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.	)	

DEFENDANT'S MOTION FOR EQUAL ACCESS TO DISCOVERY AND FOR A PROTECTIVE ORDER

Comes now Defendant, by his attorney, John D. Stobbs II, and for his Motion for Equal Access to Discovery and Protective Order states:

1. On December 11, 2007 Defendant was charged in a three count Indictment. Count 1charges Defendant with the mandatory minimum 5 year sentence of receipt of child pornography while Count 2 charges Defendant with possession of child pornography. As a result of the *de minimus* use of his residence for purposes of allegedly viewing child pornography, the Government seeks to forfeit Defendant's house in Count 3 of the Indictment.

2. As part of the investigation, the Government seized and presently possesses for the purpose of inspection and analysis, hard drives, software, diskettes, CDs and written material. Contained within the seized items is the supposed evidence which forms a basis for this and possible other counts and/or prosecutions.

3. On December 13, 2007 Defendant wrote Exhibit A to the Government requesting discovery.

4. The Government fulfilled its discovery obligations as best it could. As witnessed by Exhibit B, on January 11, 2008, the Government responded to Defendant's oral request for a protective order, by denying said request.

5. In its letter, the Government accurately has concluded that as a result of the "Adam Walsh Act" 18 U.S.C. § 3509(m) it is illegal to turn some of the discovery over to Defendant.

6. Defendant states on information and belief that the Government has provided the requested discovery regarding the computer files to individuals not employed by the federal Government. Alternatively, Defendant states on information and belief that this discovery has been in the possession of individuals not employed by the federal Government. As such Defendant is requesting "equal access" to discovery. In the event the requested material has at all times been in the possession of federal employees, Defendant requests a protective order so that the material can be turned over to his attorney and/or experts.

7. Defendant desires to file a Motion to Suppress but will be unable to do so without the assistance of a computer forensic expert. Defendant's expert witness would examine and evaluate the requested materials and items. Said expert needs the items herein requested produced in order to conduct his forensic examination. Such an examination is necessary to allow the Defendant to adequately prepare his defense and to respond to the allegations against him.

8. In the event that it proves necessary and Defendant is able to use the equity in his house he desires to employee an expert to examine his computer's hard drive.

9. It is vital to Mr. Sprague's defense for him to be allowed to perform his own analysis of the computer hard drives, CD's, and DVD's that form the basis of the Government's charges.

10. Defendant is filing this date a Motion for Additional Discovery requesting that the Government produce some items which at first blush might be covered by the "Adam Walsh Act."

11. Similarly, Defendant is filing this date a Motion for Bill of Particulars. Both Motions would be moot if a Protective Order were entered herein.

12. Defendant requests a protective order which will allow the Government to provide a duplicate/mirror image of the computer hard drive to the undersigned.

MEMORANDUM IN SUPPORT

I. Introduction

18 U.S.C. § 3509(m) of The Adam Walsh Child Protection and Safety Act, Pub. L. 109-248, 120 Stat. 587 (July 27, 2006), which was added to the Criminal Code is at issue. It provides:

> **(m) Prohibition on reproduction of child pornography.**
> (1) In any criminal proceeding, any property or material that constitutes child pornography (as defined by *section 2256* of this title) shall remain in the care, custody, and control of either the Government or the court.
> (2) (A) Notwithstanding Rule 16 of the Federal Rules of Criminal Procedure, a court shall deny, in any criminal proceeding, any request by the defendant to copy, photograph, duplicate, or otherwise reproduce any property or material that constitutes child pornography (as defined by *section 2256* of this title), so long as the Government makes the property or material reasonably available to the defendant.
> (B) For the purposes of subparagraph (A), property or material shall be deemed to be reasonably available to the defendant if the Government provides ample opportunity for inspection, viewing, and examination at a Government facility of the property or material by the defendant, his or her attorney, and any individual the defendant may seek to qualify to furnish expert testimony at trial.

The undersigned has represented numerous individuals charged with crimes related to possession of child pornography. While the Government will try to "dress" this case up with allegations and innuendos of other *possible* criminal activity, it is nothing more than a garden variety child pornography case—except for the fact that due to the *de minimus* use of his house the Government is attempting to forfeit Mr. Sprague's residence.

Actually, this is the first case where the undersigned has represented someone whose child pornography consists mainly of images of females in the age range of 12-15 as opposed to children who are much younger. This statement is not meant to excuse the crimes Mr. Sprague is accused of committing. It is meant to show that from a practitioner's standpoint Mr. Sprague is not the "typical" child pornographer.

An obvious defense to these kind of charges at trial would be that other individuals

had access to Mr. Sprague's computer. It is important to know the exact dates and times that the Government claims Mr. Sprague viewed these images. There are two alternatives to get this information. The first is through a Bill of Particulars which the undersigned will file this date. The second is to have an expert review the computer hard drive—or a mirror image—and make a determination to assist in the defense of Mr. Sprague. Obviously, in any criminal case, before a Defendant can mount an adequate defense or prepare a meaningful Motion to Suppress, it is important that he know all of the evidence against him.

II. U.S.A. v. Shrake Mandates Equal Access to Discovery

To date, the Seventh Circuit is the only Circuit Court in the country to address the discovery debate regarding the "Adam Walsh Act." In *U.S.A. v. Schrake*, 2008 U.S. App. LEXIS 2552, the Seventh Circuit concluded that the "Adam Walsh Act" was Constitutional. The Court similarly rejected the Defendant's argument that limits on his expert's pretrial access to data was unreasonable.

However, in his opinion, Judge Easterbrook concluded that:

> "Only one aspect of the statute's implementation gives us pause. Although the district court denied Shrake's motion for an exact copy of the hard disk for his expert's use, the prosecution provided such a copy to its own expert. When Shrake learned about this differential access, he asked the district court to foreclose testimony by the prosecution's expert; the judge denied this motion. In this court the United States defends this decision by arguing, first, that an expert for the prosecution is part of "the Government" as *§ 3509(m)(1)* uses that word; and, second, that foreclosing testimony is not an appropriate remedy.
>
> We very much doubt that, if the expert hired by the United States had an auto accident while driving with the duplicate hard disk, the United States would accept liability under the Federal Tort Claims Act. The expert was a private consultant; there is a substantial difference between "the Government" and people who provide services to the United States under contract. The United States itself recently drew this distinction in *Daniels v. Liberty Mutual Insurance Co., 484 F.3d 884 (7th Cir. 2007)*, [*8] when arguing that a consultant during a federal investigation is *not* a federal employee or otherwise part of "the Government." The prosecutor has not tried to reconcile the position taken here with the one taken in *Daniels*. *Section 3509(m)(1)* requires the materials to "remain in the care, custody, and control" of either the

> executive or the judicial branch of the United States. A contractual arrangement allowing the prosecutor to determine how an expert will use the copy may afford "control", but that's only one of three statutory requirements. "Custody" is no less important.
> *Wardius v. Oregon, 412 U.S. 470, 93 S. Ct. 2208, 37 L. Ed. 2d 82 (1973)*, holds that rules about pretrial discovery in criminal prosecutions must apply to prosecutors as well as to defendants. Access provided to private experts retained by the prosecution must be provided to private experts retained by the defense. The district court did not abuse its discretion, however, in denying Shrake's pretrial motion to prevent the prosecution's expert from testifying. ***The appropriate relief--which defense counsel never sought--would have been access on equal terms.*** Doubtless the court also had discretion to prevent the prosecution's expert from testifying--or [*9] at least to prevent her from testifying to matters that she investigated using forensic tools that were not available to the defense expert, who had to examine the disk in the prosecutor's office. Violations of discovery rules (or for that matter the Rules of Evidence) regularly are enforced by excluding evidence; the prosecutor's view that exclusion is never permissible would prevent district judges from ensuring compliance with *Rule 16* and other requirements for pretrial disclosure and cooperation. See *Taylor v. Illinois, 484 U.S. 400, 108 S. Ct. 646, 98 L. Ed. 2d 798 (1988)* (a court may prevent a surprise witness from testifying). But, to repeat, Shrake's counsel did not seek access on equal terms, perhaps because the prosecution's expert did not use any forensic tool that was unavailable to the defense expert when he examined the hard drive." Emphasis added

Here, in the event the Government has provided discovery to a non-federal employee, Mr. Sprague is ***specifically requesting,*** in accord with *Shrake* that he be allowed equal access to discovery.

Besides, as the saying goes—what's good for the goose is good for the gander. In the event the Government has allowed some non-federal agent or other "civilian" individual to handle the hard drive, it is wholly unfair to allow it to violate the strictures of the "Adam Walsh Act." Access to discovery should be on equal terms.

While the Government has a duty to provide exculpatory evidence, it need not provide evidence that a Defendant may construe as helpful if presented in a certain manner.

That is the reason that a Defendant is entitled to view the same evidence that the prosecuting agency viewed before determining what it chooses to introduce at trial. Quite simply, any Defendant, including Mr. Sprague must be afforded the same opportunity to examine evidence as the United States Government.

III. Knellinger and Protective Orders

Frankly, District Courts throughout the country are all over the map in terms of what to do regarding disclosure of discovery in child pornography cases. In this District for example, it has become commonplace for defense attorneys to travel to a Government office and review this type of discovery.

This is the first time the undersigned has made this argument regarding discovery and a large reason for making it now is due to the fact that as federal prosecutions of child pornography become more prevalent, the issues of fundamental fairness and equal access to discovery become more important to defend. This is the first case in this District where the Government has attempted to forfeit someone's house as a result of the *de minimus* use of the residence for criminal purposes. From prior experience the undersigned has learned that a Defendant needs to fight vigorously every step of the way or similarly situated Defendants in the future will be adversely impacted under the "that's the way we've always done it" theroy.

In *U.S.A. v. Knellinger*, 471 F. Supp. 2d 640; 2007 U.S. Dist. LEXIS 5825 (E.D.VA 2007), Judge Payne addressed the issue of disseminating discovery in child pornography cases head on.

Judge Payne granted Defendant's request for a mirror image copy of his computer hard drive, which contained the child pornography images listed in the Superseding Indictment. The request was granted subject to the entry of an appropriate protective order and a certification by counsel for the Defendant that the copy would be used for assessment and preparation of a defense. The undersigned is specifically requesting such a protective order and if an expert is required will certify that the copy would be used for assessment and

preparation of a defense.

Judge Payne specifically addressed 18 U.S.C. § 3509(m) and concluded that an ample opportunity had not been given to review the discovery. He stated:

> "In sum, Knellinger's witnesses established that assessment and presentation of a viable legal defense in Knellinger's case requires expert analysis and testimony, and that qualified experts could not reasonably be expected to agree to conduct the required analysis given the extremely burdensome practical effects of *§ 3509(m)* on the reliable discharge of their obligations."

Like the Defendant in *Knelllinger* Mr. Sprague has not hired an expert in part due to the Government's actions in making him a pauper by placing a lien on his residence due to the forfeiture count. The Government in *Knellinger* leaped at this apparent inconsistency but Judge Payne noted:

> "The United States also argues that Knellinger's request to analyze the child pornography in this case is "disingenuous." (Id. at 3.) The United States argues that Knellinger has not yet hired an expert like Owen or Griffin to conduct the analysis, and that Knellinger has not contacted the United States about conducting such an analysis in a Government facility were an expert like Owen or Griffin hired. (Id. at 3-5.) A simple explanation for this, however, is that, as far as the Court can tell from the record, a reasonable expert would not agree to conduct the analysis required in this case because of the cost and difficulty of moving the necessary equipment to, and adequately providing the appropriate services in, a Government facility. Therefore, it would make sense that Knellinger has not yet hired an expert because Knellinger has not known whether or not he will be given a copy of the child pornography in this case. Moreover, the record provides good reason to conclude that Knellinger is not, as the United States [**25] puts it, simply engaging in "litigation for litigation's sake" because of the great cost associated with conducting the analysis that the evidence shows to be appropriate here. (United States' Resp. at 5.)"

Mr. Sprague does not want to be precluded from hiring experts to review his computer hard drive so as to assist in formulating a defense. In the event Mr. Sprague is able to retain an expert said expert will need to review the discovery somewhere other than at a Government facility. Judge Payne viewed this approach favorably when he held:

> "On this record, which includes the evidence from Knellinger's legal and technical expert witnesses, the Court finds that technical expert witnesses are a necessary component of the assessment and presentation of a viable legal defense that is available to Knellinger, and that the United States has not provided Knellinger an ample opportunity for those experts, or counsel in conjunction with the experts, to conduct the required analysis of the child pornography in this case at a Government facility. The Court further concludes that the analysis described by Owen and Griffin at the evidentiary hearing constitutes an "examination" within the plain meaning of *18 U.S.C. § 3509(m)(2)*."

The Government here will no doubt cling to the proposition that since Defendant and his defense team can review discovery at a mutually agreed upon time, it has complied with the "Adam Walsh Act."

Cases before *Knellinger* and the enactment of the "Adam Walsh Act" show that protective orders were becoming more frequent. The Government's concern here, which no doubt forms the basis of 3509(m) is that if any defense counsel receives a copy of pornographic images, there will be a risk of further duplication and dissemination. Of course under *Shrake* this argument/concern goes out the window if the Government allowed a non-federal employee to "possess" the images herein. The Court in *Aldeen* shared this concern and imposed the following restrictions:

> (1) only defense counsel may examine the material;
> (2) all material containing contraband shall be kept by defense counsel in a secure, locked room accessible only to defense counsel, legal assistance, investigators and defense experts;
> (3) no other person shall examine this material without further court order. No additional copies of this order shall be made without further court order;
> (4) any computer used to analyze the material shall be a "stand alone" computer, not connected to any network; and
> (5) the defense shall return to the government or destroy any material deemed contraband by this court at the conclusion of this case. *Id.* at 5.

In concluding, the *Aldeen* court held "the government shall provide the defense with copies of all materials seized in this case including, but not limited to, mirror images of any and all computer hard drives, computer disks, CD-Roms, videos, pictures, e-mail messages,

instant messages, chat room dialogues, and advertisements. The government shall also make clear which of these items contains material the government deems is contraband. To prevent unauthorized duplication and distribution of the images, release of the images is subject to the accompanying protective order." *Id* at 5.

IV. Mr. Sprague Has Been Made a "Paper Pauper" Due to Government's Actions

In most of the cases discussing §3509(m) the issue of being able to retain, i.e. pay, an expert to review the material is discussed. What sets Mr. Sprague apart from other similarly situated Defendants is that the Government's forfeiture count and resulting lien on the only real asset in Defendant's possession—his house—has bankrupted his ability to defend himself. At most—if the Government's allegations are true—the use of his residence was *de minimus* to the crime charged. Mr. Sprague made the fatal mistake of living in the Southern District of Illinois and responsibly paying off his house. The undersigned briefly researched the number of times that ***ANY*** U.S. Attorney's Office throughout the country has *attempted* to use the forfeiture statute to take someone's house for child pornography cases and could only identify ***a handful of other times*** that an attempt has even been made. Maybe there is a reason why only a handful of other U.S. Attorneys' offices in the country have attempted to criminally forfeit a Defendant's residence in child pornography cases. Maybe this is an area where being in the vanguard is not a good thing.

The issue of the ludicrous nature in which the forfeiture statute has been applied here will be the subject of another Motion. For purposes of this Motion, Mr. Sprague simply is unable to pay for the undersigned and an expert to travel to the Government's offices to review discovery.

Through the use of a high-technology investigation service providing computer forensic examination, a copy of the hard drives that the Government possesses can be done with virtually no inconvenience. Once completed, an analysis is conducted to determine key components of this case. It will be insufficient to only copy Mr. Sprague's computer as the police computer contains downloads from sites only referenced to by him. Without

examining that computer, a trier of fact cannot have confidence that the photographs and/or images provided were the only photographs and/or images on that site. In fact, they may have been taken from linked sites within a site. Hence, Mr. Sprague would not have had knowledge of the specific depictions. This cannot be determined until reviewed.

Furthermore, a Defendant has the absolute right to question and/or verify the integrity of the investigating agencies, the validity of the investigative techniques, and the sufficiency of the evidence obtained. To effectively do this, Mr. Sprague's examiner must have the opportunity to examine whether any outside intrusions into the computer system occurred, whether the access dates on all systems correspond to the indictment, whether the access dates correspond to all other computer files, whether any computer clock manipulation occurred. Whether any applications were partially/entirely installed, whether any evidence of previous applications installations exist, whether there is a presence of file fragments, and/or whether there is evidence of previous hard drive installations, and finally, the date and time that these images were actually formed on the computer and how long these images were viewed.

All of this costs money. From a cost standpoint the burden on Mr. Sprague to have the undersigned and his expert review the evidence at a Government office would be astronomical. Of course, if the Government hadn't placed a lien on his house through the forfeiture count, for the *de minimus* use of his computer for allegedly downloading child pornography, he could take out a home equity loan to pay for the expert. The Government should not be able to gain a tactical advantage over any Defendant through the use of the criminal forfeiture statute. However, that is precisely what is happening here, because by making the mistake of residing in the Southern District of Illinois and paying his house off, the Government is prohibiting him from using that asset to help pay for his defense.

In *U.S. v. Frabizio*, 341 F. Supp. 2d 47 (D. Mass. 2004), Defendant argued that his defense team was entitled to a copy of the pornographic video which formed the basis of his arrest. Defendant claimed that "making trips to the FBI location [would] be burdensome,"

that " the Government's proposal prevents defense counsel from consulting freely with her expert" and that "any tests conducting on a FBI computer would leave behind a roadmap of the process and its results on that commuter's hard drive" giving the government access to Defendant's work product. Id at 49. The Court granted Defendant's Motion and adopted a protective order limiting the inspection of the images to defense counsel and prohibiting examination of those images on any computer connected to a network. Id at 49. The Court found no reason to believe that defense counsel could not be trusted to adhere to these requirements. Id at 51.

V. No Protective Order Gives Government Unfair Advantage Of Knowing Defense

Regarding the prospect of an expert reviewing a duplicate hard drive, it would be necessary to determine several things such as who had access to the computer and computer equipment seized by the Government, when the images were stored in, whether and when the hard drives were altered, what access the computer operators had to the internet and with whom they conversed, whether the hard drives contained viruses, the ages of the alleged minors depicted, the exact behavior of those minors, whether the videos traveled in interstate commerce, and review photographs and/or video pertaining to images used to obtain probable cause to search the computer further.

From a logistics standpoint, any forensic examiner retained by the defense would have to have the opportunity to review the hard drives that have been seized in order to make several determinations in this case. Without the opportunity to examine the sources or storage that house the downloads, Mr. Sprague would never be able to show the trier of fact whether he actually knowingly possessed or stored these alleged photographs or images. The type of expert analysis planned by the computer expert is complex and would be burdensome to perform at any Government office.

The undersigned has no doubt whatsoever that Assistant U.S. Attorney Boyce will be very accommodating regarding access to documents or computers ***at his office***. Similarly, the undersigned has no doubt that Mr. Boyce will follow the strictures placed on him by the

"Adam Walsh Act." However, assuming that the accommodations will be made, as was stated above, it is completely unfair to require the undersigned and Mr. Sprague's expert to review files and to perform analyses at any Government office. By being "chaperoned," the Government will have unfair access to defense work product. The Government will know what program the expert is running to perform the tests. It will know what the expert is focusing on. It will know how long the expert is spending on each facet of the hard drive.

In *United States v. Hill*, 322 F.Supp.2d 1081 (CDCal 2004), the Court ordered the Government to provide defense counsel with a copy of the images forming the basis of the government's case against the defendant. In *Hill*, the Court found that the Government's offer (permitting the defense expert to analyze the media in the Government's lab at scheduled times, in the presence of a Government agent) inadequate: "[t]he defense experts needs to use his own tools and his own lab. And he cannot be expected to complete his entire forensic analysis in one visit to the FBI lab." Id at 1092. Furthermore, the Court found that "not only does defendant's expert need to view the images, his lawyer also needs repeated access to the evidence in preparing for Trial." Id.

In the *United States v. Aldeen*, slip copy, 2006 WL 752821, (E.D.N.Y. 2006), March 22, 2006, the Defendant moved the Court for an order requiring the government to provide him with a mirror image of the computer hard drive allegedly containing images of child pornography that formed the basis of his arrest for violating 18 USC § 2252(a)(5)(B). The Court found persuasive Defendant's claims that his computer experts required use of their own computers and two computer programs (Encase and FTK) in order to examine the video. The Court went on to note that examinations by computer experts may take many visits to Government offices and that defense attorneys had been provided with similar material under protective orders without incident. Id. at 4. Under the circumstances, the Court in *Aldeen* found that the Defendant had demonstrated an adequate amount of inconvenience if his defense team was not provided with a copy of the entire hard drive. Id at 5.

WHEREFORE, the Defendant, Tilden Sprague, moves this Honorable Court for an order requiring the Government to provide his experts and lawyer with a mirror image of the computer hard drive allegedly containing images of child pornography that form the basis for his arrest subject to a protective order prohibiting viewing of the subject images by anyone other than the defense counsel, defense experts, and respective staff.

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 February 22, 2008 a copy of the attached *Defendant's Motion for Equal Access to Discovery and for a 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

STOBBS LAW OFFICES
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Exhibit
A

JOHN D. STOBBS, II

(618) 462-8484
Fax (618) 462-8585

December 13, 2007

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

RE: U.S.A. v. Sprague
No. 07-CR-30192-JPG-DGW

Dear Mr. Boyce:

In accordance with Fed. R. Crim. P. 16 and 12, as well as the controlling case law concerning discovery, the Court's local rules, and the Order for Pre-trial Discovery and Inspection, Defendant requests the disclosure of the following evidence and information:

1. Any and all written or recorded statements made by the Defendant.

2. Any portion of any written record containing the substance of any relevant oral statement made by the Defendant, whether before or after the arrest, in response to interrogation by any person then known to the Defendant to be a government agent.

3. ~~The substance of any oral statement made by the Defendant before or after his~~ arrest in response to interrogation by a then known-to-be government agent, which the prosecution intends to offer in evidence at trial.

4. Description of and access to any books, papers, documents, photographs, tangible objects, vehicles, buildings or places which are material to the preparation of the Defendant's defense or which the prosecution intends to use as evidence at trial, or were used, obtained, or belonging to the Defendant.

5. The results or reports of physical or mental examinations, and of scientific tests or experiments, made in connection with this case, which are material to the Defendant's defense or are intended for use at trial.

6. Disclosure to the Defendant and permission to inspect and copy all information and material known to this prosecutor which may be favorable to the Defendant on the issues of guilt or punishment within the scope of Brady v. Maryland, 373 U.S. 83 (1963) and United States v. Agurs, 427 U.S. 97 (1976).

7. Disclosure to the Defendant of the existence and substance of any payments, promises of immunity, leniency, preferential treatment, or other inducements made to prospective prosecution witnesses, as well as any and all material evidence affecting the credibility of any witness whose reliability may be determinative of Defendant's guilt or innocence, within the scope of United States v. Giglio, 405 U.S. 150 (1972) and Napue v. Illinois, 360 U.S. 264 (1959).

8. Provision to Defendant of the arrest and prior conviction records of Defendant, and any informant, cooperating individual, or witness who will testify for the Office of the United States Attorney at trial.

9. The existence and scope of any offers of immunity, plea bargains, promises of leniency, indications of leniency, or negotiations, promises of leniency, indications of leniency, or negotiations concerning pleas conducted by the United States Government with any Defendant, other Defendants charged under separate Indictment, or witness concerning matters contained in this Indictment. Giglio v. United States, 405 U.S. 150 (1972) & Brady v. Maryland, 373 U.S. 83 (1963).

10. A written summary of testimony the United States Government intends to use under Rules 702, 703, or 705 of the Federal Rules of Evidence during its case in chief at trial describing the expert witnesses' opinions, the bases and reasons thereof, and the witnesses' qualifications.

11. We request that any rough notes made or taken by any agent which are now in existence be saved and that any notes made or taken from here on out be saved. Please advise immediately if you refuse to do this so that the requisite Motion may be filed.

12. To advise the Defendant, pursuant to Fed. R. Evid. 404(b), within ten days of this letter, of the prosecutor's intention to introduce such evidence, the basis under which introducing will be supported, and of the general nature of that evidence.

13. To transcribe the grand jury testimony of all witnesses who will testify for the office of the United States Attorney at the trial of this cause, preparatory to a timely motion for discovery.

14. Provide the defendant, for independent expert examination, copies of all latent fingerprints or palm prints which have been identified by the prosecutor's expert as those of the Defendant.

15. Provide the Defendant, for independent expert examination, copies of all handwriting exemplars which have been identified by the prosecutor's expert as those of the Defendant.

16. Disclose to the Defendant, for inspection, any and all things, objects, books, or records that were seized in this case in order for the Defendant to determine whether he has the standing to file a motion to suppress.

17. A pretrial proffer from the Government regarding the statements the prosecution intends to present at trial as statements of coconspirators in furtherance of the conspiracy under Rule 801(d)(2)(E).

18. Finally, in the event ***any*** tests were conducted or will be conducted of ***any*** seized material by any lab, it is requested that the bench notes, any notes made or taken, charts, diagrams, photographs, worksheets, or anything else which was used to test the seized material be produced for inspection.

I know that this list is extensive and I am sure that those items that are most important will be provided as soon as possible and that we can agree on when all of the others should be provided. I would, however, request that you produce "Jencks" statements/material of any and all witnesses you intend to call as witnesses within a reasonable time before any motion hearing or trial in order to avoid any possible recesses and delays in those proceedings, pursuant to Fed. R. Crim. P. 26.2(d).

Similarly, pursuant to Federal Rule of Criminal Procedure 26.2 please provide the transcripts of any testimony, including grand jury testimony where your witness has previously testified, and we request the production of these transcripts upon completion of

the witness' testimony in any matter mentioned in 26.2 (g).

I will be happy to meet with you at a mutually convenient time and location to facilitate your turning over the materials requested above to the extent not previously provided. In addition, I would appreciate a written reply and response to this request to the extent that the Government is unable or unwilling to comply with the above.

Your prompt attention to the foregoing is appreciated, and if you have any questions, please contact me at your convenience.

Thank you for your anticipated cooperation in these requests.

Very truly yours,

STOBBS LAW OFFICES

BY: John D. Stobbs II

JDSII:cw
cc: Tilden Sprague

U.S. Department of Justice

United States Attorney
Southern District of Illinois

Nine Executive Drive,
Fairview Heights, Illinois 62208

(618) 628-3700
FAX (618) 628-3772
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January 11, 2008

John D. Stobbs II
307 Henry St.
Suite 211
Alton, IL 62002

Re: United States v. Tilden B. Sprague
Criminal No. 07-30192-JPG

Dear Mr. Stobbs:

In our telephone conversation yesterday, you mentioned the possibility of seeking a protective order to allow you to receive a copy of the electronic evidence in this case. The government is prohibited by law from turning over material that constitutes child pornography. 18 U.S.C. § 3509(m) is the relevant statute. While the government cannot turn the electronic evidence over to you, we will make every effort to make the materials available for your inspection or for inspection by any experts or other professionals working on your behalf. I know that you are busy with other matters for the immediate future, but I look forward to discussing this matter further with you at your convenience.

Sincerely,

RANDY G. MASSEY
Acting United States Attorney

DONALD S. BOYCE
Assistant United States Attorney

DSB

Exhibit
B

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JOHN D. STOBBS, II

(618) 462-8484
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February 22, 2008

Mr. Tildon Sprague
5208 River Aire Drive
Godfrey, Illinois 62035

RE: U.S.A. v. Sprague
No. 07-CR-30192-JPG-DGW

Dear Mr. Sprague:

Enclosed please find the following Motions:

1. Motion for Equal Access to Discovery and for a Protective Order;
2. Motion for Bill of Particulars;
3. Motion for Additional Discovery; and
4. Motion to Continue.

From a strategic standpoint I'd like to have the Judge rule on the above Motions and then be given time to prepare a Motion to Suppress and other Motions attacking the forfeiture and way in which you were charged.

In the interim I'd like for you to see a psychologist who specializes in sexual disorders. Dr. Heller recommended someone who in turn recommended Dr. David Clark who I will contact later today. I'd like for you to begin seeing another doctor—along with Dr. Heller—so that we can make a strong pitch at the appropriate time that you are not a sexual predator in any way.

If you have any questions regarding the foregoing please contact me at your convenience.

Very truly yours,

John D. Stobbs II

JDSII:ms
enclosure
cc: Joshua Sprague

Motions

3:07-cr-30192-JPG-DGW USA v. Sprague

U.S. District Court

Southern District of Illinois

Notice of Electronic Filing

The following transaction was entered by Stobbs, John on 2/22/2008 at 9:27 AM CST and filed on 2/22/2008

Case Name: USA v. Sprague
Case Number: 3:07-cr-30192
Filer: Dft No. 1 - Tilden B Sprague
Document Number: 26

Docket Text:
MOTION for Protective Order by Tilden B Sprague. (Attachments: # (1) Exhibit A, # (2) Exhibit B)(Stobbs, John)

3:07-cr-30192-1 Notice has been electronically mailed to:

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Document description: Exhibit A
Original filename:n/a
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Document description: Exhibit B
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[b77e405997d6665350b2db9d0cb868a03b6567e554998acdebe0e7a932edf095e585
ba2bb587f97e7bb08a881b04360acf508190121ae1f6c99c5b25a192a710]]

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