

ORIGINAL

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)	CHIEF JUDGE LEE F. SATTERFIELD
VICTOR ZABORSKY)	
DYLAN WARD)	STATUS HEARING DATE: 1/15/10

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GOVERNMENT'S REPLY TO
DEFENDANTS' JOINT MOTION FOR SPECIAL ASSIGNMENT

The United States, by and through its attorney, the United States Attorney for the District of Columbia, files this Reply to Defendants' Joint Motion for Special Assignment (the "Motion"). As grounds for this response, 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 motion:

Background

1. On August 2, 2006, Robert Wone was murdered while inside 1509 Swann Street, N.W., Washington, D.C.
2. On November 19, 2008, a District of Columbia Superior Court grand jury returned a one-count indictment, charging the defendants, who were occupying 1509 Swann Street, N.W., Washington, D.C. at the time of Mr. Wone's murder, with Obstruction of Justice.
3. On January 15, 2009, a District of Columbia Superior Court grand jury returned a three-count superceding indictment, charging the defendants with Conspiracy, Obstruction of Justice, and Tampering with Evidence.
4. Between November 19, 2008, the date the grand jury indicted the defendants on obstruction, and the present, the government has provided extensive discovery to the defendants

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and transferred numerous items of evidence to the defendants as part of their ongoing forensic testing and analysis. Although the defendants have filed a multitude of pretrial motions, the Court has resolved all outstanding discovery-related motions to date, and, other than a single piece of evidence, has ordered and the defendants have now received all requested items of evidence for purposes of conducting independent forensic testing and analysis.¹

5. On November 6, 2009, the same day as the last status hearing in this case, the defendants filed the instant Motion pursuant to Rule 106, asking the Chief Judge of the Superior Court of the District of Columbia to assign specially Judge Frederick Weisberg to this case after January 1, 2010, when he will have moved from the Felony I calendar to a Felony II calendar. In support of their request, the defendants generally assert that Judge Weisberg is uniquely qualified to preside over this case because he is already familiar with the “complex” nature of the case and to rule on any pending and expected motions (Defs’ Mot. at 4-7). The defendants also argue that reassignment of this case to the incoming Felony I calendar judge some four months before trial is scheduled to commence would “unduly prejudice” them (Defs’ Mot. at 7-9).

Argument

6. In relevant part, Rule 106 of the D.C. Superior Court Rules of Criminal Procedure provides:

For good cause shown, a case or cases may be assigned specially to a single judge for all purposes at any time during the litigation by order of the Chief Judge entered (1) sua

¹ At a status hearing held on November 6, 2009, Judge Weisberg definitively ruled on Defendants’ Joint Motion to Compel Production of the Entirety of the FBI Laboratory’s “Case Files” and Motion for *In Camera* Review of Documents. In addition, pursuant to Court orders issued on May 26, 2009, and November 16, 2009, the government has transferred over twenty-five items of evidence to the defendants. The one remaining piece of evidence to be transferred to the defendants consists of the towel fibers recovered from the bloody knife found near Mr. Wone’s body.