

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA :
 :
 vs. : No.
 :
 :

MOTION TO COMPEL GOVERNMENT TO ANNOUNCE, IN ADVANCE
OF TRIAL, WHETHER IT INTENDS TO USE POST-ARREST AND/OR
POST CONSPIRACY STATEMENTS (REACTED OR OTHERWISE) OF
CO-DEFENDANTS AND INCORPORATED MEMORANDUM OF LAW

NOW COMES the defendant, by and through counsel, and respectfully moves this Honorable Court for the entry of an order directing the government to announce well in advance of the trial whether it intends to use post-arrest or post-conspiracy statements (reacted or otherwise) of codefendants and/or alleged co-conspirators. As grounds therefore, defendant would show as follows:

1. Several people have been arrested in this indictment. Defendant may have made a statement following his arrest. It is likely that other codefendants and/or arrestees likewise may have made statements. Thus far, defendant has not received copies of any defendant's statement. Defendant has no way of knowing whether other defendants have made statements with respect to the allegations in this indictment which purport to either inculcate or exculpate him. Defendant is entitled to know now (not during trial) of the existence vel non of such statements and whether the government intends to use any such statements.

2. As this Court well knows, absent a prior announcement by the government, it is likely that a Burton v. United States, 391 U.S. 123 (1968), problem may arise during trial. The purpose of pretrial motions is to eliminate as much as possible evidentiary and discovery problems prior to the commencement of the trial.

3. Even a "properly" reacted statement may, in a close case result in reversible error if admitted at trial. See United States v. Danzy, 594 F.2d 905 (2d Cir.), cert. denied, 99 S. Ct 2179 (1979). Defendant is entitled to know in advance what evidence will be presented against him in order to avoid "trial by ambush." See United States v. James, 495 F.2d 434, 436 (5th Cir. 1974); see also, United States v. Herberman, 583 F.2d 222 (5th Cir. 1978).

4. Granting the within motion will not prejudice or hamper government. Denying the within motion will preclude the defendant from meaningfully exercising his right to effective assistance of counsel and his right to confront and cross-examine the government's case against him.

WHEREFORE, the defendant prays that this Honorable Court will enter its order directing the government to announce in advance of trial whether it intends to use post-arrest or post-conspiracy statements (reacted or otherwise).

This, the _____ day of _____, 1998.

101 S. Elm Street, Suite 210
Greensboro, NC 27401
(336) 333-5455

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing on the below-mentioned attorney by mailing a copy of the same to the following address:

M
Assistant United States Attorney
P. O. Box 1858
Greensboro, NC 27402

This, the _____ day of _____, 1998.

