

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MONTGOMERY BLAIR SIBLEY,

Plaintiff,

vs.

RICHARD W. ROBERTS AND ANGELA O.
CAESAR,

Defendants.

Case No.:16-cv-572 (RBW)

**PLAINTIFF’S EMERGENCY MOTION FOR
PRE-TRIAL CONFERENCE TO SCHEDULE
EXPEDITED DISPOSITION OF SIBLEY’S
THIRD CLAIM**

Plaintiff, Montgomery Blair Sibley (“Sibley”), pursuant to Federal Rules Civil Procedure, Rules 1 and 16(a)(1), moves on an emergency basis for an immediate Rule 16 Pretrial Conference to set an expedited briefing and resolution schedule of Sibley’s Third Claim, and for grounds in support thereof states:

I. BACKGROUND

On **October 3, 2006**, the government filed a Civil Forfeiture Complaint in *United States of America v. 803 Capitol Street et al.*, Case No.: 06-cv-01710-RMC. This civil suit sought the forfeiture of all of Deborah Jeane Palfrey’s assets for operating Pamela Martin & Associates, an escort agency. On **May 6, 2007**, Sibley wrote Attorney General Alberto Gonzalez requesting the appointment of a Special Counsel in *U.S. v. 803 Capitol Street* as Brian Ross of ABC News stated that: “The phone records trace back to thousands of men, **including a career Justice Department prosecutor.**” Sibley further indicated in that letter that he would release the remainder of the telephone records of Deborah Jeane Palfrey's Escort service if negotiations do not commence to resolve the pending cases. A copy of that letter is attached hereto as Exhibit

“A”. As a result, Judge Kessler on **May 10, 2007**, issued the first of several restraining orders barring Sibley from releasing the names of the clients of the Pamela Martin & Associates.

On **November 13, 2007**, Judge Gladys Kessler granted *in toto* Sibley’s *Ex Parte* Application for Issuance of Subpoenas in *U.S. v. Palfrey*.¹ Among the subpoenas requested by Sibley were five directed to telephone companies for the account-holder information of 5,902 telephone numbers that had turned up in the telephone records of Pamela Martin & Associates.

On **December 14, 2007**, the *ex parte* subpoenas directed to Verizon Wireless was returned with a CD containing 815 Verizon Wireless account holders’: (i) names, (i) business and/or home addresses, (iii) social security numbers, and (iv) home and business telephone numbers. Each name represented a former escort or client who had a cellphone number that had called Pamela Martin & Associates when that cellphone number was owned by that person. A list of the 174 companies and/or government agencies identified in the Verizon Wireless Subpoena return is attached in Exhibit “B” hereto. The names of individuals identified in the Verizon Wireless Subpoena return are not revealed in this motion due to Sibley’s uncertainty as to the applicability of restraining orders issued in the Deborah Jeane Palfrey matters.

Additionally, on **December 14, 2007**, Judge Robertson – who was curiously substituted without explanation or reason for Judge Kessler – held a status hearing, a copy of which is

¹ Among the *ex parte* subpoenas requested by Sibley and approved by Judge Kessler were:(i) five directed to telephone companies for the account information pertaining to eighty-three (83) escort agencies operating in the District of Columbia. (ii) the Federal Bureau of Investigation, (iii) the Department of State – Diplomatic Security Service, (iv) the Internal Revenue Service Criminal Investigation Division, (v) the United States Postal Inspection Service, (vi) the Office of the Director of National Intelligence, (vii) the Central Intelligence Agency, (viii) the Defense Intelligence Agency, (xi) the National Security Agency, (x) the Department of State - Bureau of Intelligence and Research, (xi) sixteen local D.C. law enforcement agencies and (xi) the White House.

attached as Exhibit “C”, at which the following exchanges took place:

THE COURT: Now, the next part of this the next thing I want to turn to is the **subpoenas duces tecum that the defense is issuing**. And these are being issued ex parte, and the defense is entitled to some protection of its own about who it's subpoenaing, but Mr. Sibley, **I have to tell you that I have received inquiries from two or three of the persons and institutions that you've served**, and then there is one motion to quash that I think everybody is aware of – two motions to quash. Well, the so called omnibus motion I have not received. When did you file that? (Emphasis added).

THE COURT The government's omnibus motion to quash was filed yesterday; there is another motion to quash that was filed a day or two ago. Mr. Sibley points out, quite correctly, that he hasn't really had an opportunity to respond to them yet. I think the right thing to do is to pass that issue. But, but a number of the subpoenas that have been issued have been issued returnable tomorrow.

MR. SIBLEY: Correct, Your Honor. It was an odd date, but. . .

THE COURT: I don't know what kind of an order you would call a temporary quashal order, **but I'm quashing all of the subpoenas until we get an opportunity to decide on the government's motion to quash**. So it's a quash without prejudice. The subpoenas remain in effect, but the return date is off. (Emphasis added).

MS. CONNELLY: Your Honor, if I could just seek clarification on one issue, which in fact is in our under seal motion, although this subpoena was not pursuant to the Court's November 13th under seal order. **The defendant also issued a subpoena on the White House with a return date of February 19th, which never was, in fact, the trial date in this case**. The Court set the trial date as April, with a potential backup date of February if Judge Kessler could fit us in in February. The government's omnibus motion addresses that White House subpoena, but I would like to be able to let them know, is that also being temporarily quashed at this point? (Emphasis added).

THE COURT: Yes, everything is temporarily quashed until I look at your omnibus motion. . . .

As a result of Judge Robertson's **non-docketed oral order** quashing all the *ex parte* subpoenas upon **non-docketed** government motions to quash those *ex parte* subpoenas, Sibley did not receive subpoena returns from: (i) Alltel, (ii) AT&T, (iii) AT&T Mobility, (iv) TMobile and (v) Verizon and (vi) and all the other governmental agencies identified in footnote #1, *supra*. Accordingly, as a matter of simple mathematics, Sibley was only able to identify 13% of the customers/escort contractors of Pamela Martin & Associates.

Finally, it is noteworthy that: (i) since 2007 there has not been a major escort service prosecution by the federal government in the District of Columbia yet (ii) brazenly advertising in the 2016 Yellow Pages are twenty-two (22) escort services which have been operating with apparent impunity since the 2006 prosecution of Defendant Jeane Palfrey. A copy of the 2016 Washington D.C. Yellow Pages is attached as Exhibit "D"

II. MOTION FOR IMMEDIATE RULE 16 CONFERENCE

Clearly, given the obvious public and quasi-public personnel and entities that Sibley was able to identify in the Verizon Wireless subpoena return, common sense dictates that in the remaining 87% of the quashed telephone company subpoena returns Sibley would have succeeded in identifying thousands of other public and quasi-public personnel and entities whose private behavior reflects adversely upon their public duties.

Notably, the government has secretly utilized escort services for its own law enforcement and national security ends. As the New York Post recently reported:

In the months after 9/11, the watchers from the [FBI Special Surveillance Group] followed Awlaki to assignments with prostitutes at the Wyndham City Center, the Melrose, the Monarch, Avenue Suites, the Swissotel [in Metro D.C.], and more. Agents would follow up with the women later the same day or the next

day, asking about Awlaki's words and actions. He liked the lights on, the agents learned. He found the escort services online and booked their services under his real name. Sometimes he asked for intercourse, sometimes oral sex, and sometimes he just watched the woman stimulate herself while he masturbated.²

Accordingly, it is reasonable to conclude that certain government agencies have knowledge of questionable behavior by those – now or in the future – in a position to be blackmailed in a manner against their public duties.

As this Court well knows, the selection of the next President of the United States and 435 members of the U.S. House of Representatives is well under way. It is beyond cavil that: “voting is of the most fundamental significance under our constitutional structure.” *Illinois Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979). As such, this Court has a Congressionally-delegated obligation to protect the integrity of the election processes. *Rosario v. Rockefeller*, 410 U.S. 752, 761 (1973) (“It is clear that preservation of the integrity of the electoral process is a legitimate and valid state goal.”).

Upon this clear judicial duty is this conflict: Sibley has an unconditional right under the First Amendment to speak out on matters of public concern. *Accord: Wood v. Georgia*, 370 U.S. 375, 391-392 (1962) (“[T]he purpose of the First Amendment includes the need . . . to protect parties in the free publication of matters of public concern, to secure their right to a free discussion of public events and public measures, and to enable every citizen at any time to bring the government and any person in authority to the bar of public opinion by any just criticism upon their conduct in the exercise of the authority which the people have conferred upon them.”).

² Retrieved from:
<http://nypost.com/2015/09/13/al-qaeda-terrorist-feared-his-love-of-sex-and-hoovers-would-end-him/>

Yet, the Supreme Court in *Celotex Corp. v. Edwards*, 514 U.S. 300, 306 (1995), stated that: “persons subject to an injunctive order issued by a court with jurisdiction are expected to obey that decree until it is modified or reversed, even if they have proper grounds to object to the order.” Here, Sibley has sought modification of the restraining orders at the: (i) District Court, (ii) Circuit Court and (iii) Supreme Court levels without success for over ninety (90) days. Remarkably, Sibley – uncertain as to whether he is subject to a restraining order – has been denied the opportunity to seek modification of such an order upon his First Amendment grounds and thus has properly raised that issue in his Third Claim.

III. CONCLUSION

Upon the foregoing, Sibley is requesting that this Court immediately hold a Rule 16 status conference to address Sibley’s request to expedite resolution of the Third Claim of the First Amended Complaint seeking a declaration of Sibley’s rights *vis-a-vis* the Verizon Wireless subpoena return. *Accord: Walters v. Nat’l Ass’n of Radiation*, 473 U.S. 305, 351 (1985)(“This Court has not hesitated to exercise this power of swift intervention in cases of extraordinary constitutional moment and in cases demanding prompt resolution for other reasons.”); *United States v. Nixon*, 418 U.S. 683, 686-687(1974)(“We granted both the United States' petition for certiorari before judgment and also the President's cross-petition for certiorari because of the public importance of the issues presented and the need for their prompt resolution”).

Here, by muzzling Sibley and thus keeping the relevant Verizon Wireless information sealed from public view – particularly during this election cycle – deprives: (i) Sibley of his First Amendment Right of Publication and (ii) the People of the information they may deem material to the exercise of the People’s electoral franchise.

WHEREFORE, Sibley respectfully requests that this Court expeditiously set a Rule 16 hearing to address Sibley's request for expedited resolution of the Third Claim of the First Amended Complaint.

LOCAL RULE 7(M) STATEMENT

Sibley states that in an attempt to discharge his Local Rule 7(m) duty to confer, on the morning of March 30, 2016, Sibley called David Moskowitz, counsel for Defendants seeking his position on the instant motion. After receiving no response, on the morning of March 31, 2016, Sibley emailed Mr. Moskowitz stating in part: "I want to contact the Court and ask for an immediate status hearing and want to know if you want to be on that telephone call or if you want me to make a representation on your behalf to the Court." Notably, refusing to telephone Sibley, Mr. Moskowitz instead after business hours on March 31, 2016, responded by email to Sibley's telephone and email by ignoring Sibley's request regarding the status conference. A copy of that email correspondence is attached as Exhibit "E". Accordingly, as Mr. Moskowitz has refused to confer with Sibley, Sibley is unable to state the Defendants' position on the relief requested herein.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 9, 2016, a true and correct copy of the foregoing was served by U.S. First Class Mail upon: David Moskowitz, Assistant United States Attorney, counsel for Defendants, 2100 Jamieson Avenue, Alexandria, Virginia 22314.

MONTGOMERY BLAIR SIBLEY
402 King Farm Blvd, Suite 125-145
Rockville, Maryland, 20850
202-643-7232
montybsibley@gmail.com



By: _____
Montgomery Blair Sibley

CENTER FOR FORFEITURE LAW

1629 K Street, Suite 300
Washington, D.C. 20006

MONTGOMERY BLAIR SIBLEY
202-508-3699
202-478-0371 (E-FAX)
SIBLEY@CIVILFORFEITURE.COM

ADMITTED TO PRACTICE:
FLORIDA
NEW YORK
DISTRICT OF COLUMBIA

May 6, 2007

Via FedEx #8617-4631-8049

and email c/o AUSAs Daniel Pearce Butler, Catherine K. Connelly, William
Rakestraw Cowden

Alberto Gonzalez, Attorney General
Office of the Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Re: *Second Request for Appointment of Special Counsel*

Greetings:

I represent Deborah Jeanne Palfrey, a/k/a the "D.C. Madam" who (i) has been indicted by your office in a matter assigned Criminal Case Number: 07-046-GK and (ii) has had all her assets seized in a civil forfeiture matter in Case No.: 1:06-CV-01710-GK.

On March 1, 2007, FedEx delivered (Tracking #8581-1680-3504) to your office my request pursuant to 28 C.F.R. §600.1 for the appointment of a Special Counsel for the above matters. In that letter I indicated that "given the broad spectrum of customers [of the escort service] it is a mathematical certainty that in time [Justice] Department employees will be identified as customers of the service and subpoenaed in either the civil matter, the criminal matter, or both." To date, I have yet to receive a response to that letter.

In the interim, approximately 20% of the telephone records of the escort service were turned over to Brian Ross of *ABC News*. As you are doubtlessly aware, last Friday, Brian Ross, in the publically available transcript of his *20/20* report, is quoted as stating: "The phone records trace back to thousands of men, *including a career Justice Department prosecutor.*"

Moreover, consider the math: If 20% of the telephone records produced one "*career Justice Department prosecutor*", then 100% of the telephone records will very likely produce at least another four (4) "*career Justice Department prosecutors.*" Moreover, this discounts the possibility that if one *Akin/Gump* law firm employee was an escort for the service, it is as likely that your "law firm" has similarly situated employees who also worked as escorts for the service. Do not assume

Exhibit "A"

Alberto Gonzalez, Attorney General
Office of the Attorney General
May 6, 2007
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that the records seized from my client identified all of the women who worked for the service at one time or another.

Finally, please note that Brian Ross also reported that: “[t]here are NASA officials; at least five military officers, including the commander of an Air Force intelligence squadron” and “[t]he phone numbers also track back to Georgetown mansions and prominent CEOs, officials at the World Bank and the International Monetary Fund and **lobbyists both Republican and Democratic.**”

Given that the person who ordered an escort was not necessarily the person who received the services provided by the escort, the highlighted phrase ought to make you ponder the misogynist wisdom of prosecuting my client for a victimless crime when significant **men** of power are walking on crimes of much greater significance to the Republic. Moreover, given that pre-9/11, an appreciable part of the clientele of the service were Arabs, national security interests may also be at issue: *Profumo/Ivanov »Tobias?*

As of present, (i) *ABC News* received copies of 75% of the 2002-2006 telephone records of the escort service and (ii) confirming the recent *Boston Globe* report – a group of veteran investigative journalists associated with the *Washington Independent Writers Association* are researching the 1997-1999 telephone records of the escort service.

This limited distribution will change in seven (7) days and when it does: (i) the reporting will be much more extensive as all of the years of the escort service telephone records will be released and (ii) the “standards and practices” committees of the recipient organizations, journalists and internet bloggers who will receive these records have decidedly different professional standards than that of *ABC News*.

Thus, I must insist that you take the following steps:

1. To restore public confidence in your office, demand that Brian Ross identify to you that “*career Justice Department prosecutor*” and then you publically detail, what, if any, role that individual played in the investigation and prosecution of my client; and
2. Under 28 C.F.R. §600.1, undertake the immediate interview and appointment of a Special Counsel for the above matters.

My client is prepared to withhold further distribution of copies of the telephone records pending *confidential* settlement negotiations with yourself or your designee – other than the presently

Alberto Gonzalez, Attorney General
Office of the Attorney General
May 6, 2007
Page 3

assigned AUSAs who are demonstratively not trustworthy in this regard – if these steps are taken and communicated to me by May 11, 2007.

In my mind, failure to do so will simply confirm to the world that your office wields its considerable power without thought or concern of the damaging consequences upon the public and the real public interests at issue.

Yours,

A handwritten signature in black ink, appearing to read "M. Blawie" or similar, written in a cursive style.

EXHIBIT "B"

A & H Painting & Decorating
Abb Power Generation
ACS Desktop Solutions
AETEA
Akin, Gump, Strauss, Haue
American Cellular Rental
American Land Concepts
Amtrak Technologies
Andersen Consulting
Andersen Corporation
Andersen Corporation Inc
Anne Arundel Co Public Schools
Anzi Tech Distributors
Archdiocese of Washington
Arlington Firefighters
Army Capabilities Integration –

The Army Capabilities Integration Center (ARCIC) is the Army's leader in the identification, design, development, and synchronization of capabilities into the Army current Modular Force and the future Modular Force, bringing together all the Army agencies as well as Joint, Multinational, and other DoD agencies to manage rapid change. ARCIC supports TRADOC in providing adaptive soldiers, leaders and units by contributing to the development of doctrine, TTPs, and the collective training experience.

ASNS
ASRC Constructors Inc
Atlantic Research Corp
Balmar Printing
Barnes, Morris, Pardoe & Fo
Battelle Memorial Institute
Beaver Dam Construction
Bell Atlantic Md
Beretta USA
Bethlehem Steel Corp
BML & Associates, Llc
Brand Direct Marketing
Brantly Group
BSI Inc. Browne Academy
Bucks County Free Library
Charles H Hodges & Son

Chevron Corp Learn & Developme
Colortone Press
Commonwealth Orthopedics
Community Radiology
Conagra Foods Inc
Constantine Comm Constuc
Constellation Energy/ BGE –

Constellation Energy, a Fortune 125 competitive energy company based in Baltimore, is the nation's largest supplier of wholesale power and competitive electricity to large commercial and industrial customers, and a major generator of electricity, with a diversified fleet of power plants strategically located throughout the U.S.

Constellation Fed Credit Union
Costumes Creative Inc.
Custis Farms Inc

Defense Group Inc – A high technology company, advancing public safety and national security through innovative research, new technologies, and systems assessments. DGI has key competencies in U.S. strategy and policy, intelligence, Weapons of Mass Destruction, vulnerability assessments, and homeland security, as well as technologies and products that support first responder and medical communities.

Deloitte
Design and Production Inc
DHHS - Office of the Inspector
DHHS/NIH/OLRS
Director of Indirect
Edgewood Management Corp
Education Loan Funding
Edwards & Sullivan, Inc.
Embassy of Japan
Enterprise Integration Corp
Fauquier Bank
FBI
Fedcel Corporation
Financial Svc Ctr/Dept of Va
Fine Homebuilders Int. Inc.
Fitness/Works Llc Company
GE Information Svcs
General Service Admin
Gold Standard Diagnostics Corp
Gottfred Speech Asso
Greenhill Realty Company

Grtr S.E. Communty Hosptl

GSA

GSA Potomac Sdt

GSA/PBS/PRS

Healthpartners

Hewlett Packard

Houston Associates

U.S. Army Training and Doctrine Command –

TRADOC recruits, trains and educates the Army's soldiers; develops leaders; supports training in units; develops doctrine; establishes standards; and builds the future Army. TRADOC is the architect of the Army and "thinks for the Army" to meet the demands of a nation at war while simultaneously anticipating solutions to the challenges of tomorrow

IDB Staff Association

IDBSA

Ikon Office Solutions

Indisoft Llc

Internal Revenue Service

International Marketing

Johns Hopkins University

Jones Day Reavis and Pogue

Kopykweeninc Dba Superior

Lockheed Martin

Lockheed Martin Corporation

Lockheed Martin Ms2- Baltimore – Lockheed Martin MS2– MS2 provides surface, air, and undersea applications on more than 460 programs for U.S. military and international customers

Logictree

Long & Foster Realtors

McKinsey

Memorial Hospital

Metropolitan Poultry and

Morristown Memorial

MSTD Inc

National Center Management

National Drug Intelligence Ctr –

The National Drug Intelligence Center – established by the Department of Defense Appropriations Act, 1993. Placed under the direction and control of the Attorney General, NDIC was established to “coordinate and consolidate drug intelligence from all national security and law enforcement

agencies, and produce information regarding the structure, membership, finances, communications, and activities of drug trafficking organizations.”

Natl Geospatial Intel Agency –

The National Geospatial Intelligence Agency – is a Department of Defense combat support agency and a member of the national Intelligence Community (IC). NGA develops imagery and mapbased intelligence solutions for U.S. national defense, homeland security and safety of navigation.

NM/Los Alamos National Labs

NVBR of Realtors

NXP Semiconductors USA Inc -

Providing engineers and designers with semiconductors, system solutions and software that deliver better sensory experiences. Net sales of \$6.32 billion in 2007.

OA0 Corp

Oracle Corporation

P W Police Association

Palace Meat

Parkview Adventist Medical

Patterson Belknap Webb

PB Facilities Inc

Philips Electronics North Amer

Philips Semiconductors

Westinghouse Electric

PriceWaterhouseCoopers

Property Damage Apprai

Reed Smith Shaw & McClay --

Reed Smith – a law firm that represents many of the world’s leading companies in complex litigation and other highstakes disputes, crossborder and other strategic transactions, and crucial regulatory matters. With lawyers from coasttocoast in the U.S. as well as in the U.K., continental Europe, Asia, and the Middle East, the firm is known for its experience across a broad array of industry sectors. The firm counsels 28 of the top 30 U.S. banks and 10 of the world's 12 largest pharmaceutical companies.

Rocky River Dental Assoc

SAIC Corporate Telecommuncations

Selzer G Rabin & Obecnny Char.

Sensei Enterprises Inc

Shiner Roofing Inc.

Smoke N Mirrors Inc

Sonoma Materials

Spring & Associates
Struever Bros Eccles & Rouse
The Allegiance Group / Aetea
The Durst Law Firm
The Mark Winkler Co.
The Roger Richman Agency Inc
The Spoon Group
Thermo Electron
Tochigi Fuji USA Inc.
Tris Inc

UDRA

United States Coast Guard
U.S. Army Information Systems Command
US Dept of Commerce
US Dept of State/CA/OCS
US Postal Service
USDA Forest Service
USDA-National Finance Center
USPS - Information Technology
Velocite Systems, Llc
Verizon Communications
Verizon Communications Inc
Verizon Communications NSI
Verizon Communications Va
Verizon Communications Wa
Verizon Data & Wireless Servic
VZW/Vienna Channels
Warrior Emporium
Washington College
Washington Gas
World Airways
Zuckerman Kronstadt

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA : Criminal No. 07-0046
 :
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 V. : December 14, 2007
 :
 :
 DEBORAH JEANE PALFREY, : 10:00 a.m.
 :
 Defendant :
 :

TRANSCRIPT OF STATUS CONFERENCE
BEFORE THE HONORABLE JAMES ROBERTSON
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government: DANIEL PEARCE BUTLER, AUSA
CATHERINE CONNELLY, AUSA
WILLIAM COWDEN, AUSA
UNITED STATES ATTORNEY'S OFFICE
555 Fourth Street, NW
Washington, D.C. 20530

For the Defendant: MONTGOMERY BLAIR SIBLEY, ESQUIRE
LAW OFFICES OF
MONTGOMERY BLAIR SIBLEY
1629 K Street
Suite 300
Washington, DC 20006
(202) 508-3699

Court Reporter: REBECCA STONESTREET, RPR, CRR
Official Court Reporter
Room 6511, U.S. Courthouse
Washington, D.C. 20001
(202) 354-3249

Proceedings reported by machine shorthand, transcript produced
by computer-aided transcription.

Exhibit "C"

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P R O C E E D I N G S

THE COURT: All right. This is criminal number 07-0046, United States versus Deborah Palfrey. I think Ms. Connelly, Mr. Butler, and Mr. Cowden are all here. Mr. Sibley, I presume?

MR. SIBLEY: Good morning, Your Honor. Yes.

THE COURT: Good morning. This is my first encounter with this case. You've been before Judge Kessler for some period of time, and a great number of documents and orders have piled up.

My agenda, such as it is, for today's status conference are first Ms. Palfrey's motion to modify the stipulated protective order; second, to discuss the timing of *Brady* disclosures; third, to discuss the subpoenas that the defendant is -- defense counsel is, I think it's fair to say, spraying around the country side; fourth, to talk about the travel expense issue, which is getting to be an issue with the Marshal Service; and then perhaps generally to talk about a detail of procedure. Because Mr. Sibley is filing a lot of motions to seal along with ex parte motions, and there ought to be a more efficient way to do this.

Let's talk about the motion to modify the stipulated protective order. Mr. Sibley, do you want to just briefly outline that motion and present any argument you think is appropriate, briefly?

1 MR. COWDEN: Those are the documents you're talking
2 about?

3 THE COURT: Those are the documents Mr. Sibley asked
4 about and those are the documents I'm ruling on.

5 MR. COWDEN: And I believe, Judge, we can do that.
6 That should work fine.

7 THE COURT: All right.

8 MR. COWDEN: Thank you, Judge.

9 MR. SIBLEY: Just so we're clear, the rest of the order
10 remains in force and effect?

11 THE COURT: Yes.

12 MR. SIBLEY: So I'm not going to be publicizing these
13 and getting out --

14 THE COURT: Right. Correct.

15 MR. SIBLEY: Thank you.

16 THE COURT: Now, the next part of this -- the next
17 thing I want to turn to is the subpoenas duces tecum that the
18 defense is issuing. And these are being issued ex parte, and
19 the defense is entitled to some protection of its own about who
20 it's subpoenaing, but Mr. Sibley, I have to tell you that I have
21 received inquiries from two or three of the persons and
22 institutions that you've served, and then there is one motion to
23 quash that I think everybody is aware of -- two motions to
24 quash. Well, the so-called omnibus motion I have not received.
25 When did you file that?

1 MS. CONNELLY: Your Honor, it was filed yesterday
2 morning at 11:30. I have a stamped copy.

3 THE COURT: You guys, you know, all we need to do is to
4 have a court hearing and paper starts coming in over the
5 transom.

6 MS. CONNELLY: Well, Your Honor, I think as I noted in
7 the motion when you get it, we didn't receive the court order
8 regarding the issuance of the subpoenas. We had no notice of
9 the subpoenas until the agencies started contacting us, so we
10 put together a response this week and filed it yesterday.

11 We had filed, I think the previous day, the motion to
12 quash based on one of the agencies. I do have a stamped copy
13 I'm happy to provide to the Court if it hasn't made its way to
14 the Court as of yet.

15 THE COURT: Well, why don't you hum the first few bars?

16 MS. CONNELLY: Your Honor, it's a motion -- it was
17 filed under seal. I'm happy to discuss it in open court. We
18 filed it under seal because the order was in fact under seal.
19 That sort of predated this motion.

20 But what happened was the government started getting
21 phone calls, as it sounds like the Court did, from various
22 federal agencies, not law enforcement and not investigative
23 agencies, but a number of federal agencies that received
24 subpoenas.

25 THE COURT: Why was this all under seal? I'm

1 struggling, frankly, with the amount of material in this case
2 that is under seal, and what's under seal and what's not under
3 seal and what's ex parte and what's not ex parte.

4 Why was this -- I'm looking at the memorandum opinion
5 that Judge Kessler issued on November 13th, which is under seal.
6 Maybe you can explain to me why it's under seal.

7 MS. CONNELLY: We never received it, Your Honor. It
8 was under seal and ex parte, so I certainly can't explain to you
9 why it was under seal. Our first notice of it was when agencies
10 were subpoenaed, and pursuant to the order, that order was
11 attached to the subpoena. So when the agencies provided us with
12 the subpoenas they received, they attached the order.

13 So I have no basis to explain to the Court why it was
14 under seal. Our motion to quash was under seal only because it
15 seemed that the Court had seemed fit to issue that order under
16 seal. So we're perfectly happy to have this issue not under
17 seal and discussed publicly, but out of an abundance of caution,
18 we were sort of following what the Court had established with
19 that November 13th order.

20 THE COURT: Well, Mr. Sibley, the sealing privilege in
21 federal courts is complex, but you know what they used to say
22 when we were kids about a secret: If you tell two people, it's
23 not a secret any longer.

24 And you've issued a whole lot of subpoenas to a whole
25 lot of people. You can't expect this to remain under seal. Do

1 you have any reason to want to continue the seal on this whole
2 issue?

3 MR. SIBLEY: Your Honor, I would ask the privilege of
4 approaching the Court and answering that question ex parte.

5 THE COURT: I'll hear you at the bench.

6 (Whereupon, an EX PARTE BENCH CONFERENCE was held on
7 the record, transcribed under separate cover.)

8 (END BENCH CONFERENCE.)

9 THE COURT: The government's omnibus motion to quash
10 was filed yesterday; there is another motion to quash that was
11 filed a day or two ago. Mr. Sibley points out, quite correctly,
12 that he hasn't really had an opportunity to respond to them yet.
13 I think the right thing to do is to pass that issue.

14 But, but a number of the subpoenas that have been
15 issued have been issued returnable tomorrow.

16 MR. SIBLEY: Correct, Your Honor. It was an odd date,
17 but...

18 THE COURT: I don't know what kind of an order you
19 would call a temporary quashal order, but I'm quashing all of
20 the subpoenas until we get an opportunity to decide on the
21 government's motion to quash. So it's a quash without
22 prejudice. The subpoenas remain in effect, but the return date
23 is off.

24 MS. CONNELLY: Your Honor, if I could just seek
25 clarification on one issue, which in fact is in our under seal

1 motion, although this subpoena was not pursuant to the Court's
2 November 13th under seal order.

3 The defendant also issued a subpoena on the White House
4 with a return date of February 19th, which never was, in fact,
5 the trial date in this case. The Court set the trial date as
6 April, with a potential backup date of February if Judge Kessler
7 could fit us in in February.

8 The government's omnibus motion addresses that White
9 House subpoena, but I would like to be able to let them know, is
10 that also being temporarily quashed at this point?

11 THE COURT: Yes, everything is temporarily quashed
12 until I look at your omnibus motion.

13 And while we're talking about trial dates, I'm not even
14 going to be in the jurisdiction in February. The April 7th date
15 that Judge Kessler set is the trial date, as far as I'm
16 concerned. There's no wiggle room on that. We're set for trial
17 on April 7th.

18 MS. CONNELLY: Thank you, Your Honor. And I just
19 provided you with a copy of the government's omnibus motion that
20 was filed yesterday.

21 MR. SIBLEY: Could I ask for 10 additional days to
22 respond to the motion to quash?

23 THE COURT: You may have 10 additional days, and
24 Merry Christmas.

25 MR. SIBLEY: Thank you, Judge.

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CERTIFICATE OF OFFICIAL COURT REPORTER

I, Rebecca Stonestreet, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Rebecca Stonestreet

5/9/08

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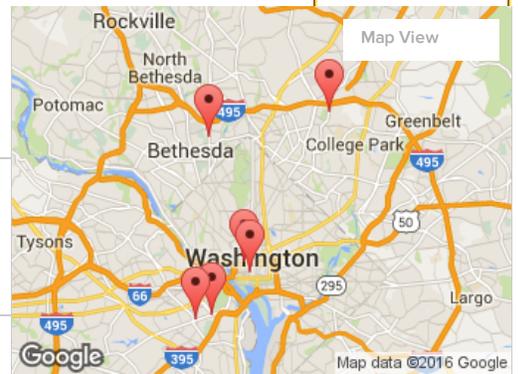
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Monty Sibley <montybsibley@gmail.com>

RE: Sibley v Roberts et al

1 message

Moskowitz, David (USAVAE) <David.Moskowitz@usdoj.gov>

Thu, Mar 31, 2016 at 6:49 PM

To: Monty Sibley <montybsibley@gmail.com>

Dear Mr. Sibley:

Our time to respond to the complaint has not expired. We will be filing a motion to dismiss shortly. I am sure that the court will want to rule on that before anything proceeds in the matter. I am therefore not sure what the purpose of a status conference would be at this stage. The Supreme Court has held that in cases, like here, where there is an immunity to suit defense, the motion to dismiss must be resolved before the case is allowed to proceed.

Thanks,

David

David Moskowitz

Assistant United States Attorney

2100 Jamieson Avenue

Alexandria, VA 22314

Telephone: (703) 299-3845

Fax: (703) 299-3983

Email: David.Moskowitz@usdoj.gov**From:** Monty Sibley [mailto:montybsibley@gmail.com]**Sent:** Thursday, March 31, 2016 7:20 AM**To:** Moskowitz, David (USAVAE)**Subject:** Sibley v Roberts et al

Exhibit "E"

David,

I left a message for you yesterday and have not heard back. In sum, I want to contact the Court and ask for an immediate status hearing and want to know if you want to be on that telephone call or if you want me to make a representation on your behalf to the Court.

Please call me at the number below to discuss.

Montgomery Sibley
[301-806-3439](tel:301-806-3439)