

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA)
)
 v.)
) No. 08-231 (EGS)
 THEODORE F. STEVENS,)
)
 Defendant.)
 _____)

**NOTICE OF (1) PRODUCTION OF EMAILS, DECLARATIONS,
AND PLEADINGS PREVIOUSLY SUBMITTED UNDER SEAL AND IN CAMERA;
(2) INTENTION TO PRODUCE ADDITIONAL DOCUMENTS TO DEFENDANT;
AND (3) APPOINTMENT OF NEW COUNSEL FOR THE UNITED STATES**

At the status conference on Friday, February 13, 2009, the Court suggested that the government reevaluate its claim of work-product protection with respect to the materials that it produced in camera on January 30, 2009, and February 9, 2009. It has carefully considered the Court's suggestion, and has now decided to produce these materials to the defendant, notwithstanding their protected status. The government takes this action with the understanding and intention that the production of these materials, which relate to the whistleblower status and/or whistleblower protection of an FBI Agent, does not constitute a waiver of any privileges or protections, including work-product protection, that may apply to other internal Department of Justice materials that address other subjects in this case, including work product concerning the substance of the allegations in the Joy complaint. Fed. R. Evid. 502(b).

In deciding to release these materials to the defendant, the government acknowledges the importance of resolving the pending post-trial motions as expeditiously as possible. By foregoing any further litigation about the release of these documents, it hopes to avoid

distractions and remain focused on the post-trial motions defendant has filed – motions that include claims of prosecutorial misconduct before and during his trial. The Department of Justice understands that the interests of the parties and the public will be advanced by a prompt airing of these claims, and that additional delay relating to the whistleblower-status issue does not advance that cause.

There are two other matters that the government would like to bring to the Court's attention at this time. First, the Public Integrity Section, aided by the FBI (but independent of OPR), has been investigating the allegations in the Joy Complaint for the purpose of responding to defendant's post-trial motions. The Department of Justice is gathering all the 302s and signed affidavits created in the course of this investigation, and it will produce those documents to defendant by the close of business on Tuesday, February 24, 2009.¹

Second, the undersigned counsel will no longer conduct litigation relating to allegations of misconduct in this matter.² The Acting Assistant Attorney General for the Criminal Division has appointed Paul M. O'Brien, Chief of the Narcotic and Dangerous Drug Section, David Jaffe, Deputy Chief of the Domestic Security Section, and William Stuckwisch, Senior Trial Attorney in the Fraud Section, to conduct on behalf of the government the litigation related to any claims of misconduct in this matter. They will enter their appearances shortly. At the request of Messrs. O'Brien, Jaffe, and Stuckwisch, the Appellate Section will continue to provide legal support on

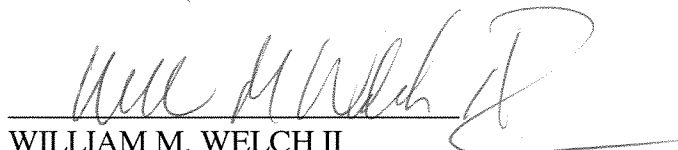
¹ Two draft 302s are included in the current production because they relate in part to Chad Joy's whistleblower status. See PIN 204-222.

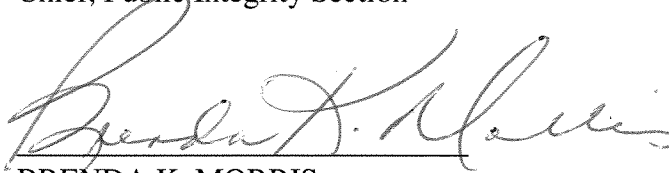
² Public Integrity Trial Attorneys Nicholas Marsh and Edward Sullivan, and Assistant United States Attorneys Joseph Bottini and James Goeke, also will not conduct such litigation relating to allegations of misconduct.

these matters as needed.

Finally, Messrs. O'Brien, Jaffe, and Stuckwisch will contact defense counsel in the near future for the purpose of working with counsel to resolve as many discovery issues as possible prior to the April 15, 2009 hearing.

Respectfully submitted,


WILLIAM M. WELCH II
Chief, Public Integrity Section


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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of February, 2009, I caused a copy of the foregoing "NOTICE OF (1) PRODUCTION OF EMAILS, DECLARATIONS, AND PLEADINGS PREVIOUSLY SUBMITTED UNDER SEAL AND IN CAMERA; (2) INTENTION TO PRODUCE ADDITIONAL DOCUMENTS TO DEFENDANT; AND (3) APPOINTMENT OF NEW COUNSEL FOR THE UNITED STATES" with described attachments to be delivered electronically to the following:

Brendan V. Sullivan, Jr., Esq.
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 /s/
Brenda K. Morris