

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 07-CR-30192-JPG-DGW
)	
TILDEN SPRAGUE,)	
)	
Defendant.)	

**REPLY TO GOVERNMENT’S RESPONSE TO DEFENDANT’S
MOTION FOR PROTECTIVE ORDER**

In its Response, the Government claims that Mr. Sprague’s reliance on *U.S.A. v. Knellinger*, 471 F.Supp. 2nd 640(E.D.V.a 2007) is misplaced. The Government contends that relying on *Knellinger* would be improper because in *Knellinger* the Government had agreed to providing discovery *prior* to the passage of the Adam Walsh Act.

Attached hereto and marked Exhibit A is a well written Order by Magistrate Smith in the matter of *U.S.A. v. Winslow* (Alaska 2008). This opinion hits close to home since the computer hard drive in question was seized in the Central District of Illinois—in Tilton, Illinois. In *Winslow* Magistrate Smith was presented with the exact same issue regarding whether or not a protective order was warranted. *Winslow* was indicted after the enactment of the Adam Walsh Act and the defense attorney simply wanted the same type of protective order that had been granted previously.

It is easy to go through each case and nitpick to distinguish it from other cases and then claim that the request is unreasonable or reliance on a particular case is misplaced. The bottom line is that there is precedent for protective orders. Magistrate Smith does a marvelous job of explaining why protective orders could be granted. The undersigned is cognizant that in the Southern District of Illinois, the issue of protective orders in child pornography cases is new. However, other District Courts throughout the country have granted protective orders. *Winslow* is simply the latest District to do so.

There is no doubt that 18 U.S.C. Section 3509 (n) allows the Government to withhold discovery from a Defendant. But that is not the end of the discussion. Mr. Sprague has requested a protective order so that he and his defense team can have unfettered access to discovery. He will agree to any protective order that this Honorable Court deems just.

While this matter was still a State case, the undersigned did meet with Detective Vucich who is a Madison County Deputy Sheriff. The review took place in the basement of the Madison County Sheriff's Department and the undersigned was *not* given free access to the discovery. At no time did Detective Vucich leave the examination room so that the undersigned could review the discovery alone. Had the undersigned been accompanied by an expert, Detective Vucich would have remained in the room which would have given him the benefit of knowing *exactly* what was being reviewed. The undersigned did not go through the discovery in depth and had he done so it would have taken numerous trips.

The fact the Mr. Sprague does not have the resources to retain an expert because of the forfeiture Count *is* relevant. The undersigned fully recognizes that the Government is within its right to present evidence to the Grand Jury regarding forfeiture of Mr. Sprague's residence. The point is that because Mr. Sprague can't "tap" the equity in his residence he is unable to retain an expert. In *Knellenger* for example, the cost of an expert to review the computer would have reached six figures. Mr. Sprague has approximately \$100,000.00 equity in his residence which he cannot touch due to the forfeiture Count. He desires to use this money to retain a computer expert.

What is irrelevant is whether or not the undersigned is appointed pursuant to the Criminal Justice Act or is retained. The result is the same vis-a-vis the issue of retaining an expert to review the computer. If the undersigned were appointed pursuant to the Criminal Justice Act he would be required to request extra funds to retain a computer expert. A basis of the Motion would be that it would cost an additional amount of money for the expert to travel to the Government's offices to review discovery. Here, Mr. Sprague desires to use the equity in his residence to defend himself. The Government is apparently unaware that the undersigned was retained by Mr. Sprague while he was charged by the State of Illinois and

he subsequently entered his appearance in this case. The undersigned felt a duty to continue representing Mr. Sprague and will do so to the best of his abilities. “Technically” Mr. Sprague retains the equity in his residence, but the fact that he can’t touch it makes him a “paper pauper.” It might seem irrelevant to the Government, but it certainly is relevant to Mr. Sprague.

This is not some novel, crazy theory thought up by a “slick” defense attorney trying to be obstreperous. Other similarly situated Defendants have found themselves in the same position as Mr. Sprague. Congress passed the Adam Walsh Act and the Assistant U.S. Attorney is well within his right to oppose Defendant’s request for a protective order.

Magistrate Smith does a wonderful job of explaining why a protective order would be proper and on page 17 discusses the fact that “§3509(m) was added to the Walsh Act without consideration in committee and with virtually no explanation in the legislative history.” An argument could be made that 3509(m) was added as an afterthought. Hopefully, this Honorable Court will follow the conclusions of the *Winslow* ruling.

WHEREFORE, Defendant request that his Motion for Additional Discovery be granted.

TILDEN SPRAGUE

STOBBS LAW OFFICES

BY:

/s/ John D. Stobbs, II
John D. Stobbs II, NO. 06206358
Attorney for Defendant
307 Henry St. Suite 211
Alton, Illinois 62002
Telephone: (618)462-8484
FAX: (618)462-8585
Email: stobbsjohn@hotmail.com

CERTIFICATE OF SERVICE

I hereby certify that on March 10, 2008 a copy of the attached *REPLY TO GOVERNMENT'S RESPONSE TO DEFENDANT'S MOTION FOR PROTECTIVE ORDER* was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the following:

Mr. Donald Boyce
Assistant U.S. Attorney
Nine Executive Drive
Fairview Heights, Illinois 62208

STOBBS LAW OFFICES

/s/John D. Stobbs, II
307 Henry St. Suite 211
Alton, Illinois 62002