

EXHIBIT C

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UNITED STATES DISTRICT COURT
FOR
THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

UNITED STATES OF AMERICA
vs.
MILTON E. MCGREGOR, et al.
DOCKET NUMBER:
2:10-CR-186-MHT

MOTION TO SUPPRESS
CONTINUING

* * * * *

HEARD BEFORE: The Hon. Wallace Capel, Jr.
HEARD ON: Marh 22, 2011
HEARD AT: Montgomery, Alabama.
APPEARANCES: Peter J. Ainsworth, Esq.; Louis Franklin, Esq.;
Joe Espy, III, Esq.; G. Douglas Jones, Esq.; Ronald Wise, Esq.;
Benjamin J. Espy, Esq.; William M. Espy, Esq.; Willian N. Clark,
Esq.; Henry L. Gillis, Esq.; Thomas M. Goggans, Esq.; Sam
Heldman, Esq.; William Mills, Esq.; Jack Sharmon, Esq.; Tom
Butler, Esq.; Mark Englehardt, Esq.; Josh McKown, Esq.; David
McKnight, Esq.

MITCHELL P. REISNER, RMR, CRR
Official Federal Court Reporter
U. S. District Court for the Middle District of Alabama
(334) 235-8218 / TopStenoman@yahoo.com

1 WHEREUPON, THE FOLLOWING PROCEEDINGS WERE HEARD BEFORE THE HON.
2 WALLACE CAPEL, JR. ON MARCH 22, 2011 AT THE UNITED STATES
COURTHOUSE IN MONTGOMERY, ALABAMA:

3

4 THE COURT: Good morning.

5 Be seated, please.

6 Do we have any preliminary matters, or are we ready to
7 proceed? Mr. Espy, these are your exhibits, correct?

8 MR. BENJAMIN ESPY: Yes, Your Honor. We have a
9 notebook, and we do have some preliminary matters we'd like to
10 discuss.

11 THE COURT: Do you want these to be admitted into the
12 record?

13 MR. BENJAMIN ESPY: They are just potential exhibits at
14 this time.

15 THE COURT: What preliminary issues do we have at this
16 time?

17 MR. BENJAMIN ESPY: We believe that additional
18 documents that should have been turned over by the Government,
19 have not been turned over. Exhibit sixty-one, you will see
20 there, Your Honor, an E-mail from Mr. Carr to Ms. Morris on June
21 the second, two thousand and ten. This is one of the E-mails
22 that was provided last Thursday night. If you'll notice, under
23 the subject R E attorney calls, there is an attachment which is
24 required of privileged lists dot X L S. There's an attachment
25 to this E-mail.

1 You will see that Mr. Carr is providing Ms. Morris the
2 various iterations of the attorney list. There is a great deal
3 of testimony about this case. We're entitled to those, and the
4 Government has failed to provide them.

5 In addition to that, Your Honor, with regards to the
6 testimony of Agent Doell preparing for the hearing, we notice
7 that Agent Doell testified on page one sixty-three of day one
8 from the transcript, what he testified about was how he did his
9 job and the way he communicated with other agents. And what he
10 said was, we had topics that were discussed that they needed to
11 be made aware of as they became available so they could be
12 briefed to the judge who is supervising the case. As well as
13 somebody who could be identified. So if you could identify
14 someone by the voice, I kept that on a written log and you would
15 pass that on to the monitor you were relieving.

16 We have repeatedly requested, since the inception of
17 this case, written logs. We have repeatedly been told there are
18 no written logs.

19 THE COURT: Let's get a response.

20 MR. OLSHAN: Good morning, Your Honor.

21 THE COURT: Good morning. How are you.

22 MR. OLSHAN: Good, sir.

23 With respect to the privilege, that attachment has been
24 provided to the Defense. I believe we provided it as an exhibit
25 to other motion responses of the lists that were posted in --

1 THE COURT: Do you have the list with you?

2 MR. OLSHAN: I do not.

3 THE COURT: Those documents with you? What I don't
4 want to do, and what I'm not going to do, is go through another
5 hearing because the document isn't coming up. So let's take ten
6 minutes if we need to. I want you to consult with the other
7 attorneys here.

8 On document sixty-one, it does certainly suggest there
9 are other documents. Let's check it to make sure we have
10 everything here today. All right?

11 MR. OLSHAN: Thank you, Your Honor.

12 THE COURT: All right.

13 (Whereupon, a recess was taken.)

14 COURTROOM DEPUTY CLERK: Remain, seated. Court is
15 again in session.

16 THE COURT: All right. Mr. Olshan, do we have the
17 documents necessary now?

18 MR. OLSHAN: No, Your Honor. We verified and have been
19 able to agree that the exhibit section to the other motion
20 response is the same as to the attachment of that E-mail.

21 THE COURT: Are we ready to proceed?

22 MR. OLSHAN: May we approach the bench?

23 (Whereupon, an off the record bench conference was
24 between all counsel and the Court was held.)

25 THE COURT: All right. Mr. Olshan, the other documents

1 that you've just showed me that the Defense counsel have not
2 been privy to are documents that either should have been
3 provided as a part of this hearing or documents -- if there was
4 a question about whether they should have been provided or
5 whether they are privileged in some way should have been
6 provided for the Court to make a determination on.

7 This seems to be an ongoing problem that we are having
8 with material that is supposed to be provided by the Government;
9 that it has not been provided or that the Government is making
10 the determinations of what's relevant and what's not. That is
11 not for the Government to do. That's my job to do.

12 Now we are sitting here again having to have all of
13 these people ready to go forward and again we're not ready to go
14 forward. Even though last week Mr. Ainsworth was telling me it
15 was a mistake or an oversight, he was told to be ready and again
16 we are in that same situation. It's unacceptable.

17 I want any documents that are in any way relevant to
18 these wiretaps to be provided to these attorneys today. They
19 are not going to be able to go through that stack of documents
20 that you have right now.

21 What is our schedule for Thursday and Friday?

22 (Whereupon, the Court conferred with the courtroom
23 deputy clerk off the record and out of the hearing of the other
24 courtroom participants.)

25 THE COURT: We're going to reconvene on Thursday.

1 If the Government has not provided the documentation,
2 the Court's going to think very strongly -- not even think
3 about, there will be sanctions. I've had it up to here with it.
4 This has gone past the point of mistake or anything else. I
5 told you before this is not a way to run a prosecution, but this
6 is going over the line. And it's not going to happen.

7 It's not going to happen. Those documents better be
8 turned over today by the end of the day and ready to proceed on
9 Thursday. Am I clear?

10 MR. JOE ESPY: Judge, may I approach?

11 THE COURT: You may.

12 MR. JOE ESPY: When you say by the end of the night --

13 THE COURT: I mean by five o'clock.

14 MR. JONES: Your Honor, I have a clarification as well.
15 The Court, in the last few days, the documents that the
16 Government had been searching for are only documents that they
17 deemed discoverable as *Jenks* type material of an agent who
18 testified. The Court used the term "relevant documents" to the
19 wiretaps, which is what we would ask, that all documents --

20 THE COURT: And that's what I'm talking about. I'm
21 talking about logs. Any of those types of things that are
22 relevant to these hearings so we can make a determination and
23 are able to rule on it. This is making us have numerous
24 hearings that are unnecessary.

25 MR. JONES: We would also request that the Government

1 produce a witness who is in charge of doing this search so that
2 we can cross examine that person about the search and their
3 criteria.

4 THE COURT: If necessary, then we will have that
5 hearing.

6 All right. Nine o'clock Thursday.

7 MR. WISE: Your Honor, if any of the materials the
8 Government is supposed to turn over today by five o'clock are
9 going to be redacted, we would ask that the Court receive the
10 unredacted copy to determine whether or not there is relevant
11 material.

12 THE COURT: Will do.

13 MR. WISE: Thank you.

14 THE COURT: Mr. Espy, this is your notebook?

15 MR. BENJAMIN ESPY: Yes, Your Honor.

16 THE COURT: All right.

17 (Whereupon, the proceedings were concluded.)
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COURT REPORTER'S CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter as prepared by me to the best of my ability.

I further certify that I am not related to any of the parties hereto, nor their counsel, and I have no interest in the outcome of said cause.

Dated this 22nd day of March 2011.

/s/ Mitchell P. Reisner
Official Court Reporter
Registered Merit Reporter
Certified Realtime Reporter

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