

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

UNITED STATES OF AMERICA :
 :
 vs. : No. [REDACTED]
 [REDACTED] :
 :

MOTION PURSUANT TO 18 U.S.C. SECTION 3504 FOR
DISCLOSURE OF ELECTRONIC OR OTHER SURVEILLANCE AND
FOR ESTABLISHING EVIDENCE UNDER 18 U.S.C. SECTION 2518
(8)(d), (9) AND (10), AND MEMORANDUM OF LAW IN SUPPORT THEREOF

NOW COMES the defendant, by and through counsel, and moves this Honorable Court to enter an order compelling the government to disclose the following:

1. Any and all voice records, tapes, mechanical or electronic recordings, logs, records or memoranda of any electronic or other surveillance:

- (a) of any wire or oral communications to which the above named defendant was a party;
- (b) of any wire or oral communications at any place in which the above-named defendant has any property right or any other nexus of use and reasonable expectation of privacy;
- (c) of any wire or oral communications at any place put under surveillance for the purpose, in whole or in part, of gathering evidence or leads against the defendant in this case;

- (d) of any wire or oral communications at any place where the defendant was at the time of this surveillance;
- (e) of any wire or oral communication which the defendant in this case is named or otherwise referred to;
- (f) of any wires, the contents of which evidence transfers of money;
- (g) of any wire or oral communications intercepted pursuant to warrant or application in which the defendant's name appears, or which warrant or application was based upon investigatory memoranda, etc., in which defendant's name appears.

2. Any and all actual voice records, tapes, memoranda, letters and articles of any electronic or other surveillance of any wire or oral communications to which any attorney for the accused, his or her agents, or employees, was a party and any conversation at which said attorney, his or her agents, or employees, were present.

3. The demand for disclosure under Paragraphs 1 and 2 includes any wire or oral communications, logs, records, etc.:

- (a) to which the parties to that conversation may

have allegedly consented;

(b) which revealed the existence of said conversations but not the contents;

(c) which were undertaken by a private person or corporation in addition to any governmental agency.

4. For any electronic or other surveillance as described in 1 through 3 above for which there are no voice records, tapes, mechanical or electrical recordings, logs, memoranda, records, letters or articles, the names and business addresses of the persons who conducted said surveillance or who have knowledge of said surveillance.

5. For any electronic or other surveillance requested in 1 through 4 above for which this Court might deny the demand for voice records, tapes, mechanical or electrical recordings, logs, memoranda, records, letters or articles of same, the existence and circumstances of same; "circumstances" is meant to include date and place of the surveillance, and duration of the surveillance, the manner in which it was conducted, and all other relevant facts.

6. Demand is also made for any and all applications, affidavits, authorizations, orders, memoranda and other papers submitted in support of applications for executive,

administrative, or judicial approval of such surveillance as described above, and all opinions and decisions responsive thereto or relating to the surveillance described above.

7. The aforementioned demand seeks not only disclosure of evidence presently known to the government, but also that which in the exercise of due diligence may or should become known during the course of further proceedings.

8. The defendant further requests an entry of an order requiring the government to inquire of all Federal, State and local agencies that conduct electronic surveillance to determine whether there has been any electronic surveillance as described above.

9. The defendant further requests the entry of an order requiring the government's response to this motion (a) to be unequivocal; (b) to include any surveillance described above (not just that which the government concedes is unlawful); (c) to include any telephones and premises used by the defendant; (d) to be under oath; (e) to be made by responsible government officials in a position to know directly the results of the aforesaid inquiry; (f) to certify that no other government agencies are involved in the current investigation or have been involved in other investigation relating to the defendant himself.

10. Without the above-requested inquiry and response entered in the record of the above-styled action, defendant cannot be protected in his right to be free from unlawful electronic and other surveillance, nor can defendant determine the parameters of the Motion to Suppress to be filed herein.

11. If such techniques have been used, the defendant requests that the government afford the defendant's attorney(s) with a true, complete and correct copy of any such recordings or interceptions, together with the authority for making such interception or recording, an accurate transcript thereof, and with any log reflecting the date that the recordings or interceptions were made, the names of the governmental agents who participated in the recordings or interceptions and the identity of all speakers on the recordings or interceptions. The defendant also seeks copies of all documents relative to any court-ordered eavesdropping, intercept or homing orders which are known to the government as being relevant to the charges herein;

12. Defendant further requests that the government:

- (a) Allow the inspection of any and all electronic surveillance equipment used by the United States in this case for the surveillance of this defendant, the codefendants and/or alleged

co-conspirators or defendant's attorneys. Said equipment is to include, but not be limited to, homing devices, beepers, body bugs, shotgun mikes, telephone taps or other listening devices.

(b) State whether or not any radio messages were intercepted from the defendant by any government agent or agency, and further state what radio frequencies and what types of radio equipment were used by the United States officials. Further, furnish a transcript of all radio messages intercepted, if any.

(c) Furnish copies of any and all radio logs made by officials of the United States Government who were involved in the investigation leading to the arrest of the defendant.

13. In support of this motion, the defendant relies on the authority contained in 18 U.S.C. § 3504, which specifically provides in subsection (a)(1), for making demands for said evidence. That section also requires that the government in this case affirm or deny the existence and/or occurrence of the eavesdropping. Further constitutional authorities relied on are the Fourth, Fifth, Sixth and Ninth Amendments to the Constitution;

Rule 16(a)(1) and (b), Federal Rules of Criminal Procedure; 18 U.S.C. §§ 2511 and 2515; Gelbard v. United States, 408 U.S. 41 (1972); Alderman v. United States, 394 U.S. 165 (1969).

14. In Alderman v. United States, 394 U.S. 165 (1969), the court held that a person is aggrieved, so as to have standing, by any illegal surveillance on his or her premises and, therefore, a person may object to overhearing not only of his or her own conversations on or off the premises, but also the conversations of others on their premises whether or not they were present or participated therein.

The Alderman case also outlined the procedures to be followed in considering claims that any of the government's evidence "grew out of" (was "tainted" by) illegally overheard conversations. First, disclosure is required of the records of all conversations to which the accused has standing. If the prosecution is unwilling to make such a disclosure, the case must be dismissed or the subpoena quashed.

15. It is clear that a claim regarding surveillance of the accused's attorney(s) really concerns the witness' Sixth Amendment rights and together provides the necessary standing. Russo v. Byrne, 409 U.S. 1219 (1972) (Douglas, J.); United States v. Alter, 482 F.2d 1016, n. 16 (9th Cir. 1973); Beverly v. United States, 468 F.2d 732 (5th Cir. 1972); United States v.

Coplon, 191 F.2d 749 (D.C. Cir. 1951), cert. denied, 342 U.S. 926 (1952); c.f. Hoffa v. United States, 385 U.S. 293, 300 (1966). The same is true where the overheard conversation involves neither the accused nor the attorney, but two other persons involved in the defense of the accused's case and covered by the attorney-client privilege. See United States v. Seale, 461 F.2d 345, 364 (7th Cir. 1972) (interception in a criminal case of communication between a representative of the client and a representative of the attorney, held to be a link in the chain of attorney-client privileged communications).

Respectfully submitted, this _____ day of _____,
1998.

WILLIAM C. INGRAM
First Assistant Federal Public Defender
North Carolina State Bar # [REDACTED]
[REDACTED]
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.

WILLIAM C. INGRAM
First Assistant Federal Public Defender