

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	No. 09 CR 002-2
v.)	Judge Glen H. Davidson
)	Magistrate Judge S. Allan Alexander
BOBBY B. DELAUGHTER)	
)	
Defendant.)	

DEFENDANT’S MOTION FOR IMMEDIATE PRODUCTION OF §3500 MATERIAL; OR IN THE ALTERNATIVE FOR AN EXTENSION OF TIME WITHIN WHICH TO RESPOND TO THE GOVERNMENT’S COMBINED MEMORANDUM OF AUTHORITIES AND MOTION IN LIMINE

Defendant, BOBBY B. DELAUGHTER, by and through his attorneys, THOMAS ANTHONY DURKIN, JOHN D. CLINE, and LAWRENCE L. LITTLE, pursuant to the Due Process, Self-Incrimination, Compulsory Process, Confrontation, and Effective Assistance of Counsel provisions of the Fifth and Sixth Amendments to the Constitution of the United States, respectfully moves this Court for the immediate production of any and all §3500 material in order to adequately respond to the Government’s pleading captioned “Combined Memorandum of Authorities And Motion in Limine,” filed June 22, 2009. In the alternative, Defendant would move for an extension of time within which to file his formal response until such materials are produced on the grounds that said witness statements are material to the preparation and presentation of any meaningful response to this motion in limine which severely and improperly attempts to limit a significant defense theory of the case.

In support of this motion, Defendant, through counsel, shows to the Court the following:

1. On June 22, 2009, the government filed a pleading entitled “Government’s Combined Memorandum Of Authorities And Motion In Limine.” The pleading submits that Defendant should be precluded from offering into evidence the fact that he did not rule contrary

to law while presiding as judge in the *Wilson v. Scruggs* case. Aside from the fundamental constitutional proposition based upon the presumption of innocence and burden of proof that Defendant should not be forced under the Fifth Amendment to reveal his defense pre-trial, suffice it to say counsel would also strongly oppose the motion in limine on its merits.

2. First and foremost, the indictment itself in this case specifically and amazingly states that the rulings Judge DeLaughter issued in the *Wilson* case were not wrong. Instead, it is tongue twistingly worded to say that Judge DeLaughter's rulings "while not plainly unlawful, would ultimately minimize Scruggs' financial liability and preclude his exposure to excessive damages." (Count, One, §7) Something not plainly unlawful can only be plainly lawful; except perhaps in Alice's Wonderland. Counsel are unaware of any legal distinctions between varying degrees of lawfulness or unlawfulness.

3. To get around the obvious absurdity of this language in the indictment – and the plain, simple, and inescapable fact that every ruling by Judge DeLaughter in the *Wilson* case was entirely appropriate and supported by both existing Mississippi law and fact – the government's witnesses, or at least one of them apparently, will say that they hoped to pay Ed Peters to get favorable rulings from Judge DeLaughter that would "survive appellate scrutiny." (Govt. Combined Memo, p. 1) Put another way, the government seems to suggest that its witnesses will say they paid Peters \$1,000,000,000.00 to get a result every lawyer hopes to get in every case – a ruling in his client's favor that will survive an appeal.¹

4. Defense counsel, however, cannot tell the Court with any degree of certainty what the government witnesses are expected to say because they are not yet privy to the anticipated

¹ The very real possibility that the crafty Peters was clever and wily enough to correctly guess how his protégé, DeLaughter, might rule on the merits should not escape anyone's attention either. This possibility is enhanced by the undisputed fact that DeLaughter received not penny one of Peters' lottery-like fees.

testimony of the government witnesses without the §3500 material. The defense does have access, however, to yesterday's Jackson *Clarion Ledger* story by Jerry Mitchell which purports to describe the testimony of government witness Timothy Balducci, based upon deposition testimony Balducci purportedly gave in the *Eaton v. Frisby* case. A copy of this story is attached as Exhibit A. Based upon this account, Balducci himself apparently will say that a critical order entered by Judge DeLaughter was so legally deficient that Dickie Scruggs supposedly settled the lawsuit "rather than risk exposure on appeal." (Exhibit A, p. 2).

5. Moreover, this testimony, if it is Balducci's testimony, would seem to fly in the face of the government's convoluted motion in limine theory. While not having any more access to Balducci's anticipated testimony, than the anticipated testimony of Dickie Scruggs, counsel are also privy, however, to a public pleading Scruggs filed, coincidentally or not, the very same day the Balducci story ran in the *Clarion Ledger*. In a pleading filed in the *Wilson* civil matter pending in this Court before Judge Biggers, Scruggs remarkably, and consistent with Judge DeLaughter's persistent and adamant insistence on his innocence, states that notwithstanding his "attempt" to influence Judge DeLaughter through Peters, the attempt was not successful. See, Scruggs' "Rebuttal Memorandum Brief In Support Of Scruggs Defendants' Motion To Dismiss Or To Stay Pending Resolution of State Court Action Or Pending Resolution of Federal Criminal Action," filed July 9, 2009, before Judge Biggers in Case No. 3:09-CV-006-NBB-SAA, attached hereto and made part hereof as Exhibit B, p.2 in particular. In fact, Scruggs goes so far as to state that: "The Hinds County Circuit Court [and Judge DeLaughter] never denied Wilson justice nor deprived him of asbestos fees due him." See, Exhibit B, p. 11.

6. To make matters even more complicated regarding any anticipated clarity or consistency from the government's witness, counsel are also aware of a rather remarkable

pleading filed by the government's transactionally immunized star witness, Ed Peters. In a rather stunning and bold pleading signed by Peter's himself acting as his own attorney in the same case before Judge Biggers, Peters denies outright the existence of this very charged conspiracy and virtually every other allegation set forth in the civil complaint that virtually tracks the allegations of this indictment. See, Peters' "Answer And Affirmative Defenses," filed May 23, 2009, as well as the "Amended Complaint" to which it responds, marked Exhibits C-1 & C-2, respectively.

7. The Peters Answer, like the Balducci deposition and the Scruggs pleading, is totally consistent with counsel's investigation to date. That is, the only consistency in these government witnesses' stories is their lack of consistency. This fact was only again reinforced with the recent publication of the *Frisby* deposition of Steve Patterson. While counsel have not had time to review this testimony sufficiently, suffice it to say for now, it too seems to completely contradict Mr. Balducci and appears to suggest the theory that Peters may well have conned Scruggs, Langston and Balducci into believing he was getting them something for Scruggs' million dollars when in fact they did not have to pay a penny for it.

8. Accordingly, counsel would urge either the immediate production of the §3500 material; or in the alternative, an extension of time to respond to the motion in limine until after the Jenck's Act materials are produced. Such production or the extension of time sought herein is critical so as to not impinge upon Defendant's meaningful opportunity to present a complete defense in this case. *Holmes v. South Carolina*, 547 U.S. 319, 164 503, 126 S.Ct. 1727 L.Ed. 2d (2006). See also *Crane v. Kentucky*, 476 U.S. 683 106 S.Ct. 9 636 2142 L.Ed. 2d (1986); *Chambers v. Mississippi*, 410 U.S. 284 93 S.Ct. 1038 35 297 L.Ed. 2d (1973).

Respectfully submitted,

/s/ Thomas Anthony Durkin
THOMAS ANTHONY DURKIN,

/s/ John D. Cline
JOHN D. CLINE,

/s/ Lawrence L. Little
LAWRENCE L. LITTLE, Attorneys for
the Defendant, Bobby B. DeLaughter.

DURKIN & ROBERTS
53 West Jackson Boulevard, Suite 615
Chicago, IL 60604
(312) 913-9300
tdurkin@durkinroberts.com

JONES DAY
555 California Street, 26th Floor
San Francisco, CA 94104
(415) 875-5812
jcline@jonesday.com

LAWRENCE L. LITTLE & ASSOCIATES, PA
829 North Lamar Boulevard, Suite 6
Oxford, Mississippi 38655
(662) 236-9396
larry@larrylittlelaw.com

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Defendant's Motion For Immediate Production Of §3500 Material; Or In The Alternative For An Extension Of Time Within Which To Respond To The Government's Combined Memorandum Of Authorities And Motion In Limine was served on July 10, 2009, in accordance with Fed.R.Crim.P.49, Fed.R.Civ.P.5, LR 5.5, and the General Order on Electronic Case Filing (ECF) pursuant to the district court's system as to ECF filers.

/s/ Thomas Anthony Durkin
THOMAS ANTHONY DURKIN
53 West Jackson Boulevard, Suite 615
Chicago, IL 60604
(312) 913-9300