

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)
)
) No. 08 CR 846
) Judge Joan H. Lefkow
)
)
JON BURGE)

GOVERNMENT’S RESPONSE TO DEFENDANT’S MOTION *IN LIMINE*
REGARDING PRIOR TESTIMONY OF ANDREW WILSON

The UNITED STATES of AMERICA, through its attorney, PATRICK J. FITZGERALD, respectfully responds as follows to defendant’s motion *in limine* regarding the prior testimony of Andrew Wilson:

Background

This Court granted government’s motion to admit specified testimony of Andrew Wilson pursuant to Fed. R. Evid. 804(b)(1). *See* R. 21; 30. As a result of this ruling, this Court has repeatedly suggested and requested that the parties attempt to agree (to the extent possible) as to which portions of the proffered Wilson testimony should be presented at trial.

To this end, the government has presented two alternatives to defense counsel, outlining how the government would like to present the Wilson testimony. The defendant rejected the government’s first option.¹ On May 6, 2010, the government presented a second option for defendant’s consideration. Prior to the instant motion, the government had not heard any response from defense counsel as to the government’s proposal. Moreover, the

¹ The government does not suggest that defense counsel’s rejection of this option was in bad faith. Indeed, in retrospect, the government acknowledges that the first submission was not an acceptable alternative in light of the Court’s ruling.

accompanying letter to defense counsel, which included the proposed Wilson testimony, stated:

[Enclosed please find a] transcript with our proposal for Andrew Wilson's testimony. The portions that we do not believe should be admitted are lined-out. If you have concerns with any of the lined-out portions, or would like to use non-cumulative portions of other cross-examinations, please let us know as soon as possible.

As is evident, to date, the parties have successfully navigated other issues involved in this litigation, and have been able to agree (or at the least, limit areas of disagreement) on many trial-related issues. The government is hopeful that a significant portion of the issues surrounding the Wilson testimony may be resolved without the need for Court intervention.

In the interest of conserving judicial resources, and because defendant has not provided the government with an opportunity to respond to his position, the government asks that defendant's motion be dismissed without prejudice as untimely. The government and defense counsel will attempt to resolve the issues presented, and if necessary, bring any unresolved issues to the Court's attention for resolution through oral argument.

Conclusion

For the reasons set forth above, the government requests that this Court deny without prejudice defendant's motion as not timely; allow the parties to attempt to resolve this issue by agreement; and if necessary, decide the remaining issues based on oral argument presented to the Court.

Respectfully submitted,

PATRICK J. FITZGERALD
United States Attorney

By: s/ M. David Weisman
M. David Weisman
Assistant United States Attorney
219 South Dearborn Street
Chicago, Illinois 60604
(312) 353-2119

Date: May 11, 2010.