

FILED

JAN 15 2009

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY JCB DEPUTY CLERK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

DAVID WINKLER,

Defendant.

*
*
*
*
*
*
*
*

CRIMINAL NO. SA-07-CR-253-XR

ADVANCE NOTICE OF IMPEACHMENT EVIDENCE OF DEFENSE EXPERT

TO THE HONORABLE DISTRICT JUDGE XAVIER RODRIGUEZ:

The United States of America, by and through the United States Attorney for the Western District of Texas and the undersigned Assistant United States Attorney files this pleading and would respectfully show the Court as follows:

I.

The undersigned received this week two transcripts of federal trials in Louisiana at which defense expert Joseph Castille testified. The attached exhibits A and B show the testimony of Mr. Castille. The first transcript reflects a trial date of August 21, 2007. The second transcript occurred yesterday, January 14, 2009 and was ordered on an expedited basis¹.

II.

The federal trial transcripts speak for themselves and reflect the impeachment of Mr. Castille as to his truthfulness. The underlying matter involves Mr. Castille's suspension and firing from the Louisiana Attorney General's Office and his subsequent Louisiana State Bar applications.

¹ In fact, the cover sheet contains a typo with respect to the year, but the second page reflects the correct year.

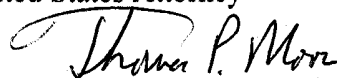


Yesterday's transcript is particularly complete and includes the district judge's subsequent admonition to Mr. Castille (outside the presence of the jury). See Attachment B. The United States of America respectfully tenders both transcripts to this Court to inform the Court of the situation, allow the Court to review the transcripts, and apprise the Court that it too will impeach Mr. Castille as to his untruthfulness using these transcripts.

Respectfully submitted,

JOHNNY SUTTON
United States Attorney

By:



THOMAS P. MOORE
Assistant United States Attorney
State Bar No. 14378320
601 N.W. Loop 410, Suite 600
San Antonio, Texas 78216
TEL. (210) 384-7150
FAX (210) 384-7135

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**


UNITED STATES OF AMERICA)	
)	
)	
v.)	Criminal No. 3:08CR414-HEH
)	
STEVEN GERSTENFELD,)	
)	
Defendant.)	

ORDER
(Rule to Show Cause)

THIS MATTER is before the Court pursuant to an oral motion by Defendant to issue a Rule to Show Cause as to Mark Vassel, an expert witness retained by Defendant. Vassel was under subpoena to appear at a hearing scheduled for Monday, December 22, 2008. Vassel appeared at the hearing, but left the hearing before being excused by the Court. As Vassel was still under subpoena, it is hereby ORDERED that he appear at this Court on **February 12, 2009 at 2:00 p.m.** to show cause why he should not be held in contempt for his failure to remain at the hearing until being excused by the Court.

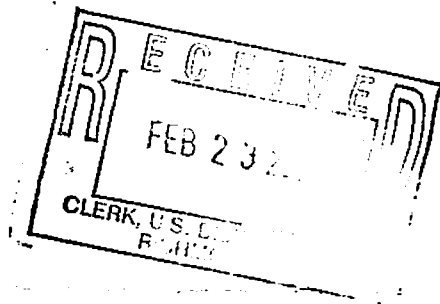
It is so ORDERED.

The Clerk is directed to send a copy of this Order to all counsel of record and to Mark Vassel.

 _____ /s/
Henry E. Hudson
United States District Judge

Date: Dec 23 2008
Richmond, Virginia

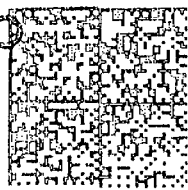
Mark T. Vassel
398 W. Bagley Rd.
Suite 212
Berea, OH 44017



3:08CR414

CLERK'S OFFICE
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
701 EAST BROAD STREET, SUITE 3000
RICHMOND, VIRGINIA 23219-3528
OFFICIAL BUSINESS

4401741312 0020
23219@fbi



Hasler

016H16503775

\$00.420

02/12/2009

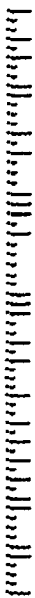
Mailed From 23219

US POSTAGE

NIXIE 441 SE 1 78 02/18/09

RETURN TO SENDER
ATTEMPTED - NOT KNOWN
UNABLE TO FORWARD

BC: 23219187250 *0250-04797-12-38



**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**


UNITED STATES OF AMERICA)
)
)
v.) Criminal No. 3:08CR414-HEH
)
STEVEN GERSTENFELD,)
)
Defendant.)

ORDER
(Continuing Hearing on Rule to Show Cause)

In an Order dated December 23, 2008, the Court issued a Rule to Show Cause as to Mark Vassel, an expert witness retained by Defendant, and ordered him to appear in this Court on February 12, 2009, at 2:00 p.m. The Court hereby CONTINUES the hearing on the Rule to Show Cause until **March 2, 2009, at 2:00 p.m.** If the Defendant decides to proceed to trial, however, the hearing on the Rule to Show Cause will be continued to a later date to allow the trial to take place on March 2, 2009, at 9:30 a.m. as scheduled.

It is so ORDERED.

The Clerk is directed to send a copy of this Order to all counsel of record,
Mark Vassel, Todd Stone, Esq., and Craig Cooley, Esq.

 _____ /s/
Henry E. Hudson
United States District Judge

Date: Feb 10, 2009
Richmond, Virginia

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Criminal Division

UNITED STATES OF AMERICA

V.

Criminal No. 3:08CR414-HEH

STEVEN GERSTENFELD

MOTION TO DISMISS SHOW CAUSE

COMES NOW the Defendant, by Counsel, and hereby moves to dismiss the Show Cause issued by the Court, and in support thereof states as follows:

1. On December 22, 2008, Mr. Mark Vassel was called to testify for the defense in the case of United States of America v. Steven Gerstenfeld. After his testimony and the testimony of the government's witness, Mr. Vassel left the courtroom to catch a flight back to Cleveland, OH.
2. Although defense counsel initially indicated a desire to call an additional witness, after returning from parking her car she decided to rest and not present any additional evidence. (December 22, 2008 Transcript; Page 2)
3. On December 23, 2008 when Court resumed, defense counsel informed the Court that Mr. Vassel had left early to catch his flight and that he had not been excused from his subpoena. The Court apparently believed that Mr. Vassel had accepted service of the subpoena and that the return had been filed with the Court. (December 23, 2008 transcript; page 2)
4. A subpoena had in fact been issued in November for Mr. Vassel's appearance at a December 5th Court date. It appears that no subpoena was ever issued for the December 22nd Court date.
5. The subpoena issued for the December 5th Court date was never served nor did Mr. Vassel ever become aware of it, as it was sent to an old office address where he no longer had contact with the occupants. The subpoena was returned without service.
6. The address listed on the subpoena where service was attempted was: 398 W. Bagley Road, Suite 212 Berea, Ohio. Vassel's company had moved from that location on or about October 31, 2008. The keys to that office had been turned in to the landlord and he no longer had access to that office.

7. Based on the assumption that Mr. Vassel was compelled to be present by service of a subpoena, the Court then issued a show cause for Mr. Vassel for leaving Court without being released from his “subpoena”.
8. In fact, Mr. Vassel was not there under any compulsory process of a subpoena.
9. Deborah Baron is Mr. Vassel’s front desk receptionist/secretary. Neither Deborah nor any other employee of Midwest, has accepted service of any subpoena and she is available to testify to the same.
10. On Monday March 2, 2009, the show cause hearing was scheduled to be heard by the Court. Because Mr. Vassel was aware that the weather forecast called for heavy snow, he and Deborah Baron drove to Richmond, VA a day early to avoid a complication with the airport potentially closing.
11. They each stayed in a hotel room and incurred over \$2,000 of expenses including travel time. Court was ultimately cancelled because of the inclement weather and Mr. Vassel and Ms. Baron returned to Cleveland.
12. In addition to the expense Mr. Vassel has incurred as a result of the show cause, he has also suffered the embarrassment of having his show cause posted on a competing expert’s website, where this “expert” warns about the potential “horror stories” involved with hiring another expert.

Because Mr. Vassel was in fact not compelled to be present in Court on December 22nd, and because of the distance and expense involved with returning to Court for a show cause hearing, the defendant Respectfully Moves this Honorable Court to take judicial notice of the fact that no subpoena was ever served on him and to Dismiss the Show Cause against him.

RESPECTFULLY SUBMITTED,

MARK VASSEL

BY: _____ /s/

Todd B. Stone
Stone and Cardwell, PLC
101 Shockoe Slip, Suite K
Richmond, VA 23219
804.359.0000
fax: 804-257-5555
VSB: 33708

CERTIFICATE OF SERVICE

I Todd B. Stone hereby acknowledge that a copy of the forgoing Motion to Dismiss the Show Cause has been delivered, by electronic transmission, to the following on the 17th day of March, 2009:

Brian R. Hood, Esquire
Office of the U.S. Attorney
600 E Main St
Suite 1800
Richmond, VA 23219
(804) 819-5400
Email: brian.hood@usdoj.gov

Debra D. Corcoran, Esquire
1650 Willow Lawn Dr
Ste 300
Richmond, VA 23230
804-651-2224
Fax: 804-673-4350
Email: LawyerDDC@aol.com

Lawrence Lloyd Muir, Jr.
Office of the Attorney General
900 E Main St
Richmond, VA 23219
804-786-9487
Fax: 804-786-1726
Email: lmuir@oag.state.va.us

Jonathan Holland Hambrick
Office of the U.S. Attorney
600 E Main St
Suite 1800
Richmond, VA 23219
(804) 819-5400
Email: jay.h.hambrick@usdoj.gov

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF VIRGINIA
3 Richmond Division

4 UNITED STATES OF AMERICA }
5 v. }
6 STEVEN GERSTENFELD } Criminal Case No.:
7 } 3:08 CR 414

8 December 22, 2008

9
10 **EXCERPT REGARDING SHOW CAUSE AS TO MARK VASSELL DURING**
11 **MOTIONS HEARING - DAY 1**
12 **BEFORE THE HONORABLE HENRY E. HUDSON**
13 **UNITED STATES DISTRICT COURT JUDGE**

14 APPEARANCES:

15 Brian R. Hood, Esquire
16 OFFICE OF THE UNITED STATES ATTORNEY
17 600 East Main Street
18 Suite 1800
19 Richmond, Virginia 23219

20 Counsel on behalf of the United States

21 Debra D. Corcoran, Esquire
22 DEBRA D CORCORAN ESQUIRE
23 1650 Willow Lawn Drive
24 Suite 300
25 Richmond, Virginia 23230

Counsel on behalf of the Defendant

26 KRISTA M. LISCIO, RMR
27 OFFICIAL COURT REPORTER
28 UNITED STATES DISTRICT COURT

1 THE COURT: Any rebuttal evidence, Ms. Corcoran?

2 MS. CORCORAN: Your Honor, may I ask for a brief
3 recess? I believe my car may be towed any minute.

4 THE COURT: We sure don't want that to happen.

5 How many witnesses do you propose to call in
6 rebuttal?

7 MS. CORCORAN: One rebuttal, Your Honor.

8 THE COURT: How long do you think that's going to
9 take?

10 MS. CORCORAN: Maybe 15 minutes to a half hour.
11 Not long.

12 THE COURT: All right. Okay, we'll stand in
13 recess. I'll give you about 10 minutes, and we'll come
14 back and resume, all right.

15 MS. CORCORAN: Thank you, Your Honor.

16 (Recess taken.)

17 THE COURT: All right, Ms. Corcoran, who will be
18 your rebuttal witness?

19 MS. CORCORAN: I understand it's late, and so
20 we'll just argue the case when the time is appropriate,
21 so we can move on to the next issue. Whatever the
22 Court wants.

23 THE COURT: Well, as far as your motion to exclude
24 the evidence, I'm prepared to hear you on that. Go
25 ahead.

1 MS. CORCORAN: Thank you, Your Honor.

2 THE COURT: I've been sitting here listening to
3 evidence for three hours. Go right ahead.

4 MS. CORCORAN: Yes, you have. Thank you, Your
5 Honor.

6
7 (Conclusion of excerpt regarding show cause as to Mark
8 Vassell during motions hearing - Day 1.)

9
10 REPORTER'S CERTIFICATE

11
12 I, Krista M. Liscio, RMR, Notary Public
13 in and for the Commonwealth of Virginia at large,
14 and whose commission expires March 31, 2012, Notary
15 Registration Number 149462, do hereby certify that
16 the pages contained herein accurately reflect the
17 notes taken by me, to the best of my ability, in the
18 above-styled action.

19 Given under my hand this 9th day of February,
20 2009.

21
22 _____
23 Krista M. Liscio, RMR
24 Official Court Reporter
25

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF VIRGINIA
3 Richmond Division

4 UNITED STATES OF AMERICA }
5 v. } Criminal Case No.:
6 STEVEN GERSTENFELD } 3:08 CR 414
7 }

8 December 23, 2008
9

10 **EXCERPT REGARDING SHOW CAUSE AS TO MARK VASSELL DURING**
11 **MOTIONS HEARING - DAY 2**
12 **BEFORE THE HONORABLE HENRY E. HUDSON**
13 **UNITED STATES DISTRICT COURT JUDGE**

14 APPEARANCES:

15 Brian R. Hood, Esquire
16 OFFICE OF THE UNITED STATES ATTORNEY
17 600 East Main Street
18 Suite 1800
19 Richmond, Virginia 23219

20 Counsel on behalf of the United States

21 Debra D. Corcoran, Esquire
22 DEBRA D CORCORAN ESQUIRE
23 1650 Willow Lawn Drive
24 Suite 300
25 Richmond, Virginia 23230

Counsel on behalf of the Defendant

24 KRISTA M. LISCIO, RMR
25 OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT

1 MS. CORCORAN: One of the reasons why I wanted to
2 make a preliminary motion, and I believe your clerk may
3 have informed you, yesterday afternoon about 5:30 to
4 6:00, I asked the Court if I could go outside to move
5 my vehicle. And at that time, it was my assumption
6 that Mr. Vassell was likewise moving his vehicle.
7 Mr. Vassell was under subpoena, has been accepted, and
8 the return was filed with this Court.

9 As it turns out because Mr. Vassell was supposed
10 to be in the courtroom to hear the testimony of
11 Mr. Thompson, and then with Mr. Thompson to offer
12 rebuttal witness -- testimony, you may recall that
13 prior to my going out to move my car and us recessing I
14 said I was going to be offering a rebuttal witness, as
15 I just assumed he was going to be testifying to what he
16 heard.

17 THE COURT: And you came back in and you said due
18 to the lateness of the day, you decided to put on no
19 evidence and you wanted to argue, and we went forward.

20 MS. CORCORAN: I believe I said I have no rebuttal
21 testimony. I believe those were my words, but I could
22 be mistaken.

23 THE COURT: Well, what import would I have from
24 that other than the fact that you chose to put on none?

25 MS. CORCORAN: At the time, Your Honor, I was not

1 aware -- and Mr. El-Amin and myself both called
2 Mr. Vassell, and he indicated that he was merely trying
3 to find a parking spot. And as it turns out, it's my
4 understanding, although I can't ascertain from the
5 airport, obviously, that Mr. Vassell got on a plane and
6 left back for Ohio. And at -- that caught me
7 completely off guard. He checked out of his hotel.
8 And, clearly, if this was his intent, I don't know.

9 THE COURT: Had you indicated to him,
10 Ms. Corcoran, that he could leave?

11 MS. CORCORAN: No, sir. Not at all.

12 THE COURT: Do you want me to issue a Bench
13 warrant for his arrest, or do you want to issue a rule
14 to show cause?

15 MS. CORCORAN: I think probably a warrant, Your
16 Honor. I think that would be appropriate.

17 I did seek advice this morning from a former
18 magistrate judge on how to deal with this sort of
19 thing. I was very concerned about it.

20 THE COURT: All right. If you will give the
21 information to the Clerk of the Court, I'll decide what
22 type of process should issue. But one way or the
23 other, we'll bring him back before this Court and deal
24 with him appropriately.

25 MS. CORCORAN: Yes, sir. Now, Your Honor, I am

1 asking for a motion to continue in order to offer
2 rebuttal testimony of Mr. --

3 THE COURT: You've already closed your case and
4 I've already ruled. It's already over with. You can't
5 do that, Ms. Corcoran, and you know that.

6 MS. CORCORAN: Well, Your Honor, I still have to
7 put on the record about --

8 THE COURT: I understand that. And I appreciate
9 that.

10 MS. CORCORAN: Yes, sir.

11 THE COURT: But once you close your case like
12 that, and I have ruled, you're not going to go back and
13 reopen it. I'm just not going to allow it. I sat here
14 four hours yesterday and heard stuff.

15 MS. CORCORAN: Yes, sir. Yes, sir.

16 THE COURT: We're going to move on in this case.

17 MS. CORCORAN: Yes, sir.

18 THE COURT: So I'm going to hear you this morning.
19 And I recessed yesterday to give you a chance to
20 refresh your recollection on some principles of law.
21 Are you ready to go this morning?

22 MS. CORCORAN: Yes, I am. And I think the Court
23 will be quite pleased on a few of the matters.

24 For the other matters that we are proceeding on,
25 with the exception of Mr. Gerstenfeld's motion to

1 suppress his statements -

2 THE COURT: Right.

3 MS. CORCORAN: - I am submitting on the pleadings
4 to the Court.

5 (Conclusion of excerpt regarding show cause as to Mark
6 Vassell during motions hearing - Day 2.)

7
8 REPORTER'S CERTIFICATE

9
10 I, Krista M. Liscio, RMR, Notary Public
11 in and for the Commonwealth of Virginia at large,
12 and whose commission expires March 31, 2012, Notary
13 Registration Number 149462, do hereby certify that
14 the pages contained herein accurately reflect the
15 notes taken by me, to the best of my ability, in the
16 above-styled action.

17 Given under my hand this 9th day of February,
18 2009.

19
20 _____
21 Krista M. Liscio, RMR
22 Official Court Reporter
23
24
25

CRIMINAL PROCEEDINGS — U.S. DISTRICT COURT, EASTERN DISTRICT OF VA, RICHMOND DIVISION

JUDGE: HUDSON

DOCKET NO. 3:0BCR414

REPORTER: LISCIO, OCR

DATE: 4-16-09

UNITED STATES OF AMERICA

COUNSEL

v.

- 1. Steven Gerstenfeld
- 2. (petitioner)
- 3. _____
- 4. _____

- 1. Debra D. Corcoran
- 2. _____
- 3. _____
- 4. _____

APPEARANCES: Respondent Todd B. Stone (✓)
 GOVERNMENT DEFENDANT WITH COUNSEL (✓) DEFENDANT WITHOUT COUNSEL ()
 DEFENDANT NOT PRESENT () WAIVER OF APPEARANCE FILED ()

BAIL STATUS: DEFENDANT ON BOND (✓) DEFENDANT INCARCERATED () BOND NOT SET ()

TYPE OF PROCEEDINGS: ARRAIGNMENT () REARRAIGNMENT/GUILTY PLEA () MOTIONS ()
 OTHER: _____ (✓)

PRELIMINARY PROCEEDINGS: WAIVER OF INDICTMENT EXECUTED, FILED ()
 CRIMINAL INFORMATION FILED ()
 OTHER: _____ ()

ARRAIGNMENT PROCEEDINGS:

	DEFENDANT(S)	WFA	FA	GUILTY	NG	JURY	WAIVED	30-DAY WAIVER
1								
2								
3								
4								

GUILTY PLEA PROCEEDINGS: DEFENDANT WITHDREW PLEA OF NG AS TO COUNT(S) _____ ()
 DEFENDANT REARRAIGNED ON COUNT(S) _____ ()
 PLEA BARGAIN AGREEMENT FILED ()
 STATEMENT OF FACTS FILED () USED AS SUMMARY ()
 DEFENDANT ENTERED PLEA(S) OF GUILTY AS TO COUNT(S) _____ ()
 COURT ACCEPTED PLEA () GOVERNMENT SUMMARIZED EVIDENCE ()
 JUDGMENT: DEFENDANT GUILTY AS CHARGED IN COUNT(S) _____ ()
 PRESENTENCE REPORT ORDERED () P.S.I. WAIVED ()
 SENTENCING GUIDELINE ORDER ENTERED ()

BOND HEARING PROCEEDINGS: DEFENDANT CONTINUED ON PRESENT BOND (✓) DEFT REMANDED ()
 BENCH WARRANT TO ISSUE () MOTION DENIED ()

OTHER PROCEEDINGS: See Attached

CASE CONTINUED TO: May 20, 2009 AT 9:00 A.M. FOR sentencing

CASE SET: 2:00 BEGAN: 2:04 ENDED: 2:21 TIME IN COURT: :17

MINUTE SHEET, CON'T.

United States of America v. Steven Gerstenfeld

Criminal Action No. 3:08CR00414-HEH

Matter came on for hearing on Motion to Dismiss Show Cause filed by respondent Mark Vassel.

Petitioner's Motion to Strike Affidavit of Mark Vassel filed 4/15/2009.
Argument heard; motion denied.

Counsel for respondent heard.
Counsel for petitioner heard.
Findings given from the Bench.
Rule of Show Cause dismissed by Court.
Objection noted by petitioner.