



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 Nos. 2008-CF1-26996
2008-CF1-27068
2008-CF1-26997

Judge Lynn Leibovitz

Status Hearing – March 12, 2010

**DEFENDANTS' JOINT RESPONSE TO GOVERNMENT'S MOTION TO EXTEND
TIME TO FILE REPLY TO DEFENDANTS' JOINT MOTION TO COMPEL
RULE 16(A)(1)(E) DISCLOSURES**

Defendants Dylan M. Ward, Joseph R. Price and Victor J. Zaborsky, by and through undersigned counsel, respectfully submit this response to the "*Government's Motion to Extend Time to File Reply to Defendants' Joint Motion to Compel Rule 16(a)(1)(E) Disclosures.*"

FACTUAL BACKGROUND

Pursuant to the Court's January 15, 2010, scheduling order, the government was to produce by February 5, 2010, its expert disclosures as required by Super. Ct. Crim. R. 16(a)(1)(e). Rule 16(a)(1)(E) provides in relevant part: "[a]t the defendant's request, the government shall disclose to the defendant a written summary of the testimony of any expert witness that the government intends to use during its case-in-chief at trial. . . . The summary provided . . . shall describe the witnesses' opinions, the bases and the reasons for those opinions, and the witnesses' qualifications." *Id.*

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On February 8, 2010, the government provided the defense with a Rule 16 disclosure of twenty-four expert witnesses. See February 5, 2010 Letter from Kirschner to Defense Counsel, 3-9, attached at *Exhibit A*. The majority of the Government's expert disclosures did not satisfy the requirements of Rule 16(a)(1)(E). On February 12, 2010, the Defendants accordingly filed a motion to compel the government to provide proper Rule 16(a)(1)(E) disclosures.

Now, two weeks after the Defendants filed their motion to compel, the Government has filed a motion to extend its time to respond to the Defendants' motion to compel until March 8, 2010. The Government claims that while it "has given [the Defendants] rolling notice of numerous expert witnesses over the course of this case, beginning as far back as December 18, 2008" and has more recently "supplemented that notice," its "consultation is ongoing with many of the expert witnesses previously disclosed." The Government further states that it "anticipates providing the defense additional information prior to the requested extension date of March 8, 2010, that may render moot some of the defendants' requests for additional information vis-à-vis notice of expert testimony." While the Court granted the Government's motion for an extension in an Order dated February 24, 2010, that extension has a significant impact on the Defendants, the Court's scheduling Order, and the defense trial preparation. To that end, the Defendants submit this response.

ARGUMENT

The Government's motion for an extension of time in which to respond to the defense's motion to compel by providing expert disclosures that satisfy Rule 16(a)(1)(E) raises several issues. As an initial matter, we understand the Court's admonition that the parties not engage in unproductive finger-pointing and we intend to abide by that admonition. However, as discussed below, we believe the merits of the Government's motion require the Court to consider the fact

that the Government has been investigating this case for more than three and one-half years, that this case was indicted more than a year ago and that the Defendants' trial date is just over eight weeks away. Moreover, many of the expert reports that the Defendants have received from the Government in discovery were prepared in 2007 and 2008, which predates the Defendants' October 2008 arrests. Indeed, the affidavit filed by the Government in support of the Defendants' arrest warrants shows that in the more than two years between Mr. Wone's death and the Defendants' arrests, the Government engaged a large number of experts to analyze evidence. The record thus demonstrates that the Government has had more than ample time to identify its experts and provide the Defendants with adequate and proper Rule 16 disclosures. Against this backdrop, the Government now concedes through its motion that, with trial just two months away, it has not provided full Rule 16 disclosures regarding its expert witnesses and contends that it cannot do so immediately because its consultation with expert witnesses is "ongoing."

The schedule set by this Court for expert witness disclosures was clear. Mindful of the approaching trial date, the Court set a deadline of February 5, 2010, for the Government to provide the Defendants with Rule 16 expert disclosures. The Court also set a deadline of February 26, 2010, for the Defendants' to make their reciprocal Rule 16 disclosures of expert witnesses. The Defendants' deadline necessarily was premised on the assumption that the Government would comply with its own disclosure obligations on time, because Rule 16(b)(1)(C) states plainly that a defendant's duty to make expert witness disclosures arises only after the Government has complied with its own duties under Rule 16(a)(1)(E). Through its current motion, the Government concedes that it failed to meet the February 5, 2010, deadline and indicates that it will provide additional expert disclosures between now and March 8, 2010.

The first consequence of the Government's motion is that the Defendants cannot be required to make their expert disclosures to the Government until the Government has provided the defense with complete expert disclosures that satisfy Rule 16. The Defendants are prepared to and will submit their preliminary expert disclosures to the Court *ex parte* and under seal by the current deadline of February 26, 2010. However, based on Rule 16(b)(1)(C) and the Government's admission that it has not fulfilled its expert disclosure obligations, the Defendants will withhold those disclosures from the Government until the Government has met its expert disclosure obligations, or the Court instructs otherwise.

The second consequence of the Government's motion is that the defense cannot ensure that its own expert disclosures are complete until it has received full expert disclosures from the Government. That is the whole point of the sequential filings mandated by Rule 16 (*i.e.*, the Government files expert disclosures first and only then must the Defendant file). The practical difficulties for the defense created by the Government's current motion are exacerbated by the fact that trial is merely two months away (in a case that has been pending for 14 months) and that this trial, unlike many, will focus almost exclusively on forensic evidence and expert testimony. The Government's theory of prosecution rests entirely upon forensic evidence, and the Defendants' defense will rebut that evidence point-for-point. Each side will notice more than a dozen experts in more than a half dozen areas of expertise. Because of the critical role of forensic evidence in this case, the Defendants have also exercised their right to have their own experts independently examine and test the Government's evidence. Those tests and examinations have been (and, to a large degree, must be) based upon the disclosed findings of the Government's experts. In addition, the underlying scientific validity of most of the forensic disciplines in this case will come under great scrutiny. The recent landmark Report of the National Academy of

Sciences emphasized that a wide range of forensic disciplines lack validity: “[w]ith the exception of nuclear DNA analysis . . . no forensic method has been rigorously shown to have the capacity to consistently, and with a high degree of certainty, demonstrate a connection between evidence and a specific individual or source.” Comm. on Identifying the Needs of the Forensic Science Cmty., Nat’l Research Council of the Nat’l Acads., *Strengthening Forensic Science in the United States: A Path Forward* (2009). The defendants intend to challenge the Government’s use of certain evidence it contends to be expert testimony as not sufficiently reliable to be admitted.

Finally, even after the Government makes an expert disclosure under Rule 16, it is a time-intensive process for the defense to (1) locate and engage an appropriate expert in the particular discipline; and (2) have that expert review, examine and potentially test or analyze the relevant evidence, reports, tests, and Government expert disclosures in order to establish an independent opinion and prepare a report. The Defendants cannot (and should not be expected to) instantaneously investigate and rebut expert disclosures being made by the Government two months before trial in a forensically-intensive prosecution, particularly when the Government has had over three years to prepare that information and fulfill its obligations under Rule 16.


CONCLUSION

For all the reasons set forth above, the Defendants respectfully request the following relief. First, the Defendants intend to comply with this Court’s Scheduling Order requiring that our expert disclosures be submitted by February 26, 2010, but ask that they be permitted to submit those disclosures to the Court *ex parte* and under seal given the fact that the Government has not met its disclosure obligations under Rule 16 and the Defendants are not required to make their disclosures until the Government has done so. Second, the Defendants ask that the Court

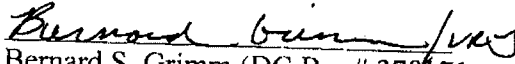
afford them sufficient time after the Government has fulfilled its expert disclosure obligations to amend or supplement their expert disclosures in response.

Date: February 26, 2010

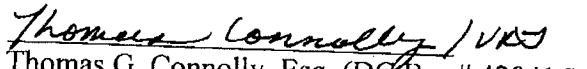
Respectfully Submitted,


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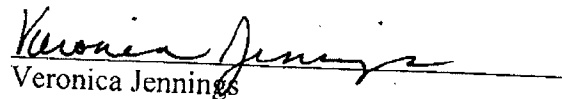
Counsel for Defendant Victor J. Zaborsky

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Defendants' Joint Response to *Government's Motion to Extend Time to File Reply to Defendants' Joint Motion to Compel Rule 16(A)(1)(E) Disclosures* was served, via hand and first class mail, postage pre-paid, this 26th day of February 2010, upon:

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Veronica Jennings

IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

UNITED STATES,

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DYLAN M. WARD,
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and
VICTOR J. ZABORSKY,

Defendants.

Criminal Nos. 08-CFI-26997

Judge Lynn Leibovitz

ORDER

This matter is before the court on Defendants' Response to the Government's Motion to Extend Time to File Reply to Defendants' Joint Motion to Compel Rule 16(a)(1)(E) Disclosures. Defendant's Motion is **GRANTED**, and accordingly, it is this ___ day of _____ 2010,

ORDERED that the United States, no later than March 8, 2010, shall produce to Defendants complete and proper D.C. Super. Ct. R. Crim. P. Rule 16(a)(1)(E) disclosures for all of experts, describing the witnesses' opinions, the bases and the reasons for those opinions, and the witnesses' qualifications. It is further

ORDERED that upon adequate disclosures from the Government under Rule 16(a)(1)(E), the Defendants shall file notice with the Court as to the time they believe they need to appropriately amend or supplement their Rule 16 expert disclosures in response to the Government's disclosures.

JUDGE LYNN LEIBOVITZ

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EXHIBIT A



U.S. Department of Justice

United States Attorney

District of Columbia

*Judiciary Center
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February 5, 2010

BY FACSIMILE (LETTER ONLY) AND COURIER PICK-UP

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

United States v. Victor Zaborsky
Case No. 2008-CF1-26997

United States v. Dylan Ward
Case No. 2008-CF1-26996

Dear Counsel:

In accordance with the Court ordered briefing schedule and the government's discovery obligations pursuant to Rule 16 of the D.C. Rules of Criminal Procedure, we are writing to provide you with a summary of the Rule 16 discovery already provided to date, including expert witness disclosures, as well as any additional information currently known to the government and discoverable under Rule 16.

I. Summary of Discovery Previously Provided¹

A. Documentation

According to our records, the government has already produced the following "documentation" to date:

- 3043 pages of documentation (Bate Stamped P1 - P3043)
- 911 call by defendant Zaborsky (1 CD)
- 911 call by defendant Zaborsky enhanced by USSS (1 CD)
- Videotaped statement by defendant Price (2 CDs)
- Videotaped statement by defendant Zaborsky (2 CDs)
- Videotaped statement by defendant Ward (1 CD)
- FBI photos (3 CDs)
- MPD photos (14 CDs)
- Knife and knife box set photos (1 CD)
- Towel photos (1 CD)
- S&M items photos (2 CDs)
- Autopsy photos and ER records (1 CD)
- Information seized as part of searching Louis Hinton's computers (2 CDs)
- Information seized as part of searching defendant Price's work computer (1 CD)
- Photographs of trip to Italy (1 CD)
- Various documentation related to the police investigation into an October 30, 2006 burglary at 1509 Swann Street, including: an Affidavit and Search Warrant for 1939 Calvert Street, N.W.; an Affidavit in Support of an Arrest Warrant for Michael Price; an Affidavit in Support of an Arrest Warrant for Phelps Collins; a PD 163 for Michael Price; a PD 163 for Phelps Collins; a PD 251; a PD 252; a PD 81; two photos of property; and Detective Daniel Whalen's write up (3 pages) of a conversation between he and Joseph Price in the presence of his then-attorney Kathleen Volker, concerning the October burglary
- Photographs taken at Mr. Wone's 30th birthday party (1 CD)
- Additional photographs of basement and backyard area of 1509 Swann Street, N.W., as well as photographs taken in connection with the investigation into the alleged burglary of 1509 Swann Street, N.W., in October, 2006 (1 CD)
- Contents of defendant Ward's Blackberry (1 CD)
- Photographs of window screens recovered from 1509 Swann Street (1 CD)
- Copy of Mr. Wone's RFA e-mail address account and calendar on Outlook, including e-mails sent to and received from that e-mail address, from July 29, 2006, through August 3, 2006 (1 CD)

¹ Although we are attempting to summarize the discovery already provided in these cases, this is not intended to be an all-inclusive list of items and information disclosed to date. Indeed, we anticipate that given the sheer volume of information disclosed to you in the course of this litigation that certain items and information will not be specifically referenced.

- FBI protocols, quality standards, etc. (8 CDs)
- 25 additional photographs taken on the scene at 1509 Swann St., N.W. (1 CD)
- Complete proficiency test summaries for various FBI personnel (1 CD)
- Raw data and quality standards information from the Chemistry Unit, Latent Print Operations Unit, and Mitochondrial DNA Unit of the FBI (3 CDs)
- "Electro Ejaculation" videotaped clips (1 DVD)
- Through the assistance of the United States Secret Service, a digital, "imaged copy" of the electronic data collected from various computers that were imaged as part of the government's investigation in this case.

Moreover, on January 29, 2009, and February 26, 2009, you (and/or your designees) had an opportunity to view much of the physical evidence in the above cases. Per your request, the government later provided you with viewing letters on two separate occasions allowing you to view and examine the remaining physical evidence in the case and the latent fingerprints recovered in the case.

Finally, via court orders, dated May 26, 2009, and November 16, 2009, numerous items of evidence have been transferred to your custody and control for examination, testing, and analysis by your defense experts. Yesterday, you took possession of the fiber evidence in the case. To date, approximately half of the transferred evidence items have been returned to the government. Please let us know at your earliest convenience when we should expect to regain possession of the remaining items. As previously advised, we would like to retake possession of those items as soon as possible.

B. Reports of Examinations or Tests and Experts

As previously disclosed, the government may call the following experts at trial: (1) Dr. Lois Goslinowski (forensic pathologist); (2) Mr. Doug Deedrick (trace evidence examiner); (3) Mr. James Plant (sadism and masochism expert); (4-5) U.S.S.S. Special Agents Steven Kopech and Scott Reed (electronic forensics examiners); (6-8) Mr. Brendan Shea, Ms. Leslie McCurdy, and Ms. Tamyra Moretti (DNA examiners); (9-11) Ms. Madeline Montgomery, Ms. Maureen Bradley, Mr. Robert Rooney, and Mr. Jason Brewer (forensic chemists); (12-13) Ms. Florine Allen and Ms. Shelly Rensink (fingerprint examiners); (14-16) Mr. Rory Doyle, Dr. Fiona Couper, and Mr. Roman Karas (toxicologists); and (17) Mr. Robert P. Spalding (blood pattern evidence expert). The government has already supplied you with copies of the *curriculum vitae* for the above-identified experts. Although, in large part, the above experts are expected to testify consistent with their previously disclosed expert reports (where one or more exists), a summary of their expected expert opinions and basis for those opinions is also provided below.

(1) Dr. Lois Goslinoski

Dr. Goslinoski is a Deputy Medical Examiner for the District of Columbia. Dr. Goslinoski performed the autopsy on Robert Wone. Dr. Goslinoski is expected to testify about forensic pathology and her observations and conclusions concerning the autopsy of Mr. Wone. Specifically, consistent with her report, Dr. Goslinoski is

expected to testify that Ms. Wone died as a result of three remarkably clean, symmetrical, uniform stab wounds to his torso. Dr. Goslinoski is expected to testify that there were no defects in the stab wounds (i.e., no drag marks, abrasions, or "fish-tailing"). Each wound was inflicted at approximately the same angle. Dr. Goslinoski is expected to testify that she found a single petechial hemorrhage in the right sclera and the left lower conjunctiva (white of the eye). Such a finding is consistent with some type of asphyxial event. Dr. Goslinoski is expected to testify that the stab wounds appear to have been caused by the same size knife, due to the similarity of the three stab wounds. Dr. Goslinoski is also expected to testify that the knife found by the police on the bedside table next to the bed in which Mr. Wone was lying was not the murder weapon. Instead, in her experience, a knife blade that is four and one-half inches in length (e.g., the knife missing from defendant Ward's cutlery set) is more consistent with the depth of the wounds to Mr. Wone's chest. Dr. Goslinoski is also expected to testify that she observed several pre-mortem needle puncture marks to Mr. Wone's body that do not appear to be the result of any medical treatment or intervention. Dr. Goslinoski is expected to testify that none of the stab wounds would have killed or even rendered Mr. Wone unconscious immediately. Rather, unless incapacitated, Mr. Wone would have reacted instinctively to fend off physically any attack and protect himself. Dr. Goslinoski is expected to testify that she did not observe any defensive wounds on Mr. Wone's hands or forearms (i.e., no cuts, abrasions, lacerations, bruises, or similar markings of any kind indicative of a physical struggle or of Mr. Wone having acted to defend himself from his attacker). Finally, Dr. Goslinoski is expected to testify that due to the significant internal bleeding resulting from the stab wounds, and the presence of blood in Mr. Wone's intestine, Mr. Wone was alive for a considerable period of time after being stabbed.

(2) Mr. Doug Deedrick

Mr. Deedrick is a trace evidence examiner for MPD. If called by the government, he would be expected to testify concerning the trace evidence recovered in this case, including any hair or fibers that were found in this case. Mr. Deedrick is the examiner who examined the trace evidence in this case and prepared and submitted the previously disclosed reports. Mr. Deedrick would testify consistent with the results of his examination, as found in his reports. Among other things, Mr. Deedrick would testify that based on a microscopic comparison, it is his expert opinion that: certain fibers found on Item 13 (the knife) were like fibers extracted from Item 16 (towel); none of the fibers found on Item 15 (the knife) were like with fibers extracted from Item 17 (the victim's shirt); and green synthetic fibers recovered from Item 34 (a shirt) were like fibers extracted from Item 18 (the victim's shorts).

(3) James Plant

James Plant is an expert in sadism and masochism (S and M) practices. Mr. Plant has extensive knowledge and experience concerning S and M practices and types of equipment, tools, and toys used by individuals engaged in S and M practices. Mr.

Plant is expected to testify, in reference to and consistent with the previously produced itemized list/description of S and M items recovered from 1509 Swann Street (with accompanying photographs), about the intended and common use of certain S and M items by individuals engaged in such practices. The basis for Mr. Plant's opinions will be his extensive practical experience and instruction in S and M practices.

(4-5) Special Agent Steven Kopech and Scott Reed

SA Kopech and SA Reed are electronic forensics examiners with the United States Secret Service. SA Kopech and SA Reed conducted forensic examinations on various electronic devices (e.g., desktop computers, laptop computers, electronic storage media). SA Kopech or SA Reed, or both, are expected to testify as to the methods and means that they used to recover, store, and search the electronic data contained on these devices and storage media.

(6-8) Mr. Brendan Shea, Ms. Leslie McCurdy, and Ms. Tamyra Moretti

Mr. Shea, Ms. McCurdy, and Ms. Moretti are the FBI examiners who conducted various DNA testing and examinations in connection with this case. Mr. Shea, Ms. McCurdy, and Ms. Moretti are expected to testify concerning DNA testing, analysis, and examination and the DNA testing, analysis, and examination that was conducted in this case. The reports containing the DNA testing, analysis, and examination were previously disclosed to you. Mr. Shea, Ms. McCurdy, and Ms. Moretti will testify consistent with those reports.

(9-11) Ms. Madeline Montgomery, Mr. Robert Rooney, and Mr. Jason Brewer

Ms. Montgomery, Mr. Rooney, and Mr. Brewer are forensic chemists working at the FBI's Chemistry Unit. They each conducted some of the forensic chemistry examinations on items of evidence in this case. They are expected to testify about the science of forensic chemistry and the work they performed in this case, consistent with their reports, copies of which have already been disclosed.

(12-13) Ms. Florine Allen and Ms. Shelly Rensink

Ms. Allen is a fingerprint examiner for MPD. Ms. Rensink is a fingerprint examiner for the FBI. They conducted fingerprint examinations of certain items in this case. They may testify concerning latent fingerprints, the recovery of latent prints (including fingerprints, extreme fingertip prints, and palm prints), the examination of prints, the categorization and analysis of prints, and, specifically, the examination, analysis, and findings concerning certain latent prints that were recovered in this case. They prepared and submitted certain reports previously disclosed to you. They are expected to testify consistent with those reports.

(14-15)Mr. Rory Doyle and Dr. Fiona Couper

Mr. Doyle and Dr. Couper are toxicologists for the District of Columbia. They conducted toxicology examinations on Mr. Wone's blood and urine in this case. They are expected to testify about the science of toxicology and the work they performed in this case, consistent with their report, a copy of which has already been disclosed.

(16) Mr. Robert P. Spalding

Mr. Spalding is a blood splatter and crime scene reconstruction expert. A copy of Mr. Spalding's report was provided previously. The government may call Mr. Spalding as an expert in the field of blood pattern evidence to testify at trial. We expect that Mr. Spalding will testify consistent with his report, as well as provide other expert opinions consistent with his examination of the evidence in this case. Mr. Spalding is currently conducting additional tests and experiments involving blood patterns results from the transference of blood from one item to another (e.g., the blood patterns resulting from the transference of blood from a blood-soaked towel to a clean knife as well as the transference of blood from a bloody knife to a clean towel). We expect that Mr. Spalding will be finalizing this testing and experimentation in the near future, at which time he will prepare a report that we will disclose promptly.

In addition, you have already met with and interviewed certain of the government's experts, including Dr. Goslinowski (twice) and Ms. Moretti.

C. Other information:

In a February 9, 2009 discovery letter we advised you that as part of processing the scene of the homicide on August 3, 2006, MPD mobile crime lab technicians applied a processing chemical called Ashley's Reagent to certain areas of the crime scene. Ashley's Reagent is essentially a protein stain that reacts with protein. Thereafter, FBI evidence response team members processed parts of the crime scene using other methods and techniques, including Luminol. Further, multiple samples and items were taken from the scene and submitted for further forensic testing. It has been determined that the Ashley's Reagent was used in manner not intended by the manufacturer of that product.

In an April 17, 2009 discovery letter we advised you that a Blackberry belonging to Robert Wone was recovered from the scene and provided to the U.S. Secret Service to be "imaged" or copied. After it was believed to be imaged, the Blackberry was retrieved from the U.S. Secret Service and returned to Mr. Wone's widow who had requested it for purposes of retrieving contact information for a number of Mr. Wone's friends and associates to thank them for their support. Detective Waid provided the Blackberry to Ms. Wone. Thereafter, Ms. Wone returned the Blackberry to Mr. Wone's former employer, Radio Free Asia. However, thereafter it was learned

that the although several other computers and electronic items were imaged by the U.S. Secret Service as part of this investigation, Mr. Wone's Blackberry was not, and the government does not presently have a copy of the contents of said Blackberry. As you also know, Detective Bryan Waid recalled that upon viewing Mr. Wone's Blackberry on the scene there were two email messages noted, as follows:

- An email purporting to be from Mr. Wone to his wife, timed 11:05 p.m., indicating that he had just taken a shower and was going to bed
- A second email, timed at 11:07 p.m., purporting to be from Mr. Wone to an associate confirming lunch plans for the following day

We made Detective Waid available to you to be interviewed about his recollections regarding said emails, and you interviewed him regarding the same.

In a July 31, 2009 discovery letter, we identified the following individuals to you as persons already known to you who may qualify as "character" witnesses for the defendants: Michael Price, David Anderson, Mark Bright, Peter Dernbach, Lisa Goddard (now Lisa Desjardin), Louis Hinton, Scott Hixson, and Jefferson Wilson.

In a January 13, 2010 discovery letter, the government directed your attention to the EMS run sheet; namely, where it references, "UTO IV access." The government further advised you that in attempting to determine the nature of that entry, we inquired of the EMS workers involved in transporting Mr. Wone's body from 1509 Swann Street to the hospital. One of the EMS workers indicated that she believes that entry indicates an attempt to gain IV access. The EMS worker indicated if they had attempted IV access they would ordinarily attempt said access in the antecubital area (at the bend of the elbow). The EMS worker specifically **ruled out** several of the locations of the puncture marks found on Mr. Wone's body as places where IV access would be attempted.

II. Additional Discovery

A. Additional Documentation

The following additional documentation (Bates Nos. P3044 - P3069) is included:

- Report of Examination by Douglas W. Deedrick (also faxed on February 4, 2010)
- FBI Report of Examination by Harold A. Deadman

B. Additional Reports of Examinations or Tests and Experts

The government may call the following additional experts at trial: (17) Dr. Yosaitis (anesthesiology); (18) Dr. David Fowler (forensic pathologist); (19) Mr. Lucas Zarwell (toxicologist); (20-22) Ms. Maureen Walsh, Mr. Joseph Anderson, Mr. Dave Sergeant (crime scene experts); (23) Mr. Harold Deadman (trace evidence examiner; and (24) Ms. Maureen Bradley. The government is hereby supplying you with copies of the *curriculum vitae* for Dr. Fowler and Mr.

Zarwell. We will forward you copies of the *curriculum vitae* for Dr. Yosaitis and Mr. Deadman in the near future. A summary of the above-named experts' expected opinions and basis for those opinions is provided below.

(17) Dr. John Yosaitis

Dr. Yosaitis is a practicing anesthesiologist at Georgetown Hospital in the District of Columbia. Dr. Yosaitis is expected to testify about the practice of anesthesiology, anesthetics generally, and the effects of anesthetics on the human body. Among other things, Dr. Yosaitis is expected to testify that anesthetics can be administered both via intravenous (IV) and via intramuscular (IM) injections. Dr. Yosaitis will testify that certain commonly used anaesthetics, like succinylcholine, are not closely controlled in operating and emergency rooms (unlike narcotics) and are therefore easily accessible to those having access to said rooms. Dr. Yosaitis will testify that if administered via intramuscular injection, a dose of succinylcholine could render a person immobile in as little as thirty (30) seconds. Depending on the dosage of succinylcholine, an affected person would retain sensory perception and other bodily functions (e.g., digestion), but would not be able to move (i.e., temporarily paralyzed). Dr. Yosaitis would further testify that the components parts of succynolcholine occur naturally in the body, and succynolcholine injected into the human body quickly breaks down into its component parts and is metabolized, making "injected" succinylcholine impossible to detect in subsequent toxicology screens. Dr. Yosaitis will base his expert opinions on his educational background, training, and extensive work in the field of anesthesiology.

(18) Dr. David Fowler

Dr. Fowler is the Chief Medical Examiner for the Office of the Chief Medical Examiner for the State of Maryland. Dr. Fowler has reviewed the autopsy report and related materials prepared by Dr. Goslinowski in performing the autopsy of Robert Wone. Dr. Fowler is expected to testify about forensic pathology and his observations and conclusions concerning the autopsy of Mr. Wone. Specifically, and consistent with the autopsy report, Dr. Fowler is expected to testify that Ms. Wone died as a result of three remarkably clean, symmetrical, uniform stab wounds to his torso. Dr. Fowler is expected to testify that there were no defects in the stab wounds (i.e., no drag marks, abrasions, or "fish-tailing"). Dr. Fowler is expected to testify that the stab wounds appear to have been caused by the same size knife, due to the similarity of the three stab wounds. Dr. Fowler is also expected to testify that the knife found by the police on the bedside table next to the bed in which Mr. Wone was lying was not the murder weapon. Instead, in his experience, a knife blade that is four and one-half inches in length (e.g., the knife missing from defendant Ward's cutlery set) is more consistent with the depth of the wounds to Mr. Wone's chest. Dr. Fowler is also expected to testify that the pre-mortem needle puncture marks to Mr. Wone's body do not appear to be the result of any medical treatment or intervention. Dr. Fowler is expected to testify that none of the stab wounds would have killed or

even rendered Mr. Wone unconscious immediately. Rather, unless incapacitated, Mr. Wone would have reacted instinctively to fend off physically any attack and protect himself. Dr. Fowler is expected to testify that there do not appear to be any defensive wounds on Mr. Wone's hands or forearms (i.e., no cuts, abrasions, lacerations, bruises, or similar markings of any kind indicative of a physical struggle or of Mr. Wone having acted to defend himself from his attacker). Finally, Dr. Fowler is expected to testify that due to the significant internal bleeding resulting from the stab wounds, and the presence of blood in Mr. Wone's intestine, Mr. Wone was alive for a considerable period of time after being stabbed. Dr. Fowler will base his expert opinions on his educational background, training, and extensive work in the field of forensic pathology.

(19) Mr. Lucas Zarwell

Mr. Zarwell is a toxicologist for the District of Columbia. He participated in certain toxicology examinations on Mr. Wone's blood in this case. He is expected to testify about the science of toxicology and the work he performed in this case, consistent with the OCME DC toxicology report, a copy of which has already been disclosed.

(21-23) Ms. Maureen Walsh, Mr. Joseph Anderson, Mr. Dave Sergeant

Ms. Walsh, Mr. Anderson, Mr. Sergeant are retired MPD evidence technicians. As crime scene experts, they were to testify about the nature of the evidence typically found on crime scene that are the product of violent deaths, including shooting, stabbings, bludgeonings, etc.

(23) Mr. Harold Deadman

Mr. Deadman is a trace evidence examiner for MPD. If called by the government, he would be expected to testify concerning the trace evidence recovered in this case, including any hair or fibers that were found in this case. Mr. Deadman examined certain trace evidence in this case and prepared and submitted reports, which have been previously disclosed.

(24) Ms. Maureen Bradley

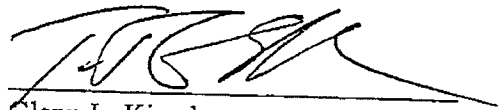
Ms. Bradley is a forensic chemist working at the FBI's Chemistry Unit. She conducted some of the forensic chemistry examinations on items of evidence in this case. She is expected to testify about the science of forensic chemistry and the work she performed in this case, consistent with her reports, copies of which have already been disclosed.

As always, should you have any questions, you may contact us by telephone at 202-514-7425 (GK) or 202-514-7504 (PM).

Sincerely,

CHANNING D. PHILLIPS
United States Attorney

By:



Glenn L. Kirschner
T. Patrick Martin
Assistant United States Attorneys

cc: Superior Court Case File (w/o attachments)