



SUPERIOR COURT OF
THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

March 25, 2010

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Via E-mail

FILED

Glenn Kirschner, Esq.

T. Patrick Martin, Esq.
Rachel Carlson Leiber, Esq.
Assistant United States Attorneys
Office of the United States Attorney
for the District of Attorney
555 4th Street, NW
Washington, DC 20530

Re: United States v. Victor Zaborsky, et al., Case No. 08-CF126997

Dear Glenn, Pat, and Rachel:

I write on behalf of all defense counsel in response to your March 19, 2010 letter and the related production on that date of a number of previously undisclosed statements alleged to have been made by each of the Defendants in the above referenced matter. In that letter you indicate that "in the process of preparing our opposition to your motions to suppress your clients' statements, we have uncovered additional statements by your clients of which we were not previously aware, and thus had not disclosed." The previously undisclosed statements identified in your letter include:

- A videotaped recording of Mr. Victor Zaborsky, made at approximately 5:30am, during his custodial interrogation throughout the night of Aug. 2-3, 2006.
- Five pages of handwritten notes made by Det. Brown taken during her August 3, 2006 interrogations of Mr. Dylan Ward and Mr. Zaborsky, while they were confined at the Violent Crimes Branch.
- Three-and-a-half, single-spaced pages of the "recollections" of eleven different police officers concerning a wide range of statements allegedly made three-and-a-half years ago by the defendants.

We have made numerous written requests under Rule 16(a)(1)(A) for the Defendants' statements. Those statements are exceedingly important in a case that is premised almost entirely on the government's theory, which we assert is simply false, that each Defendant lied to the police the night of August 2-3, 2006. Precisely because of the significance of the



Defendants' statements, on sixteen separate occasions¹ since the year-and-a-half-old indictment, we have either requested or moved to compel² all of the Defendants' statements. In two of those sixteen requests, we expressly addressed the need to avoid the very sort of eleventh-hour production that has just been made:

Regarding any defendant's statement, I would request all notes, running resumes, memoranda, 302s or summaries of my client's or any other defendant's statements in this case. *As you know, although unintended, it is not uncommon for statements to appear on the eve or in the course of a trial. I would like to eliminate that possibility now.*³

As I have noted before, Mr. Price's recorded statement appears to commence well over an hour into his interrogation. I have requested his entire statement from you previously. . . . I reiterate my request for all of Mr. Price's statements to the police, as well as all notes and diagrams made by Mr. Price during the interviews with police. Please note, we have not received any notes or diagrams made by Mr. Price. *As you know trials are normally delayed over statements located or found during the course of the trial.*⁴

In response to our requests for the Defendants' statements, the government repeatedly and consistently insisted as far back as a year ago, that it had produced all of the Defendants' statements in the government's possession: "The defendants gave statements to law enforcement on or around August 3, 2006. The videotaped portions of those statements made to MPD are being provided on the enclosed CDs";⁵ "All handwritten notes taken by all MPD personnel on August 2-3, 2006, during the interrogation of Defendants, including but not limited to notes taken by MPD Det. Waid and MPD Det. Norris [have been] [p]roduced."⁶

Having now learned of these recently discovered statements, we ask that *no later than Monday, March 29, 2010*, you provide us with the following information so that we may address this matter with the Court on April 5, 2010 and file the appropriate motion(s). Given our time constraints, if we have not heard from you by March 29, 2010, we will assume that you do not intend to voluntarily produce this information.

¹ See Letters from Grimm to Kirschner on 11/21/08, 01/09/09, 01/13/09, 03/03/09, 04/01/09, 08/03/09; Letters from Connolly to Kirschner on 12/01/08, 03/04/09, 01/26/09, 05/14/09; and Letters from Schertler to Kirschner on 12/01/08, 02/05/09, 02/05/09(II), 06/02/09.

² See Defendants' Joint Motion to Compel (Mar. 26, 2009); Defendants' Renewed Joint Motion to Compel (July 2, 2009).

³ Letter from Grimm to Kirschner, 2 (Jan. 9, 2009) (emphasis added).

⁴ Letter from Grimm to Kirschner, 3 (Mar. 3, 2009) (emphasis added).

⁵ Letter from Kirschner to defense counsel, 6 (Dec. 19, 2008).

⁶ Letter from Kirschner to defense counsel, Tab B, 1 (Apr. 17, 2009).

A. Victor Zaborsky's videotaped statement and Gail Brown's notes

Please provide us with the following information regarding the videotaped statement of Mr. Zaborsky ("video") and Det. Brown's handwritten notes of Mr. Zaborsky and Mr. Ward's statements ("notes"):

1. When, exactly (the date), each was found;
2. Where, exactly, each was "found." If they were found at either the United States Attorney's Office ("USAO") or at any Metropolitan Police Department ("MPD") office/location, please state exactly whose office in which the video and notes were located and where, exactly, in that office(s) the video and notes were found;
3. Identify who found the video and notes, what prompted the discovery and how and when the discovery was communicated to your office;
4. Identify what—if any—measures your office is taking to search all offices, computers and other appropriate locations for additional notes and videos of the Defendants' statements.

B. The statements of the eleven Officers

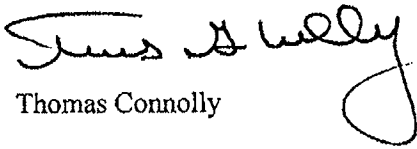
You have identified eleven MPD or former MPD officers who have now remembered undisclosed statements made by the Defendants' three-and-a-half years ago. Those officers are: Greg Alimian, Christopher Clemmons, Sgt. Charles Patrick, Eric Hampton, Sgt. Wagner, Det. Waid, Det. Norris, Det. Gaffney, Det. Lewis, Det. Brown, and Det. Kasul. Please provide the following information regarding each of these officer's purported recollection of the Defendants' alleged statements:

1. When, exactly (the date), did each officer recall these statements;
2. What notes, if any, do each of these officers possess that reflect these new recollections? We have received no such notes except for Det. Brown, and request that if any such notes exist they be produced immediately. We note that though you state in your March 19, 2010 letter that "[o]fficer [Eric] Hampton's written statement was provided to you in the initial discovery materials," we are unaware of having received such a written statement. Please provide us with the production numbers of officer Hampton's statement and the date of production.
3. When were these recollections conveyed to your office, to whom were they conveyed and under what circumstances, e.g., did the officer spontaneously contact your office or did someone from your office contact the officer;

Finally, we have insisted to you on several occasions that Mr. Price provided Detective Norris with a written list of the persons who had keys to the home at 1509 Swann Street and a separate diagram of the room in which Mr. Wone was found. You have consistently denied that you can locate the written list and diagram. The Government's recent discovery of a trove of statements by the Defendants leads us to believe that these are additional items that the Government simply has not uncovered. We again ask that you renew your efforts to search for the list and diagram.

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

Sincerely,



Thomas Connolly

- cc: Superior Court Case File
- The Hon. Lynn Leibovitz
- Bernard Grimm, Esq.
- Kathryn Yingling, Esq.
- Amy Richardson, Esq.
- David Schertler, Esq.
- Robert Spagnoletti, Esq.

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

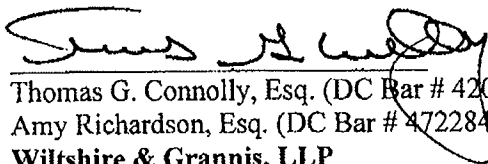
Judge Lynn Leibvotiz

Status Hearing – Apr. 5, 2010

NOTICE OF FILING

Defendant Victor J. Zaborsky, by and through counsel, respectfully requests that the attached discovery letter, dated March 25, 2010, be made a part of the record in this case.

Respectfully submitted,



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