimm**  
Direct Phone 202-912-4800  
bgrimm@cozen.com

**VIA FIRST CLASS MAIL**

Glen Kirschner  
Assistant United States Attorney  
Chief Homicide Section  
555 4<sup>th</sup> Street, NW  
Washington, DC 20530

Re: United States v. Joseph Price, Case No. 2008 CFJ 27068

Dear Glen,

As you know, prior to and during a May 22, 2009 motions hearing in the above referenced matter, the government committed to produce a variety of discovery to the defense. We wrote to you on June 3, 2009 and June 4, 2009, delineating the discovery that the government agreed to produce, and requested that the majority of the promised discovery be provided to us no later than June 15, 2009. As of today, June 16, 2009, we have not received any of the promised discovery, nor has the government provided a date certain for production of any of the promised discovery.

Among the promised discovery are FBI Laboratory testing "Case Files," to include all bench notes and all communications between the United States Attorney's Office ("USAO") and the FBI Laboratory, regarding all testing conducted in this matter. By telephone call of June 5, email of June 8, and letter of June 10, we advised the government that it is urgent that these Case Files be produced now because without the Case Files, Defendants experts cannot proceed with the independent testing of the items which the Court, by order of May 26, 2009, directed be transferred to the defense for independent testing and analysis.

On Friday, June 12, 2009, you left a message indicating that none of the Case Files would be produced by June 15, 2009, because one of the many FBI Laboratory analysts, Ms. Tamyra Moretti, who was involved in testing in this matter, was on vacation from June 8, 2009 to June 26, 2009. On June 15, 2009, we contacted your office and asked that one of Ms. Moretti's colleagues assist in retrieving the case files so that they could be timely produced. Indeed, it is our understanding that the Case Files can be quickly retrieved from the FBI "Laboratory file

room” by a host of FBI Laboratory employees, simply by reviewing the specific identifiable files related to any case where forensic analysis of evidence was utilized.<sup>1</sup>

Naturally, there should also be no delay in gathering and producing now the host of Case Files that relate to testing done by FBI Laboratory analysts other than Ms. Moretti. Similarly, your office is in possession of its own copy of all communications to and from the FBI Laboratory regarding testing in this matter, so there need be no further delay in producing those communications either.

Other than the matter of Ms. Moretti’s Case Files, we have received no response to our requests that the other promised discovery be produced now. Accordingly, following we again delineate the promised discovery and ask that **all promised discovery, including all Case Files, be produced to the defense no later than July 1, 2009.**<sup>2</sup> Should the government fail to produce all of the promised discovery by that time, we will have no choice but to renew our motion to compel.

### Discovery to Be Produced

The government has agreed to produce the following discovery to the defense (reference is made to the Request numbers of Defendants’ “Outstanding Discovery Requests” chart):

<u>Req. No.</u>	<u>Discovery To Be Produced</u>
7-9	PD 119s of EMS responders;
12, 13	Complete copies of documents that were partially produced;
14, 15	Subpoena issued to various cell phone/email providers, to the extent not already produced;
22	Robert Wone’s cell phone records (to the extent not already produced) and cell phone;
24	Image of Robert Wone’s work computer hard drive;
25, 36	All Emails for July 27 - Aug. 3, 2006, from Robert Wone’s home computer;
26-28	All of Robert Wone’s emails for July 27 - Aug. 3, 2006, from any and all of Robert Wone’s email accounts;
31, 41	Robert Wone’s personnel file from Radio Free Asia;

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<sup>1</sup> This system is not only practical in instances such as this, where the analyst who did the testing is temporarily unavailable, but it is plainly an absolute necessity given that FBI Laboratory analysts can and do leave the FBI entirely

<sup>2</sup> I will send you a separate discovery letter today which specifically addresses the forensic discovery

- 36 All of Kathy Wone's emails for July 3 - Aug 3, 2006, from any and all of Katherine Wone's email accounts:
- 62-63 All forensic test results and the FBI "case file associated with each of the forensic reports [the FBI] issued in this case," to include bench notes and all communications between the USAO and FBI Laboratory:
- 64, 75 Any and all materials furnished to any government expert, including but not limited to all correspondence (including email) between the USAO and its expert(s):
- 69-70, 73-75 Complete Rule 16(a)(1)(E) Expert Disclosures to include "witnesses' opinions, the bases and reason for those opinions, and the witnesses qualifications":
- 73 Certifications for any and all cadaver dog(s) used at 1509 Swann Street; and
- 71 The exact location of the partial palm print found in the second floor office of 1509 Swann Street.

In addition, we have agreed that discovery responsive to Defendants' Req. Nos. 1 and 16 will be submitted to the Court for *in camera* review. We also ask that the following additional discovery which was also produced in redacted form subsequent to the filing of Defendants' Joint Motion to Compel, be submitted to the Court for *in camera* review:

<u>Req. No.</u>	<u>Discovery To Be Submitted For In Camera Review</u>
1	Redacted notes from the custodial interrogations of Defendants (produced at P344 - P352).
16	Warrant Attachment (produced at P51).
NA	Emails between Detective Bryan Waid and others regarding Mr. Robert Wone's now missing Blackberry (first fifteen pages of the May 8, 2009 production which has no production page numbers).
NA	Emails between Robert Wone and the individuals with whom he had lunch plans on Aug. 3, 2006, and to whom he typed an email at 11:07 pm on Aug. 2, 2006, on his now missing Blackberry (the twenty-second and twenty-third pages of the May 8, 2009 production).

NA Notes taken by government interviewers of statements made by Defendants Dylan Ward and Victor Zaborsky (produced at P1476 - P1491).

We ask that all of these redacted documents be produced to the Court for *in camera* inspection by no later than July 1, 2009.

We have agreed that the following is *Jencks* material that need not be produced now, but which we request be produced along with all other *Jencks* material—no later than two weeks before trial is to commence:

Req. No.      Jencks Material To Be Produced

5, 105          Redacted PD 119 (P353-P356)

We have also agreed that the government will produce *Lewis* material, including but not limited to *Lewis* material for all Metropolitan Police officers and EMS responders involved in this matter. We ask that all *Lewis* Material be provided no later than July 31, 2009. See Req. Nos. 103-104.

#### **Brady Requests**

We have not resolved, and the Court has not yet considered, Defendants' *Brady* requests (Req. Nos. 78-102).

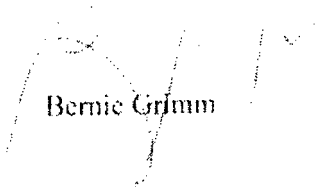
However, we renew our request that the government provide all *Brady* material from interviews of and grand jury testimony by all individuals interviewed and/or called by the government. The government has offered to provide the defense with a list of names of interviewees who said favorable things about the Defendants. We view this as insufficient to meet the government's *Brady* obligations as Defendants are entitled to copies of the actual *Brady* material from the notes and/or testimony from all individuals interviewed or called by the government. We ask that this specific *Brady* material be provided to the defense **no later than July 15, 2009**.

#### **Items To Be Transferred to Defense**

We understand that the government is prepared to transfer all of the items that are subject to the Court's May 26, 2009 order. We will take possession of these items as soon as we have received all the FBI Laboratory testing "Case Files," so that we can then promptly proceed with analysis and testing of these items.

Thank you in advance for your prompt attention to these matters.

Sincerely,



Bernie Grimm

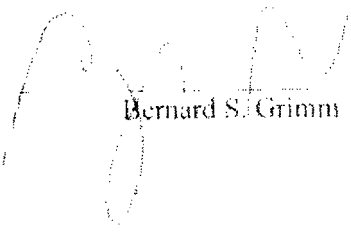
cc:

D.C. Superior Court Clerk's Office  
David Schertler  
Thomas Connolly  
Veronica Jennings  
Amy Richardson

**CERTIFICATE OF SERVICE**

I certify that on this 17<sup>th</sup> day of June 2009 the foregoing discovery letter was sent via 1<sup>st</sup> class mail, postage pre-paid and facsimile:

Glen Kirschner  
Assistant United States Attorney  
Chief Homicide Section  
555 4<sup>th</sup> Street, NW  
Washington, DC 20530



Bernard S. Grimm

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Judge Frederick H. Weisberg

Status Hearing – Sept. 11, 2009

Exhibit D



COZEN  
O'CONNOR

A PROFESSIONAL CORPORATION

THE ARMY AND NAVY CLUB BUILDING SUITE 1101 1627 I STREET, NW WASHINGTON, DC 20004-2037  
202.912.4800 800.540.1151 202.912.4800 FAX www.cozen.com

June 18, 2009

VIA FIRST CLASS MAIL

Bernie Grimm  
Direct Phone 202-912-4800  
bgrimm@cozen.com

Glen Kirschner  
Assistant United States Attorney  
Chief Homicide Section  
555 4<sup>th</sup> Street, NW  
Washington, DC 20530

Re: United States v. Joseph Price, Case No. 2008 CF1 27068

Dear Glen,

In follow up to my letter of June 16, 2009, in the above referenced matter, I am writing to ensure that we are in agreement regarding the contents of the FBI Laboratory testing "Case Files" and related forensic testing information that the government has agreed to produce in this matter, and which we have requested be produced to the defense **no later than July 1, 2009**.

It is our understanding -- and request pursuant to D.C. Rule of Criminal Procedure 16 and the Fifth and Sixth Amendments to the U.S. Constitution -- that the government will produce the following with regard to any and all DNA and other forensic testing, including but not limited to forensic testing for the presence of semen, conducted or contemplated in this case:<sup>1</sup>

- (1) Case file of DNA and other forensic testing results: A legible copy of the complete case file with all records pertaining to DNA and other forensic testing in this case. For materials that are represented in any format other than black and white copies, please provide copies that are equivalent in content and quality (e.g., x-ray film copies of x-ray films, photographic quality copies of photographs, color copies of electropherograms, and CD-ROM copies of electronic data). The records to be produced include, but are not limited to, the following, even if located separate from the laboratory "Case File."

<sup>1</sup> It is also our understanding that this type of information is routinely requested of and provided by your office in cases involving testing of biological evidence.



- a. All communications between the United States Attorney's Office and the FBI Laboratory regarding the testing;
  - b. Hand written bench notes;
  - c. Extraction, quantitation, PCR, hybridization, capillary electrophoresis, and final analysis worksheets;
  - d. Worksheets and other notes used in calculating frequency statistics;
  - e. Any printouts of electropherograms;
  - f. Any printouts of electronic quantitation data;
  - g. Records of any errors, discrepancies, or trouble-shooting that occurred during the testing in this case, as well as an explanation of actions taken to remedy the problems—such records should include documents maintained pursuant to SWGDAM Standard 14.1.1;
  - h. Color photographs or copies of slot blots, restriction gels, yield gels, dot strips, or autorads (if used in testing);
  - i. Copies of phone and other communication logs reflecting conversations by laboratory personnel internally and externally with other people about testing in this case;
  - j. Case notes maintained pursuant to SWGDAM Standard 11.1;
- (2) Data files for testing done in this case: Copies of all data files created and used in the course of performing DNA testing and subsequent analysis of DNA data in this case. These files should include all data necessary to (a) independently reanalyze the raw data, and (b) reconstruct the analysis performed in this case (As a noninclusive example, if the laboratory used Genescan and Genophiler, all electronic data files from both programs should be included). Please provide these data files on a CD-ROM on which the DNA examiner has written the date he or she copied the data onto the CD-Rom, the laboratory case number, and the DNA examiner's initials. Transmit the data intact, as originally collected, whether on a Macintosh or PC platform. In addition, to the extent that this request pertains to commercially available software that was used unmodified in this case, you may respond to this request simply by indicating the name of the software item, the manufacturer, and the version used to create the data files you deliver. However, in the event that data files were created with internally created software or commercial software modified in any way, please provide either a copy of the modified software item or a detailed list of the changes or modifications that were made with regard to the software along with the data files. Data files should include, but are not limited to, the following:

- a. Project files;

- b. Sample files.
- c. Gel files (when gels used);
- d. Matrix files (including the data used to compile the matrix files).
- e. Analysis parameter files;
- f. Sample sheets;
- g. Injection lists; and
- h. Log files.

(3) Statistical information relied upon to interpret tests: Please identify the statistical method used to calculate probabilities in this case. In addition, please provide copies of the materials that were used or relied upon in performing any statistical analyses in this case. These materials should include, but are not limited to, the following:

- a. The complete STR database or databases on CD-ROM, in a format such that the multi-locus genotype is given for each sample tested;
- b. Copies of all documents describing the source or origin of samples in STR databases used, including documents regarding the method by which samples were collected, the background and/or characteristics of the individuals who were the sources of the samples, the choice of populations and sub-populations that were sampled, and the nature of the sampling procedure used to collect the samples;
- c. Copies of all documents generated by computer statistical programs (e.g., PopStats) used to aid statistical calculations in this case;
- d. Allelic frequency tables relied upon; and
- e. Computer data files relating to statistical analyses.

(4) Laboratory procedures relied upon when performing tests: Please provide legible copies of all documents that were, or are claimed to have been, followed or relied upon in executing, interpreting, and/or reporting the DNA tests performed in the instant case. These materials should include, but are not limited to, the following:

- a. Standard operating procedures of the DNA testing laboratory, including those maintained pursuant to SWGDAM Standard 9.1.1;
- b. Quality assurance manuals, including those maintained pursuant to SWGDAM Standard 3.1.1; and
- c. Quality control manuals.

(5) Documentation of laboratory and analyst expertise: Please provide legible copies documenting how the testing laboratory meets scientific community standards and how laboratory personnel have been trained to conduct DNA testing. These materials should include, but are not limited to, the following:

- a. Copies of all licenses or other certificates of accreditation held by the DNA testing laboratory;
- b. Copies of all audit reports for the last five years relating to the DNA testing laboratory used in this case, including all audit documents retained pursuant to SWGDAM Standard 15.1.2;
- c. Copies of any contamination records kept by the laboratory- these materials should include (i) instances of reagent blanks and/or negative controls registering the presence of DNA and/or positive controls registering the presence of DNA other than that of the control DNA and (ii) all documents describing actions taken by the laboratory in response to contaminated controls or other forms of contamination;
- d. Copies of any control or sample discrepancy logs kept by the laboratory- these materials should include: (i) the case number, (ii) laboratory number, (iii) name of the analyst, (iv) extraction/concentration method, (v) description of the discrepancy, (vi) the cause of the discrepancy, and (vii) the corrective action taken.
- e. Copies of any proficiency tests that were taken by the persons who performed the DNA testing in this case- these materials should include (i) the complete proficiency test case file, (ii) computer data files, (iii) evaluations and/or reports by the testing agency; and (iv) records maintained pursuant to SWGDAM Standard 13.1.1;
- f. Current resumes, job descriptions, and descriptions of continuing professional training for all personnel involved in handling, conducting, and/or reviewing the biological material, serological testing, and DNA testing performed in this case, including all materials maintained pursuant to SWGDAM Standard 5.1;
- g. A list of the last ten cases at which the persons involved with testing in this case have testified.

(6) Explanation of laboratory and computer instruments relied upon to perform tests: Please provide legible copies of documentation about the equipment, reagents, and testing kits used to conduct DNA testing in this case. These materials should include, but are not limited to, the following:

- a. A brief description of the kinds of forensic work done in the laboratory and a diagram of the laboratory that clearly designates the work areas for evidence storage, DNA isolation, PCR processing, and DNA typing;

- b. A list of all the laboratory instruments used in the DNA testing in this case, including the name of the instrument, manufacturer, and version used;
  - c. A copy of the instructions provided by manufacturers of commercial tests kits, and protocols and manuals relating to the testing instruments (including user's manuals and machine-run specifications);
  - d. Documents regarding any modifications from the seller's specifications to any instrument (e.g. the ABI 310) or test kit along with any documentation of what, if any, validation was performed regarding such modifications;
  - e. Documentation of the maintenance of laboratory equipment maintained per SWGDAM Standard 10.3.2;
  - f. Materials that document any trouble-shooting or changes that were made to the genetic analyzer instrument used in the instant case, including: (i) copies of any notes, or records of communications relating to trouble-shooting that had to be done on the instrument, including calls to technical support lines and visits to field technicians to repair the instrument; (ii) records of any changes that were made to the instrument in the course of testing samples in this case, including replacement of parts such as laser or CCD virtual camera; (iii) records of all computer resets or reboots that had to be done during the testing in the instant case, including soft resets, cold boots, and/or clear memory resets; and (iv) records of all incidents in which manual control was used to override genetic analyzer presets;
  - g. A list of all software programs, filters, and any "macros" used in the DNA testing in this case, including the name of the software program, manufacturer, and version used in this case -if modifications were made to commercial software's default settings or software was created in-house, these modifications and software should be provided;
  - h. A copy of the instructions provided by manufacturers of the software used in this case;
  - 1. Copies of developmental validation studies pertaining to the STR DNA test performed in this case, as required by SWGDAM Guideline 8.1.1 - these materials should include copies of laboratory notebooks, computer data files, unpublished scientific papers, and citations to published scientific papers;
  - 2. Copies of any internal validation studies pertaining to the specific STR DNA test performed in this case, as required by SWGDAM Guideline 8.1.3- these materials should include copies of laboratory notebooks, computer data files, unpublished scientific papers, and citations to published scientific papers
- (7) Information regarding evidence control procedures and current disposition of evidence: Please provide legible copies of documentation about the laboratory

control of evidence in this case. These materials should include, but are not limited to, the following:

- a. Copies of all chain of custody documents for each item of evidence subjected to DNA testing, starting with the first description or "log entry" for each item and continuing through to the current disposition of that item of evidence. Such documentation should show (i) where and how the materials were collected, (ii) where and how the materials were stored (including temperature and type of container), (iii) the amount of evidence material which was consumed in testing, (iv) the amount of material which remains, and (v) where and how the remaining evidence is stored;
- b. Copies of the lab's internal operating procedures regarding evidence control pursuant to SWGDAM Standard 7.1.

(8) Information about DNA testing of other individuals: Pursuant to Rule 16 and *Brady v. Maryland*, 373 U.S. 83 (1963), please provide all results, analyses, printouts, and raw data with respect to any DNA tests performed in this case on any other individual besides the Defendants and Mr. Robert Wone. If no testing was conducted on any other individual, please indicate whether a DNA sample was taken from any other individual, and why no DNA testing was conducted in that instance.

(9) Evidence of inconclusive DNA typing: Pursuant to Rule 16 and *Brady*, for any inconclusive DNA typing results please provide a particularized explanation as to why that typing result was determined to be inconclusive (e.g. insufficient quantity of DNA, degraded DNA, inhibited PCR, etc.).

(10) Serology: Provide a complete copy of all laboratory protocols and records relating to any serological testing in the above captioned case, including but not limited to the following:

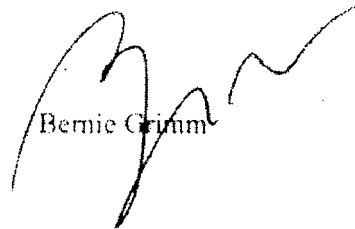
- a. Laboratory protocols;
- b. Laboratory notes;
- c. Photographs;
- d. Diagrams;
- e. Sketches;
- f. Bench notes;
- g. Final reports; and
- h. Draft reports.

In the event that you are unable or unwilling to provide the material I have requested above, or if you disagree with or are confused by any of the foregoing representations, please advise me promptly so that I may timely file any necessary pretrial motions.

Please provide me with the names, telephone numbers, and curricula vitae of all government personnel who handled the biological evidence, including but not limited to police officers, crime scene officers, mobile crime officers, laboratory personnel, serologists, hair and fiber experts, laboratory technicians, biologists, laboratory analysts, peer reviewers, and supervisors, **no later than July 1, 2009.**

Thank you in advance for your prompt attention to these matters.

Sincerely,



Bernie Crimm

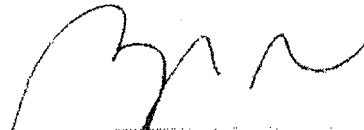
cc:

D.C. Superior Court Case File  
David Schertler, Esq.  
Thomas Connolly, Esq.  
Robert Spagnoletti, Esq.  
Veronica Jennings, Esq.  
Amy Richardson, Esq.

CERTIFICATE OF SERVICE

I certify that on this 18<sup>th</sup> day of June 2009 the foregoing discovery letter was sent via 1<sup>st</sup> class mail, postage pre-paid and facsimile:

Glen Kirschner  
Assistant United States Attorney  
Chief Homicide Section  
555 4<sup>th</sup> Street, NW  
Washington, DC 20530



Bernard S. Grimm

IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA  
CRIMINAL DIVISION

UNITED STATES,

v.

DYLAN M. WARD,  
JOSEPH R. PRICE,  
and  
VICTOR J. ZABORSKY,

Defendants.

Criminal No. 08-CF1-26996  
Criminal No. 08-CF1-27068  
Criminal No. 08-CF1-26997

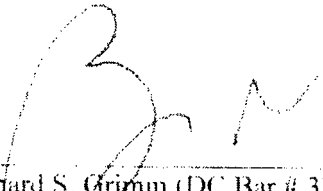
Judge Frederick H. Weisberg

Status Hearing – Sept. 11, 2009

**NOTICE OF FILING**

Defendant Joseph R. Price, by and through counsel, respectfully requests that the attached discovery letter, dated June 18, 2009, be made a part of the record in this case.

Respectfully submitted,



Bernard S. Grimm (DC Bar # 378171)

**Cozen O'Connor**

1627 I Street, N.W., Suite 1100

Washington, D.C. 20006-4007

Telephone: 202-912-4835

Facsimile: 877-260-9435

Email: [bgrimm@cozen.com](mailto:bgrimm@cozen.com)

*Counsel for Defendant Joseph R. Price*



**IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA  
CRIMINAL DIVISION**

**UNITED STATES,**

**v.**

**DYLAN M. WARD,  
JOSEPH R. PRICE,  
and  
VICTOR J. ZABORSKY,**

**Defendants.**

**Criminal No. 08-CFI-26997**

**Judge Frederick H. Weisberg**

**Status Hearing – Sept. 11, 2009**

**Exhibit E**



COZEN O'CONNOR  
THE ARMY AND NAVY BUILDING • SUITE 4000 • 1625 I STREET, NW • WASHINGTON, DC 20004-4000  
202.912.4800 • 202.912.4830 • 202.912.4830 • FAX • WWW.COZEN.COM

June 10, 2009

**Bernard Grimm**  
Direct Phone 202.912.4835  
Direct Fax 202.912.4830  
bgrimm@cozen.com

Glenn Kirschner  
Assistant United States Attorney  
Chief Homicide Section  
555 4th Street, NW  
Washington, DC 20530

Re: United States v. Joseph Price, et al. Case No. 08-CF127068

Dear Glenn:

On Friday, June 5, 2009, AUSA Pat Martin notified my office that the government was prepared, pursuant to the Court's May 26, 2009 order, to transfer the various items requested by the Defendants for independent testing and analysis (the "Items"). As you know, pursuant to the terms of the order, Defendants have twelve weeks from the date of their receipt of the items for the testing to be completed.

In light of that deadline, I informed AUSA Martin on Friday, June 5, 2009, that we need to receive along with the Items, all of the FBI Laboratory's testing "Case Files" — to include all bench notes and government communications with the FBI Laboratory — which the government indicated on May 22, 2009, it will produce to Defendants. Defendants cannot proceed with their own testing and analysis of the Items without the FBI Case Files and therefore request that all the FBI Case Files be produced along with the Items. Per my letter of June 4, 2009, we request that the Items and all FBI Case Files be produced to Defendants no later than June 15, 2009.

On a related note, we have identified a typographical error in the Court's May 26, 2009 order, caused by Defendants. The order requires the transfer for Item 16 (towel) and "Q117-1," which is the specimen created from Item 16. However, the order should read "Q117-1," which is the specimen created from the towel. See P182. There is no Q117-1.

Please contact me with any questions regarding these matters. We look forward to receiving transfer of the Items and production of the FBI Case Files for all testing in this matter by June 15, 2009.

Glenn Kirschner

June 10, 2009

Page 2

Sincerely,

Bernard Grimm

cc.

Superior Court Case File

David Schertler, Esq.

Thomas Connolly, Esq.

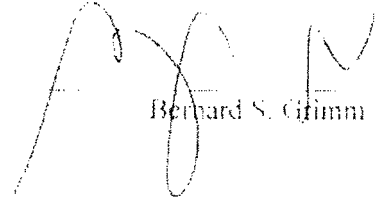
Amy Richardson, Esq.

Veronica Jennings, Esq.

CERTIFICATE OF SERVICE

I certify that on this 10<sup>th</sup> day of June the foregoing discovery letter was sent via 1<sup>st</sup> class mail, postage pre-paid to:

Glen Kirschner  
Assistant United States Attorney  
Chief Homicide Section  
555 4<sup>th</sup> Street, NW  
Washington, DC 20530



Bernard S. Giffin

IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA  
CRIMINAL DIVISION

UNITED STATES,

v.

DYLAN M. WARD,  
JOSEPH R. PRICE,  
and  
VICTOR J. ZABORSKY,

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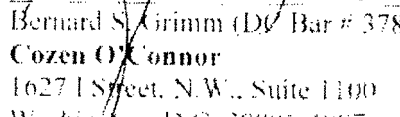
Judge Frederick H. Weisberg

Status Hearing – Sept. 11, 2009

NOTICE OF FILING

Defendants, by and through counsel, respectfully requests that the attached discovery letter, dated June 10, 2009, be made a part of the record in this case.

Respectfully submitted,



Bernard S. Grimm (DC Bar # 378171)  
**Cozen O'Connor**  
1627 I Street, N.W., Suite 1100  
Washington, D.C. 20006-4007  
Telephone: 202-912-4835  
Facsimile: 877-260-9435  
Email: [bgrimm@cozen.com](mailto:bgrimm@cozen.com)

*Counsel for Defendant Joseph R. Price*