

IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA  
CRIMINAL DIVISION

CLERK OF THE DISTRICT OF COLUMBIA  
2009 NOV 24 P 3:45

FILED

UNITED STATES OF AMERICA,

v.

DYLAN M. WARD,  
JOSEPH R. PRICE,  
and  
VICTOR J. ZABORSKY,

Defendants.

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

Judge Frederick H. Weisberg

Status Hearing – Jan. 15, 2010

**REPLY IN SUPPORT OF DEFENDANTS'  
JOINT MOTION FOR SPECIAL ASSIGNMENT**

Defendants Dylan M. Ward (“Ward”), Joseph R. Price (“Price”) and Victor J. Zaborsky (“Zaborsky”) (collectively “Defendants”) by and through counsel, respectfully submit this Reply in Support of Defendants’ Joint Motion for Special Assignment of this case, which is set to begin trial on May 10, 2010, to Judge Frederick H. Weisberg, who has been the trial judge for more than a year.

**ARGUMENT**

On Nov. 6, 2009, Defendants filed their Motion for Special Assignment, explaining that the following good cause warrants special assignment of this case to Judge Weisberg:

- a) Judge Weisberg has a depth and breadth of knowledge that cannot be readily acquired by a judge new to this matter;
- b) Reassignment of this case at this juncture to a new judge would be unduly prejudicial to Defendants; and

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- c) Neither prejudice nor burden will be occasioned on the government, the court or the Defendants by allowing Judge Weisberg to continue presiding over this case.

On November 20, 2009, the government filed its opposition, in which it objects to Judge Weisberg being allowed to continue as trial judge. Significantly, the government does not dispute that judicial economy is served by allowing Judge Weisberg to continue as trial judge. Nor does the government assert that it would be prejudiced. Instead, the government takes issues with Defendants' claims that they would be prejudiced by reassignment of the case at this juncture. Gov't Opp. ¶¶ 9, 10 (Nov. 20, 2009). The government also contends that Judge Weisberg should not be allowed to continue as trial judge because it would be unduly burdensome on him in light of assignment to the Felony II Calendar. *Id.* ¶ 8. Both arguments ring hollow.

A. REASSIGNMENT OF THIS CASE WILL DELAY THE TRIAL AND THEREBY SIGNIFICANTLY PREJUDICE DEFENDANTS.

As fully set forth in Defendants' motion, this is a "unique" case that presents significant "complexity." Hr'g Tr. at 22:16-18, 23:7, May 22, 2009.<sup>1</sup> As of January 1, 2010, Judge Weisberg will have been the trial judge for thirteen months, and the case will be four months from trial. During his thirteen months as trial judge he has presided over eight hearings and decided twenty-four motions, a number of which deal with the transfer and forensic testing of numerous items of evidence which, contrary to the government's protestations, have and will require Judge Weisberg's continued involvement.<sup>2</sup> Given Judge Weisberg's direct and extensive involvement in this case, the extent of pretrial

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<sup>1</sup> Attached at Exhibit A to Defendants' Joint Motion for Special Assignment.

<sup>2</sup> For example, at a Nov. 6, 2009 motions hearing, the Court heard argument on Defendants' motion to compel withheld portions of the FBI Case Files. The Court Ruled that Defendants could submit requests for withheld material regarding specific testing done by the FBI Laboratory. Defendants are preparing these requests and filing them with the Court.

motions practice, and the protracted and involved discovery disputes, the notion that a new judge—no matter how capable—could get up to speed in four months is not only unrealistic, but a practical impossibility.

Moreover, it is inevitable and unavoidable that reassignment of this case will delay the proceedings. That the government “strongly disagrees” does nothing to prevent this eventuality. For example, now pending before the Court is Defendants’ Joint Motion to Dismiss Counts I and II of the Indictment. This motion will be ripe for decision and could be heard at the next status hearing which has been scheduled for Jan 15, 2010. Naturally, if the case is reassigned, the new trial judge will not be in a position, having had the case for just two weeks, to hear the motion on January 15, 2010. Instead the hearing and subsequent decision on this case-shaping motion will have to be postponed for at least two months. This significant delay in hearing the motion would be occasioned by the fact that counsel for Mr. Ward will be starting a two month trial in federal court on January 31, 2010.

The same circumstances exist with regard to Defendants’ pending motion to set a date for an evidentiary hearing regarding alleged uncharged criminal conduct. The Court’s ruling will obviously have a profound impact on the case. If Defendants need not defend against uncharged claims of drugging, sexually assaulting and torturing Mr. Wone, this will fundamentally reshape the case and significantly reduce the number of experts Defendants will call. This, in turn, will necessarily impact the time required to try this matter.

If the case is not reassigned, this hearing could occur in January 2010, providing sufficient time for the defense and counsel to prepare their cases in light of the Court’s