SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION - FELONY BRANCH

UNITED STATES OF AMERICA	)	CRIMINAL NOS. 2008-CF1-27068
	)	2008-CF1-26997
v.	)	2008-CF1-26996
	)	
JOSEPH PRICE	)	JUDGE LEIBOVITZ
VICTOR ZABORSKY	)	
DYLAN WARD	)	STATUS HEARING DATE: 4/23/10

GOVERNMENT'S OMNIBUS OPPOSITION TO DEFENDANTS' MOTIONS IN LIMINE

The United States, by and through its attorney, the United States Attorney for the District of Columbia, hereby files this Omnibus Opposition to Defendants' Motions in Limine (the "Opposition"). As grounds for its Opposition, the United States relies on the following points and authorities and such other points and authorities as may be cited at a hearing on the defendants' various motions in limine and the government's opposition thereto:

FACTUAL AND PROCEDURAL BACKGROUND

1. On August 2, 2006, Robert Wone was murdered while inside 1509 Swann Street, N.W., Washington, D.C. The known occupants of the residence at the time of the murder were defendants Joseph Price, Victor Zaborsky, and Dylan Ward.

2. In this case, the defendants are charged with the following counts: (1) Conspiracy to Obstruct Justice (in connection with the criminal investigation into the homicide of Robert Wone); (2) Obstructing Justice; and (3) Tampering with Evidence.

3. Trial is scheduled to begin on May 10, 2010.

4. The defendants have jointly filed the following motions in limine:

I. Motion in Limine to Exclude Argument and Testimony that the Crime Scene Was Cleaned and to Limit Argument and Testimony Regarding Lack of Blood Evidence

II. Motion in Limine to Exclude Evidence and Argument Regarding the Burglary of 1509 Swann Street

III. Motion in Limine to Exclude Argument, Testimony and Evidence Regarding Sexual Assault and Chemical Incapacitation

IV. Motion in Limine to Exclude Argument, Testimony and Evidence Regarding Defendants' Sexual Histories and to Limit Argument, Testimony, and Evidence Regarding Defendants' Sexual Orientations

V. Motion in Limine to Exclude Argument, Testimony and Evidence Regarding Alleged Restraint and to Exclude Testimony of Mr. James Plant

VI. Motion in Limine to Exclude Experiment Evidence and Testimony[1]

5. In an effort to address each of the defendants' motions in limine in the context of what the government intends to prove at trial, the government submits the following comprehensive narrative of the relevant evidence it will seek to introduce at trial:

The Murder and Defendant Zaborsky's 9-1-1 Call

In the late evening hours of August 2, 2006, Robert Wone was stabbed to death inside the defendants' residence at 1509 Swann Street, N.W. Defendants Price, Zaborsky, and Ward were the only occupants of the home at the time.

According to the defendants, Mr. Wone had arrived at their residence shortly after 10:30 p.m. At 11:49 p.m., Zaborsky called 9-1-1 to report that an "intruder" had stabbed a guest in their home and requested an ambulance. District of Columbia Emergency Medical Services ("EMS")

[1] With the government's consent, the defendants sought and obtained additional time from the Court to file this motion in limine after the scheduling order deadline, and filed it on April 9, 2010. Because the government has had only a limited opportunity to consider the defendants' arguments in the motion, it will seek to respond in a pleading filed no later than April 23, 2010.

personnel were immediately dispatched to the location. During the 9-1-1 call, Zaborsky related to the 9-1-1 operator that, "we heard . . . we think it was somebody, an intruder in the house, we heard a chime, the door." At some point during the call, the 9-1-1 operator told Zaborsky to "get a dry cloth, apply pressure to that area where he was stabbed, even if the towel is saturated with blood, just get another towel and put it on top of that, never lift the first towel off the area, hold it on, once it gets filled up with blood, just put another towel on top of that and just apply pressure until the paramedics arrive." Zaborsky responded, "my partner is holding it [a towel] on there . . . he is applying pressure." The 9-1-1 operator instructed Zaborsky to, "keep applying pressure, you need to hold it there until the paramedics get there." During the call to 9-1-1, and without prompting, Zaborsky also asked the operator, "what time is it?" and volunteered that "the person had one of our knives." Approximately five minutes and forty seconds into the call, Zaborsky indicated that emergency medical services ("EMS") personnel had arrived on the scene.

The Observations of the EMS Personnel

Once on the scene, EMS personnel parked their ambulance on the street in front of the defendants' home. The first EMS paramedic (hereinafter referred to as W-1) is expected to testify as follows:

W-1 approached the home and observed a white male (Zaborsky) standing on the front steps to 1509 Swann Street, wearing a bathrobe and speaking on a cell phone. W-1 asked Zaborsky, "what's going on?" Zaborsky did not appear to be responding directly to W-1's inquiry; however,

W-1 overheard Zaborsky say something about a stabbing on the second floor.[2] W-1 then entered 1509 Swann Street, a three-story townhouse, through the front door and proceeded up the stairs.

On his way up the stairs, W-1 saw a second white male in a bathrobe (Ward) emerge from a small hallway area adjoining the second floor bathroom. As Ward approached, W-1 confronted Ward and directly asked him, "what's going on?" Ward looked at W-1, but did not reply. Instead Ward walked past W-1 and directly into his bedroom on the second floor. W-1 proceeded down the hallway on the second floor and observed a third male (Price) wearing only a pair of underwear, seated on the edge of a pull-out couch bed in a room at the front of the house overlooking the street (the "guestroom"). Price had his back to the door and was not applying pressure to Mr. Wone's wounds or touching Mr. Wone in any way. W-1 again said, "what's going on?" Price replied, "I heard a scream," and said nothing more. Price then got up from the bed and, keeping his back to W-1, moved sideways away from the bed.

W-1 will testify that the behavior exhibited by Zaborsky, Ward, and Price alarmed W-1. Specifically, as a paramedic for more than ten years, W-1 will testify that he has responded to hundreds of scenes involving victims who had been shot, stabbed, or otherwise injured by violent conduct inside homes. Generally, in W-1's experience, such scenes are chaotic in that inhabitants of the home will be yelling about what happened and trying to direct W-1, as a medical professional, to the location of the victim. At this scene, however, the observed conduct of Zaborsky, Ward, and Price "made the hair on the back of [W-1's] neck stand up." Indeed, W-1 was so concerned with the

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[2] In our March 26, 2010 Opposition to the Defendants' Motion to Suppress Statements, the government erroneously stated that Mr. Zaborsky did not answer the EMS worker's question "what's going on?" As appears clear from the 9-1-1 call, however, he tells the EMS worker "Help us, he was stabbed, he is on the second floor."

odd behavior that he visually checked Price's hands for weapons upon entering the guest room. Additionally, instead of directly attending to Mr. Wone on the side of the bed closest to the door, W-1 deliberately moved around to the other side of the bed so that he could see Price in front of him.

Mr. Wone was found in the second-floor guestroom on a pull-out couch. The guestroom was located on the front of the house, overlooking Swann Street, and was situated furthest from the stairs that ran from the first floor to the second floor of the residence. Mr. Wone was lying flat on his back, on the pull out couch that had been made up as a bed, with his head on the pillow, and with his arms down at his sides. Mr. Wone was clad in a grey, "William and Mary" t-shirt (pushed up around his neck), green, mesh gym shorts, and underwear. Mr. Wone was lying on top of the sheets and comforter on the pull-out couch, which were folded at a forty-five degree an angle underneath his body.

Upon examining Mr. Wone, W-1 immediately noticed three apparent stab wounds to his chest. W-1 checked Mr. Wone for vital signs, finding no pulse in Mr. Wone's wrist, no pulse in his femoral artery in his groin, and no pulse in the carotid artery in his neck. W-1 saw that Mr. Wone's pupils were fixed and dilated, and there was no sign of respiration whatsoever. W-1 saw little to no blood on Mr. Wone's chest and none coming from the three wounds in Mr. Wone's chest. W-1 will describe the limited blood on Mr. Wone's chest as a light film of blood with striation marks. Unlike W-1's experiences and observations on other stabbing scenes where the stabbing had allegedly just occurred, W-1 will testify that Mr. Wone's body presented as if he had been dead for some period of time (i.e., body was cool and clammy to the touch, and had absolutely no vital signs, faint or otherwise).

The Scene

As the paramedics attended to Mr. Wone, several Metropolitan Police Department ("MPD") officers arrived on the scene and entered the house. These officers all encountered the same, strangely pristine scene, and some will testify at trial about their observations. Collectively, the first responding MPD officers will testify that the inside of the home presented as extremely neat and orderly, and openly displayed various items of expensive electronics equipment and other valuables throughout. On the first floor (the entry level), there was a flat screen television mounted in the kitchen, which is located at the back of the house, near the rear patio. When the officers inspected the room in which Mr. Wone was found, it appeared completely undisturbed; there was no indication that a violent struggle or stabbing had occurred in the room, or that it had been ransacked or searched for valuables. Mr. Wone's wallet, Movado watch, and Blackberry were on the table at the foot of the bed within plain sight of anyone who entered the room. The officers also observed a bloody knife on a night stand to the right of the bed. According to the defendants, the knife was part of a knife and cutlery set located in the kitchen.

A number of the responding MPD officers, evidence technicians, and detectives who saw the room on August 2, 2006, will testify that the only visible blood in the guestroom consisted of two relatively small spots of blood on the bed on which Mr. Wone was found lying.[3] The government will introduce photographs taken of the room that night (some of which are included at Attachment A), confirming that these two, discrete blood spots were, in fact, the only visible blood in the room.

A number of the responding MPD officers, evidence technicians, and detectives who examined the entire residence on August 2, 2006, and the days that followed, will further testify that

[3] Mr. Wone had already been removed from the scene at this time.

there was no visible blood in the residence (other than on the bed in the guestroom) and, significantly, there was no evidence of forced entry. The residence had a lock on the front and rear doors as well as a seven-foot security fence and locked security gate encircling a small back yard area. The residence also had a separate rear entrance that lead directly to the basement apartment. That entrance was also located within the secured back yard area. Finally, the residence had a roof top entrance that leads to a roof top patio. Every entrance was examined on August 2, 2006, and there were no signs of forced entry into the residence. Additionally, nothing was disturbed within the residence, and there was no property missing from the residence.

The government intends to present the expert testimony of retired MPD evidence technicians Maureen Walsh, Joe Anderson, Dave Sergeant, and blood pattern expert Robert Spalding to testify as to the nature of crime scene, as presented. In short, Ms. Walsh, Mr. Anderson, Mr. Sergeant, and Mr. Spalding will testify as follows:

- the room and home in which Mr. Wone was found exhibited none of the forensic evidence characteristically present at violent, multiple stab-wound scenes (e.g., blood spatter, blood spillage, blood trails, disturbed nature of the home, guest bedroom, and bed in which Mr. Wone was found, other evidence of a violent struggle or stabbing, and other blood evidence of a violent struggle or stabbing)

- the room and home in which Mr. Wone was found exhibited none of the forensic evidence characteristically present when an unauthorized intruder has invaded the premises (e.g., evidence of unauthorized entry, disturbed premises, guest bedroom, and bed in which Mr. Wone was found, items of value displaced or taken)

Their opinions and the basis for their opinions are set forth more fully in the government's expert notices as well as, in the case of Mr. Spalding, his expert report (see relevant notice and Mr. Spalding's report at Attachment B).

The Towel and Bloody Knife

On the floor near the bed in which Mr. Wone was found, evidence technicians discovered a large, white, cotton towel. The government will introduce that towel and relevant photographs of it into evidence at trial (see photographs at Attachment C). When recovered, the towel had only a few blood stains on it–one measuring approximately two-and-one-half by three inches and a few other smaller ones (confirmed through DNA testing to be Mr. Wone's blood). Contrary to Zaborsky's statement to the 9-1-1 operator and Zaborsky and Price's subsequent statements to the police, Mr. Spalding will testify that the larger blood pattern on the towel is inconsistent with Price having used the towel to apply pressure to Mr. Wone's wounds. Mr. Spalding will further testify that the larger blood pattern on the towel is more consistent with the pattern one would expect to see if someone held the bloody towel in one hand and a knife in the other, placed the knife on the towel, folded the towel over the blade of the knife, and swiped the blood from the towel onto the knife. Mr. Spalding will further testify there are areas on the "back" side of the towel which are consistent with blood having been absorbed through the towel where a person's fingers were applying pressure to the item that was making contact with the "front" side of the towel.

Evidence technicians also recovered the knife found on the night stand. The government will introduce that knife and relevant photographs of it into evidence at trial (see photographs at Attachment D). Mr. Spalding will testify that the blood pattern on the knife, including apparent "swipe" marks, and an absence of any blood along the cutting edge of the knife blade, is inconsistent with the knife having been used to stab Mr. Wone three times. Retired MPD evidence technicians Maureen Walsh, Joe Anderson, Dave Sergeant will testify that, based on their experience, knives used in violent, multiple stab-wound cases typically have visible blood all over them, including on

the knife blade and handle. In this case, however, the purported murder weapon discovered near Mr. Wone's body did not have any visible blood on anything other than the knife blade itself.

The government will introduce evidence as to how, after the knife was seized and placed in a sealed tube, it was sent to the FBI to be forensically processed for blood, trace, and fingerprint evidence. As part of its standard protocols, the FBI recovered various suspected trace evidence off the knife blade itself. Mr. Doug Deedrick, who was then employed by the FBI, visibly examined the trace fiber evidence under both a clear microscope and one using a florescent light source, and determined that a significant number of white cotton fibers recovered from the knife blade (more than 12) were like fibers taken off the white, cotton towel recovered from the guestroom floor. Mr. Deedrick will testify that the presence of the white cotton fibers on the knife's blade is consistent with the bloody towel having come into direct contact with the knife blade. Mr. Deedrick will also testify that while the knife actually used to stab Mr. Wone appears to have passed through the grey "William & Mary" T-shirt he was wearing in three places, no fibers were found in the blood on the knife that were consistent with the fibers of that t-shirt.

Both Mr. Spalding and Mr. Deedrick conducted "swipe" experiments in this case. Using an exemplar towel and knife that were identical in brand name and model to those recovered from the guest bedroom, as well as some human blood, Mr. Spalding and Mr. Deedrick sought to duplicate, in every material respect, the circumstances under which a person could have taken the bloody towel recovered and wiped blood from it onto the knife recovered from the scene. As a result of these controlled experiments, Mr. Spalding and Mr. Deedrick independently determined that visible blood pattern on the knife recovered from the scene (i.e., in terms of directional swipe and striation marks) resemble those appearing on the exemplar knife when the exemplar towel saturated with some blood

was swiped across the exemplar knife blade from hilt to point. In short, Mr. Spalding and Mr. Deedrick will testify that the blood pattern found on the knife recovered on the scene is more consistent with someone having taking the bloody towel and swiped it across the knife (see relevant portions of Mr. Spalding's report at Attachment B and notice and reports of Mr. Deedrick at Attachment E).

The Knife Missing from Ward's Bedroom

In Ward's bedroom, the police recovered a cutlery set box. The government will introduce that cutlery set box and relevant photographs of it into evidence at trial (see photographs at Attachment F). The box is designed to contain three items: a large carving knife, a large fork, and a smaller knife. When recovered, the large knife and fork were present in the box, but the smaller knife was missing. The missing knife was not found on the scene and has never been recovered. The government has procured an exemplar of the smaller knife missing from the cutlery set and will seek to introduce the exemplar knife into evidence at trial. Significantly, the exemplar knife measures approximately four and one-half to four and three-quarters inches in length, and approximately three-quarters to thirteen-sixteenths of an inch in width.

The Autopsy and Stab Wounds to Mr. Wone's Body

Dr. Goslinoski of the Office of the Chief Medical Examiner for the District of Columbia, will testify about her findings and opinions in performing the autopsy on the body of Mr. Wone. In relevant part, Dr. Goslinoski will testify based on her training and experience in the field of forensic pathology and her autopsy examination of Mr. Wone's body that:

- upon examination, she found three remarkably clean, symmetrical, uniform stab wounds to Mr. Wone's torso

- there were no defects in the stab wounds themselves: no drag marks, abrasions, fish-tailing, or the like. Rather, the wounds were "perfect, slit-like defects"

- each wound was inflicted at exactly the same angle: with the sharp edge oriented at 10 o'clock and the blunt edge oriented at 4 o'clock

- based on the characteristics of the stab wounds, they appear to have been "methodically" inflicted

- there was a single petechial hemorrhage in the right sclera (white of the eye) and the left lower conjunctiva (inner surface of the eyelid and exposed surface of the eyeball). Such a finding is consistent with some type of asphyxial event (e.g., an attempt to suffocate someone by placing a pillow over their face). However, she did not find any injuries indicative of manual strangulation; the hyoid bone was intact, and there were no ligature marks or bruising to the exterior or interior neck regions

- due to the largely identical dimensions of the stab wounds to Mr. Wone's body, the same size knife appears to have been used to inflict each of the three stab wounds

- each of the three stab wounds is between 4 to 5 inches in depth, and the direction of each wound is front to back, right to left, and slightly downward

- in light of the physical dimensions of the bloody knife recovered from the scene (i.e., having a blade measuring five and one-half inches in length) and the depth and nature of the stab wounds to Mr. Wone, it is unlikely that the knife recovered from the scene was used to inflict the stab wounds to Mr. Wone

- in light of the physical dimensions of the exemplar of the missing knife from the cutlery set in Ward's bedroom (i.e., having a blade measuring four and one-half inches in length) and the depth and nature of the stab wounds to Mr. Wone, it is more likely that a knife having the physical dimensions of the missing knife from the cutlery set in Ward's bedroom was used to inflict the stab wounds to Mr. Wone.

- there were a number of needle puncture marks (e.g., three in the center of his chest, two to the upper portion of his right foot, two to the left side of his neck, and one to his left wrist) that do not appear to have been caused by any medical treatment or intervention. The needle puncture marks appear to have been caused pre-mortem, and therefore inflicted before Mr. Wone was found without a pulse by W-1, the first medically-trained professional to attend to Mr. Wone on the scene

- none of the knife wounds would have killed or even rendered Mr. Wone unconscious immediately. Unless otherwise incapacitated, Mr. Wone would have reacted instinctively to protect himself and/or physically fend off his attacker(s). However, there was no evidence of any defensive wounds on Mr. Wone's hands or forearms (e.g., 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(s)). Moreover, there was little to no blood on his hands, indicating that he did not even clutch his hands to his chest at the time of or immediately after the attack, as would be a natural human response. Accordingly, Mr. Wone was not able to move (i.e., he was incapacitated) at the time he was stabbed.

- there was a significant amount of internal bleeding as a result of the stab wounds. Blood had filled Mr. Wone's intestine a distance of two feet down from his duodenum (where the stomach attaches to the intestine), indicating that Mr. Wone was alive for a considerable period of time after he was stabbed, in that his digestive system continued to operate, forcing blood into his intestine for digestion

Dr. Goslinoski's opinions and the basis for her opinions are set forth more fully in the government's expert notice for Dr. Goslinoski as well as in her autopsy report at Attachment G.

The government also intends to introduce the expert testimony of Dr. David Fowler, a trained forensic pathologist and Chief Medical Examiner for the Office of the Chief Medical Examiner for the State of Maryland. Dr. Fowler independently reviewed and considered, among other things, the nature and circumstances of the crime scene, the physical evidence found there (including the purported murder weapon), the injuries inflicted upon Mr. Wone, and Dr. Goslinoski's autopsy report. In large part, Dr. Fowler will concur with and expound upon Dr. Goslinoski's expert opinions, as set forth above. Dr. Fowler's opinions and the basis for his opinions are set forth more fully in the government's expert notice for Dr. Fowler, a copy of which is at Attachment H.

Finally, the government expects Ms. Walsh, Mr. Anderson, and Mr. Sergeant to testify, based on their prior observation of the visible injuries of hundreds of stabbing victims when responding to stabbing scenes over the course of their respective careers, that Mr. Wone's perfect, slit-like stab wounds are inconsistent with his having been involved in a violent struggle involving multiple stab wounds. Namely, unlike the injuries of multiple stab wound victims that they have come into contact with over the course of their respective careers, Mr. Wone's stab wounds themselves have no drag marks, abrasions, or fish-tailing, and his body exhibited absolutely no defensive wounds.

In this regard, Ms. Walsh, Mr. Anderson, and Mr. Sergeant would testify that the victim's wounds in this case are unlike any others they have observed on victims in multiple stab wound cases.

The Toxicology Results

The government will seek to introduce expert testimony concerning the toxicology testing and results in this case. In particular, standard toxicology tests performed on blood samples taken from Mr. Wone's body around the time of the autopsy were negative for the presence of the following drugs: ethanol, acetone, methanol, isopropanol, amphetamines, barbiturates, benzodiazepines, cocaine metabolites, methadone, methamphetamines, opiates, phencyclidine, propoxyphene, gamma-hydroxybutyrate, and carbon monoxide. However, on April 14, 2010, in a more expansive toxicology test conducted by FBI toxicologist Roman Karas, the presence of xylenes–a volatile organic compound capable of inducing unconsciousness in human beings when inhaled–was detected in Mr. Wone's blood sample.[4] The government intends to introduce this toxicological finding, in conjunction with the medical examiner's findings and conclusions in this case, to establish that Mr. Wone was, in fact, incapacitated and unable to move or defend himself at the time he was stabbed.

Evidence of Delayed Reporting and Collusion by the Defendants

First, the government will seek to introduce evidence establishing the time line of events on August 2, 2006, to establish that Mr. Wone was stabbed sometime after arriving at the defendants' residence at approximately 10:30 p.m., but well before the defendants called 9-1-1 to report Mr. Wone's fatal condition at 11:49 p.m. To do so, the government will introduce evidence that:

[4] Mr. Karas is conducting ongoing quantitative testing on the blood sample in an attempt to quantify the amount of xylenes present in Mr. Wone's blood sample, the results of which the government may also seek to introduce at trial.

- W-2, as related in the Affidavits in Support of the Arrest Warrants, while occupying a home adjacent to 1509 Swann Street, heard a single scream come from the area of the guest room in 1509 Swann Street where Mr. Wone was found between 11:00 and 11:30 p.m.

- the responding EMS personnel observed that Mr. Wone's body exhibited signs indicating that he had been dead for a period of time before they arrived on the scene (i.e., he was nonresponsive, pale, and his body exhibited absolutely no vital signs)

- emergency medical personnel at George Washington University Emergency Room also observed that Mr. Wone's body exhibited signs that he had been dead for a significant period of time before he arrived at the emergency room (i.e., he was nonresponsive, extremely pale, and exhibited absolutely no vital signs)

- according to Dr. Goslinoski, a significant amount of digested blood was found in Mr. Wone's intestines, indicating that he was alive and his digestive system clearly continued to function for a considerable period of time after he was stabbed but before he ultimately perished.

In addition, the government will present the testimony of MPD officers who, upon arrival, observed Price, Zaborsky, and Ward, huddled closely together and appearing to be whispering to one another. These officers will consistently testify that Price effectively spoke for all three defendants while on the scene, and by his actions and words was the dominant and controlling personality among the three men.

Second, as direct proof that the defendants knowingly and intentionally delayed their 9-1-1 report to the police of the stabbing of Mr. Wone on August 2, 2006, the government will introduce evidence that the defendants (1) would, based on their unique relationship, delay the report of a crime to protect the true perpetrator of the crime where it was someone well-known to them, and (2) in fact, did so under similar circumstances, in delaying their report to the police of Michael Price's burglary of 1509 Swann Street, N.W., on or around October 30, 2006. The government will introduce evidence concerning the unique nature of the defendants' three-person relationship to establish their motive, loyalty, and ability to conspire successfully to obstruct the investigation into the true circumstances of Mr. Wone's killing, including that:

- Price and Zaborsky were involved in a committed relationship for several years before Mr. Wone's murder

- starting in the Spring of 2003, defendant Price and Ward were contemporaneously involved in a relationship for several years before Mr. Wone's murder

- the nature of the relationship between defendants Price and Zaborsky was materially different than the relationship between defendants Price and Ward in that one primarily served to fulfill defendant Price's need for an emotionally-stable relationship (Price and Zaborsky) and the other primarily served to fulfill defendant Price's need for a sexually-satisfying relationship (Price and Ward)

- the relationship between defendants Zaborsky and Ward was largely non-intimate and the product of their independent devotion to defendant Price

- despite the obvious complexity and resulting tensions existing in this three-person relationship, defendant Price, as the common and dominant personality among the three men, nonetheless managed to maintain the relationship and keep it intact

The government will seek to introduce the following discrete set of facts related to the October 30, 2006 burglary and the defendants' decision to delay their reporting of it:

- On or around October 30, 2006, approximately three months after Mr. Wone's murder, the defendants' residence at 1509 Swann Street, N.W., was burglarized

- At that time, the defendants were not staying at the residence

- The burglar(s) entered the residence without force (e.g., no evidence indicating a forced entry), and took several pieces of high-end electronic equipment (e.g., flat screen TV, DVD player, etc.)

- Around 4:00 p.m. on October 30, 2006, Ward became aware that 1509 Swann Street, N.W., had been burglarized and notified Price and Zaborsky of the burglary shortly thereafter

- the defendants collectively believed that Price's brother, Michael Price, was at least partially responsible for the burglary and discussed whether to report the burglary

- in deference to Joe Price, the defendants decided not to report the burglary that day because Michael Price was a member of their family and it was a "family matter"

- on the evening of October 30, 2006, the defendants learned that Michael Price had been arrested in Maryland and charged with car theft (arising from his unauthorized use of his partner, Louis Hinton's car)

- the next day, on October 31, 2006, the defendants spoke to their attorneys
- on October 31, 2006, the defendants also learned that an associate of Michael Price had aided and abetted Michael Price in burglarizing their residence
- according to Ward, because there was another person involved in the burglary–a stranger to the defendants–they decided to report the burglary
- they reported the burglary to MPD on the morning of November 2, 2006.
- in the months before the burglary, Michael Price had a set of keys to the residence and the home security system code, both of which were provided to him by Price
- for the first time since the murder, and in the weeks after the murder, Price acknowledged to the police (through a statement to Detective Danny Whalen) that Michael Price had a set of keys to the residence
- on March 20, 2007, Michael Price sent Zaborsky an e-mail, in which Michael Price admitted to and apologized for burglarizing 1509 Swann Street. Zaborsky did not provide this direct evidence of Michael Price's involvement in the crime to the government until August 29, 2007.

The government will seek to establish the above facts concerning the delayed reporting of the burglary committed by Michael Price through both the defendants' voluntary contacts and statements to the police as part of its investigation into the burglary, as well as the introduction of select portions of the grand jury testimony of Ward and Zaborsky (also voluntarily given while being represented by counsel).

Finally, as set forth in great detail in the Government's Notice of Intent to Use Statements, the government will seek to establish the full nature and extent of the defendants' conspiracy to obstruct the police's investigation into the true circumstances of Mr. Wone's murder, in part, through their own statements to law enforcement personnel and civilian witnesses after the murder.

Other Evidence Recovered From the Scene

In the days that followed the murder, the government seized hundreds of items of evidence from the scene, a small and select portion of which it will seek to introduce at trial. For instance,

in light of the substantial evidence referenced above establishing that Mr. Wone was unable to move at the time he was stabbed (i.e., he was chemically incapacitated, physically restrained, or both), the government will seek to introduce a limited number of "restraint" items found in Ward's bedroom on the second floor–the same room in which the knife set with the missing knife was found. The specific items the government will seek to introduce are delineated in the government's April 15, 2010 discovery letter, a copy of which is at Attachment I. Because the manner and extent to which these items are capable of restraining persons is not readily apparent to the casual observer who has not had any prior experience with such items, the government intends to introduce the testimony of Mr. James Plant for the limited purpose of identifying the items and explaining how they are commonly used to restrain a person's movements.[5]

ARGUMENT

The government submits that each of the categories of evidence the defendants seeks to exclude is probative of the crimes with which the defendants' are charged and properly admissible at trial to establish their guilt. Accordingly, the defendants' various motions in limine should be denied.

I. Defendants' Motion in Limine to Exclude Argument and Testimony that the Crime Scene Was Cleaned and to Limit Argument and Testimony Regarding Lack of Blood Evidence

In their motion in limine to exclude evidence and argument that the crime scene lacked blood evidence and that the defendants' cleaned the scene, the defendants appear to argue that: (1) former MPD evidence technicians Walsh, Anderson, and Sergeant are not qualified to testify about the absence of blood evidence on the scene (or "what the blood evidence should have been") because

[5] Because the government will seek to elicit relatively limited testimony from Mr. Plant, it will explore the possibility of introducing this information via a stipulation that would generically identify the restraints and describe, in a non-inflammatory manner, their restraint capabilities.

they are not medical doctors or trained forensic pathologists (Mot. 11-13); (2) their opinions lack a factual basis because the police were unable to find direct evidence that the defendants cleaned blood up from the scene (Mot. at 13-15); and (3) their testimony, if admitted, would have limited probative value and be unfairly prejudicial (asserting it is based on speculation alone) (Mot. 15-16). The defendants' argument are without merit and should be rejected.

A "trial judge has broad discretion in the matter of the admission or exclusion of expert evidence . . . ." Smith v. United States, 389 A.2d 1356, 1358 (D.C. 1978) (quoting Salem v. United States Lines Co., 370 U.S. 31, 35 (1962) (internal quotation marks omitted)). There is a two-level analysis in evaluating proposed expert testimony. First, the Court examines admissibility, applying the three-prong test set forth in Dyas v. United States, 376 A.2d 827, 832 (D.C. 1978): (1) The subject matter must be so distinctively related to some science, profession, business or occupation as to be beyond the ken of the average layman; (2) the witness must have sufficient skill, knowledge, or experience in that field or calling as to make it appear that his opinion or inference will probably aid the trier in his search for truth; and (3) expert testimony is inadmissible if the state of the pertinent art or scientific knowledge does not permit a reasonable opinion to be asserted even by an expert. Dyas, 376 A.2d at 832 (quoting McCormick on Evidence, § 13 at 29-31 (E. Cleary, 2d ed. 1972)). Second, relevant evidence may be nonetheless excluded if its probative value is substantially outweighed by the risk of unfair prejudice. Johnson v. United States, 683 A.2d 1087, 1100 (D.C. 1996) (en banc). Here, the defendants challenge to the admissibility of the proffered expert testimony of former MPD evidence technicians Walsh, Anderson, and Sergeant is limited to the second prong of Dyas (Mot. 10-15) and a generic relevance-versus-risk-of-unfair-prejudice attack.

The government seeks to have former MPD evidence technicians Walsh, Anderson, and Sergeant qualified as experts to opine as to the absence of blood evidence on the crime scene (as well

as the unusually perfect, slit-like nature of the Mr. Wone's visible stab wounds, and the lack of any forensic evidence indicating that an intruder had entered the residence). The government submits that they are qualified to give their proffered opinions because those opinions are based on their training in crime scene evidence assessment and collection (including blood spatter training), as well as thirty years of professional crime scene collection experience each, in which they have assessed and processed literally hundreds of similar stabbing and other violent crime scenes for forensic evidence, including blood evidence. Their opinions will clearly aid the jury in its search for the truth in that they can describe how, based on their training and experience, a multiple stab-wound crime scene and similar violent crime scenes presents themselves and how the instant crime scene lacked all the forensic evidence typically found at such a scene. This will, in turn, assist the jury in evaluating whether Mr. Wone was: (1) stabbed while lying motionless in the guestroom bed by an unheard, unseen, and undetected intruder, as suggested by the defendants; or (2) killed by someone known to the defendants such that they would substantially alter the crime scene in an effort to protect the identity of the murderer. The second prong of Dyas requires nothing more.

Contrary to the defendants' contention, former MPD evidence technicians Walsh, Anderson, and Sergeant need not be trained medical doctors or forensic pathologists to qualify as experts in the field of crime scene evidence assessment and collection, including the observed and recognized absence of forensic evidence, like blood spatter. "Scholarship is not a prerequisite for eligibility to testify as an expert witness; the relevant knowledge may be derived from professional experience, including, in particular, experience as a police officer." Karamychev v. District of Columbia, 772 A.2d 806, 812 (D.C. 2001); see, e.g., Eason v. United States, 687 A.2d 922, 925-26 (D.C.1996) (homicide detective with 16 years of experience and some training and use of blood spatter analysis properly qualified as an expert); People v. Clark, 857 P.2d 1099, 1142-43 (Cal. 1993) (en banc)

(witness, who had attended lectures, read literature, conducted experiments, and visited crime scenes involving blood spatter, was properly qualified), cert. denied, 114 S. Ct. 2783 (1994); State v. Moore, 585 A.2d 864, 883-84 (N.J. 1991) (police officer, who had attended a blood spatter seminar and investigated many crime scenes, was properly qualified); State v. Young, 663 So.2d 301, 303 (La. Ct. App. 1995) (police officer, who attended a seminar and had in-house training on blood spatter, was properly qualified); People v. Smith, 633 N.E.2d 69, 72 (Ill. App. Ct. 1994) (police officer, who had extensive general experience and some instruction on blood spatter, was properly qualified); McCray v. State, 873 S.W.2d 126, 128 (Tex. Ct. App. 1994) (police officer, who had general crime scene training and extensive investigative experience, was properly qualified).

Similarly, the proffered expert opinions of former MPD evidence technicians Walsh, Anderson, and Sergeant are not without factual support. Rather, their expert opinions are based on training in the crime scene evidence collection as well as over 30 years each of having processed multiple stab-wound crime scenes and comparing, for example, the blood evidence found on those scenes, to the near-complete absence of blood evidence found on this one.[6]

For essentially the same reasons articulated above, the proffered expert opinions of former MPD evidence technicians Walsh, Anderson, and Sergeant, and Mr. Spalding[7] are clearly probative

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[6] Interestingly, the defendants argue that because the police did not find evidence, such as the presence of cleaning agents, to prove affirmatively that they cleaned up the scene, the "crime scene was not cleaned" (Mot. at 14). Indeed, the government has made it clear that the evidence supports the opposite conclusion in that because the crime scene presented as artificially and atypically spotless, except for the two modest blood spots on the bed, and the government was unable to detect the defendants' clean-up, the defendants successfully obscured the truth of their cover-up of the true circumstances of the murder. If the defendants' numerous experts opine otherwise, that is a question of fact for the jury to decide.

[7] Although the defendants generically lump Mr. Spalding's expert opinions in with those of the government's former MPD evidence technicians, it is abundantly clear from their respective notices, that Mr. Spalding's expert opinions are much more expansive then those of the former MPD evidence technicians. Because the defendants' bald challenge to Mr. Spalding's expert opinions is

of whether the defendants altered the crime scene in this case before summoning the police to the scene and not otherwise inadmissible pursuant to defendants' generic claim that such evidence presents a risk of unfair prejudice.

II. Defendants' Motion in Limine to Exclude Evidence and Argument Regarding the Burglary of 1509 Swann Street

In their motion in limine to exclude evidence and argument regarding the October 30, 2006 burglary of 1509 Swann Street, the defendants contend that: (1) the facts establish that the defendants delayed reporting of the burglary was not their decision, but was instead dictated by Mr. Schertler's schedule (Mot. 3-4); and (2) the delayed reporting of the burglary is not relevant to the charges in this case (Mot. 4-5). The defendants' arguments are both misplaced and unpersuasive.

As an initial matter, the government has already proffered facts that, if credited by the jury, clearly establish that the defendants delayed their report of the burglary to protect Michael Price, and not, as urged by defense counsel, because his schedule did not permit them to report it earlier. Importantly, unlike the purported facts and suggested import of those facts offered by the defendants in their motion, the government's proffered facts are based on the sworn grand jury testimony of Ward and Zaborsky, as well as corroborative testimony from independent witnesses, establishing, at a minimum, that: (1) the defendants first discovered the burglary on the afternoon and early evening of October 30, 2006, (2) they suspected Michael Price was the perpetrator of the burglary, and (3) they therefore chose not to report it to the police on October 30. Indeed, even were the Court to accept without question the defendants' strained version of the facts in their motion, the defendants did not confer with their attorneys about the burglary until, at earliest, the morning of October 31. Therefore, there would still be uncontradicted evidence from the defendants themselves

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bereft of any real substance, it should be summarily denied.

that--independent of any contact with or advice from their counsel--they decided amongst themselves not to report the burglary to the police for well over 12 hours. And, as already proffered above, the government submits that their own grand jury testimony establishes that they delayed their report to the police out of deference to Joe Price, who sought to protect his brother Michael, the suspected perpetrator of the crime.

Second, it is self-evident that if the defendants delayed their report of the burglary to protect Michael Price, that delay in reporting a crime to the police that they believed was committed by someone they knew is circumstantial evidence of the charges alleged here as well. Namely, the government alleges that the defendants deliberately delayed in reporting the murder of Mr. Wone to protect the identity of the true killer(s)--a person(s) known to the defendants. Surely, evidence that the defendants delayed reporting the burglary of their home by Michael Price just months after the murder is also probative of whether they similarly delayed in reporting the murder of Mr. Wone inside their home because they knew the perpetrator was someone close to them under closely analogous circumstances (e.g., no forced entry to the home, a felonious act committed inside their home, a strong reason to delay reporting based on personal relationship with the perpetrator of the crime, etc.). Independently, the evidence of the defendants' delayed but eventual reporting could appropriately be considered by the jury as further proof that they created more time for them to cover-up the true circumstances of the crimes and as consciousness of guilt. See, e.g., Commonwealth v. Coonan, 705 N.E.2d 599, 605 (Mass. 1999) ("[T]he defendant's behavior after the murder, including a three-hour delay in reporting the victim's death to police, as well as the destruction of certain evidence, demonstrated a consciousness of guilt.")[8]

[8] For the same reasons, the government submits that Zaborsky's decision not to provide the e-mail he received from Michael Price on March 20, 2007, in which Michael Price admits to and apologizes for burglarizing 1509 Swann Street, to the government until interviewed by the

III. Defendants' Motion in Limine to Exclude Argument, Testimony and Evidence Regarding Sexual Assault and Chemical Incapacitation

In their motion in limine to exclude evidence and argument regarding sexual assault and chemical incapacitation, the defendants ask the Court to exclude the government's introduction of evidence of sexual assault and chemical incapacitation of Mr. Wone in either its case-in-chief or where the defendants "open the door" to the introduction of such evidence due to defendants' trial tactics. It is the government's understanding that the Court has effectively denied the defendants' motion in limine to exclude evidence of sexual assault as moot, in recognition of the government's express representation that it would not seek to introduce such evidence in its case-in-chief. Accordingly, the government will not address the substantive arguments advanced by the defendants in their motion, other than to note that the government still believes that there is admissible evidence tending to show that Mr. Wone may have been sexually assaulted before his death. Contrary to the defendants' assertion in its motion, the government has never conceded that there is "no evidence" of sexual assault in this case. That said, for strategic reasons, the government will not seek to introduce such evidence at trial unless it feels that the introduction of such evidence is necessary to address (and correct) misleading inferences advanced by the defendants either through their examination of trial witnesses or in counsels' openings or closings. Of course, should the government want to make reference to sexual assault, it will first approach the bench to seek the court's prior approval to do so.

With respect to the defendants' motion to exclude evidence and argument regarding chemical incapacitation, we anticipate that the defendants will want to reassess their position after reviewing the recent toxicology results issued by the FBI. As previously mentioned, the government intends

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government on August 29, 2007, is indicative of a pattern of willful conduct by the defendants to withhold information that is patently material to a pending criminal investigation.

to introduce expert testimony concerning the toxicology testing and results in this case, including Mr. Karas' recent detection of the presence of xylenes–a volatile organic compound capable of inducing unconsciousness in human beings when inhaled–in Mr. Wone's blood sample. The government intends to rely on this toxicological finding, in conjunction with the other evidence in the case (e.g., the medical examiner's findings and conclusions), to argue that Mr. Wone was, in fact, chemically incapacitated and therefore unable to move or defend himself at the time he was murdered.

IV. Defendants' Motion in Limine to Exclude Argument, Testimony and Evidence Regarding Defendants' Sexual Histories and to Limit Argument, Testimony, and Evidence Regarding Defendants' Sexual Orientations

In their motion in limine to exclude evidence and argument regarding defendants' sexual histories and sexual orientations, the defendants baldy contend that "there is no credible argument that their sexual orientations or histories are in any way relevant to or probative of any fact in this case;" and yet conveniently ignore the relevance of such evidence, as expressly recognized by the District of Columbia Court of Appeals ("DCCA") in Jones v. United States, 625 A.2d 281, 288 (D.C. 1993).

In Jones, the DCCA reversed the convictions of two homosexual defendants, who, acting in concert, had committed a stabbing. Id, at 283. In doing so, the DCCA concluded that the trial court had abused its discretion in allowing excessive evidence of the defendants' homosexual relationship with each other, and of one of the defendant's effeminate characteristics. Id, at 282-3. Significantly, the DCCA did not take issue with the trial court's decision to admit evidence of the defendants' homosexual relationship to show the unique association between the two defendants and provide a basis for their being together at the time of the stabbing. Id. at 284. Indeed, the DCCA expressly stated, "the conscientious trial judge attempted to strike a delicate balance early in the trial between

probative and prejudicial evidence by allowing limited relevant testimony about [the defendants'] homosexual relationship and effeminate tendencies to prove their unique association and to prove the identification of [the victim's] assailant." Id. at 285, n5. Instead, the DCCA found error because the "prosecutor heedlessly escalated and introduced evidence about the defendants' sexual relationship far in excess of what was appropriate . . . ," and the trial court failed to "maintain a vigilance against prejudice." Id. at 288.

Jones is instructive here as well. The government seeks to introduce evidence establishing the complex, yet enduring, nature of the relationship among the three defendants. Specifically, the government seeks to prove that: (1) Price and Zaborsky were involved in a committed relationship, for several years before Mr. Wone's murder and throughout the duration of the alleged conspiracy; (2) Price and Ward were contemporaneously involved in a relationship that continued throughout the duration of the alleged conspiracy; (3) the nature of the relationship between Price and Zaborsky was materially different than the relationship between Price and Ward in that one primarily served to fulfill Price's need for an emotionally-stable relationship (Price and Zaborsky) and the other primarily served to fulfill Price's need for a sexually-satisfying relationship (Price and Ward); (4) the relationship between Zaborsky and Ward was largely non-intimate and the product of their independent devotion to Price; and (5) despite the complexity and resulting tensions existing in this unique three-person relationship, Price, as the common and dominant personality among the three men, nonetheless managed to maintain the relationships and keep them intact.

Like the relationship in Jones, proof of the defendants' complex, yet steadfast and unwavering, three-person relationship is plainly relevant to the charges in the instant case. Indeed, it is axiomatic that evidence establishing the nature of the relationship between or among co-defendants is highly probative in conspiracy cases. See, e.g., United States v. Mermelstein, 487 F.

Supp. 2d 242, 262 (E.D.N.Y. 2007) ("[E]vidence of the nature of the relationship between alleged co-conspirators is frequently admitted by courts."); see also Chumbler v. Commonwealth, 905 S.W.2d 488, 492-93 (Ky. 1995) (holding, in a conspiracy to commit murder case, that evidence of the homosexual relationship between the two defendants was properly admitted given the government's theory as to the nature of the conspiracy).

Moreover, as previously argued in the Government's Notice of Uncharged Conduct II, the government seeks to introduce evidence of the defendants' three-person relationship not because it happens to involve three consenting homosexuals, but rather, because their unique, three-person relationship is indicative of the powerful bond that all three shared and the intense loyalty that, in part, formed the bedrock for the conspiracy. Indeed, evidence of the defendants' unique, three-person relationship would be probative of their willingness to engage in a conspiracy to cover up a crime regardless of whether that relationship involved three heterosexuals individuals (e.g., a husband, a wife, and a live-in mistress), three homosexual individuals, or a mixture of sexual orientations. In short, the defendants' three-person relationship is unique because a three-person relationship is that much more difficult to manage and maintain successfully–something the defendants proved they were nonetheless able to do under the direction and at the behest of Price. Accordingly, the government maintains that the above-referenced evidence is admissible to prove up the charge of conspiracy.

V. Motion in Limine to Exclude Argument, Testimony and Evidence Regarding Alleged Restraint and to Exclude Testimony of Mr. James Plant

In their motion in limine to exclude evidence and argument regarding alleged restraint and exclude testimony of Mr. Plant, the defendants argue that: (1) there is no evidence of physical restraint in this case (Mot. 2-3); (2) there is no evidence connecting the restraints found in Ward's bedroom to the circumstances of the murder (Mot. 4-5); (3) the probative value of any evidence that

Mr. Wone was restrained is minimal and outweighed by the risk of unfair prejudice to the defendants (Mot. 6-8); and (4) Mr. Plant is neither qualified to testify, nor is his testimony relevant here (Mot. 12-17). The government disagrees.

Contrary to the defendants' assertion, the government has never "acknowledged that there is no evidence of restraint" (Mot. 2) (emphasis added). Indeed, it is clear from the evidence that Mr. Wone was physically restrained in some manner, chemically incapacitated (via the introduction of a substance containing xylenes), and ultimately rendered completely unable to fend off his assailant(s) during the attack leading up to the stabbing. The government submits, as the forensic medical evidence indicates, that at the very moment Mr. Wone was stabbed three times in the torso, he was completely and totally incapacitated (i.e., unable to move). The perfect, slit-like stab wounds to Mr. Wone's torso establish that proposition, as well as the corresponding expert testimony of Drs. Goslinoski and Fowler (the wounds were "perfect, slit-like defects" that appear to have been "methodically" inflicted). Notwithstanding, that is not to say that at the beginning of the attack upon Mr. Wone, and up until the actual stabbing, there is no evidence that he was physically restrained in some manner to assist his attacker(s) in chemically incapacitating and then killing him.[9]

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[9] The defendants correctly note that in the Affidavits in Support of Arrest Warrants and at other times over the course of the case, the government has contended that Mr. Wone was not merely restrained at the time he was stabbed. It is unlikely that mere physical restraint (unaccompanied by chemical incapacitation) would have completely immobilized Mr. Wone such that the stab wounds could be inflicted without any evidence of drag marks, abrasions, fish-tailing, or other imperfections. Furthermore, government counsel's statement that "there's no indication of restraint" at the September 11, 2009 hearing refers to the fact that, in conducting the autopsy, Dr. Goslinoski did not observe or note any physical indicia of restraint (i.e., obvious external bruising or abrasions to the arms, legs, torso, neck, or head). That Dr. Goslinoski did not observe such evidence of restraint, however, does not definitively rule out that Mr. Wone was nominally restrained at some time by his attacker(s). Indeed, there are a number of padded restraints recovered as evidence in the case that potentially could have been employed without causing any bruising.

In light of the likely sequence of events culminating in Mr. Wone's stabbing death, the government maintains that the introduction of the attacker(s)' ready access to the "restraints" in the house is highly probative of the factual issues in this case. Significantly, the "restraint" items the government is seeking to introduce were found in Ward's bedroom–the same room containing the knife set with the missing knife, and no more than forty feet from where Mr. Wone was stabbed to death.[10] Like the carving knife and fork remaining in the knife set box found there, the cover-up by the defendants ensured that there would be no direct proof that the particular "restraint" items the government discovered in Ward's bedroom were themselves used in the murder. Rather, it is probative that such "restraint" items were plentiful and readily assessable to the killer(s).

As previously set forth in the Government's Notice of Uncharged Conduct II, evidence that restraints were accessible to a perpetrator is often deemed admissible where it tends to make more probable the existence of a fact of consequence to the case. See State v. Burkins, 973 P.2d 15, 25 (Wash. Ct. App. 1999) ("'[W]hether evidence actually plays a part in a crime is not the definition of relevant evidence.' To be relevant, and admissible at trial, evidence need only have a tendency to make the existence of a fact that is of consequence to the determination of the action more probable.") (internal citation omitted). Here, the presence of a multitude of restraints in close proximity to the bedroom in which Mr. Wone was found stabbed tends to make more probable that Mr. Wone was physically restrained in some manner and then chemically incapacitated prior to being stabbed. See, e.g., State v. Thomas, 533 A.2d 553 (1987) (where victim bound by rope, testimony regarding clothesline in defendant's basement admissible to show defendant had access to rope); cf. State v. Winot, 879 A.2d 115, 129 (Conn. App. 2006) (evidence of rope fashioned into noose and

[10] The ready and practicable access to these "restraint" items, and the intended and ordinary use of such items, differs significantly from that of the extension cords, phone line, and television cable alleged located in the utility closet in the very guestroom in which Mr. Wone was stabbed.

found in defendant's trunk was properly admitted where prosecutor was required to prove that the defendant intended to restrain the victim).

The government recognizes that the manner in which the delineated "restraint" items are introduced into evidence may pose some risk of prejudice to the defendants–primarily Ward. However, the government maintains that it can appropriately sanitize the presentation of such evidence and Mr. Plant's accompanying testimony to diminish appreciably the potentially prejudicial effect of such evidence. For example, the government could instruct Mr. Plant to refer generically to the items as "an assortment of restraints." The government could also instruct Mr. Plant to limit his testimony to appropriate and sanitized explanations as to how the items are properly employed to, in fact, restrain another individual. Mindful of these constraints, the government could introduce the fact that such restraints were readily accessible for the attacker(s) use in restraining Mr. Wone, while also minimizing any risk of unfair prejudice to the defendants.[11]

Finally, the government maintains that Mr. Plant's proffered expert testimony is properly admissible under Dyas and relevant to an issue in this case (i.e., the "restraints" accessible to Mr. Wone's attacker(s)). Contrary to the defendants' assertion, the manner in which the "restraint" items are capable of actually restraining a person is not readily apparent to the casual observer who has not had prior experience with such items. In that sense, Mr. Plant's ability to explain how they are employed is certainly beyond the ken of the average layman. Moreover, Mr. Plant is uniquely

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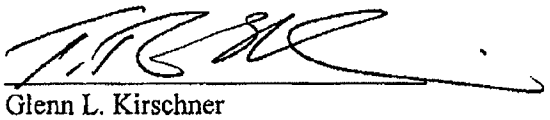
[11] Introducing the "restraints" evidence in such a manner would also prevent the government from running afoul of Jones, where the DCCA reversed a defendants' convictions because the prosecutor elicited "excessive" evidence and engaged in "excessive" argument of what was appropriate given the limited purpose for which it was deemed admissible. There, "[t]he prosecutor ignored the court's warning to 'tone it down' and, to the contrary, proceeded to exploit every opportunity to remind the jury of appellants' homosexual relationship and, in particular, Butler's effeminate characteristics." Jones, 625 A.2d at 285. For the same reason, the government submits that the application of the other cases cited by the defendants on page 7 of their motion is misplaced given the government's suggested toned-down introduction of the evidence here.

qualified to testify as an expert in the employment and use of such "restraint" items due to his extensive experience with such items–both personally and, importantly, in training others to employ such devices safely so as to avoid injury or harm to the restrained person. Karamychev v. District of Columbia, 772 A.2d 806, 812 (D.C. 2001) ("Scholarship is not a prerequisite for eligibility to testify as an expert witness); see, e.g., People v. Clark, 857 P.2d 1099, 1142-43 (Cal. 1993) (en banc) (witness, who had attended lectures, read literature, conducted experiments, and visited crime scenes involving blood spatter, was properly qualified), cert. denied, 114 S. Ct. 2783 (1994). Thus, Mr. Plant should be allowed to provide this limited expert testimony regarding the "restraint" items.

WHEREFORE the government respectfully submits that the defendants' above-referenced motions in limine should be denied and the government's proffered evidence be deemed admissible at trial.

Respectfully submitted,
RONALD C. MACHEN JR.
United States Attorney

By: 

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CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of this pleading (without attachments) to be served by e-mail on April 16, 2010, and a copy (with attachments) to be made available for pick-up on April 19, 2010, upon Bernard Grimm, Esq., The Army and Navy Building, 1627 I Street, NW, Suite 1100, Washington, DC 20006, counsel for defendant Price, Thomas G. Connolly, Esq., Harris, Wiltshire & Grannis, LLP, 1200 Eighteenth Street, N.W., 12th Floor, Washington, DC 20036-2506, counsel for defendant Zaborsky, and David Schertler, Esq., Schertler & Onorato, LLP, 601 Pennsylvania Avenue NW, North Building, 9th Floor, Washington, DC 20004-2601, counsel for defendant Ward.

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