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

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CR. NO. 2:10cr186-MHT-001
	)	
MILTON E. McGREGOR, et al.	)	
	)	
Defendants.	)	

MOTION FOR ORDER PROVIDING ACCESS TO WIRETAP MATERIALS

Defendant Milton McGregor respectfully moves for an order providing him with copies of, or other access to, all intercepted communications, wiretap applications, orders, and associated information as discussed in this motion. This motion is made under 18 U.S.C. § 2518(8)(d), 18 U.S.C. § 2518(9), and any other applicable source of law.[1]

McGregor has received notices from the Government, apparently pursuant to U.S.C. § 2518(8)(d), that the Government applied for and received orders authorizing the interception of wire and electronic communications. It appears, from those notices, that the interceptions involved multiple conversations and communications to which McGregor was a party. It also appears that he was likely a person named in the application(s) or order(s).

By this motion, McGregor seeks all communications that were intercepted pursuant to any order in which he was a person named, or pursuant to any order granting

[1] McGregor also notes his position that the Government can and should produce these materials to him without waiting for an order from this Court requiring such disclosure. It is common and appropriate for the Government to produce both tapes and transcripts of all intercepted communications, in discovery. *See, e.g., U.S. v. Howell*, 514 F.2d 710, 713 (5th Cir. 1975) ("Also, complete transcripts of all recorded conversations were made available to the defense during pre-trial discovery.")

any application in which he was a person named. McGregor also seeks any other intercepted communication to which he was a party, even if he was not named in the relevant application or order. McGregor further seeks all applications (including all attachments or exhibits thereto, and all evidence of any sort that was offered or received in support of such applications) and all orders, which gave rise to the interception of any such communication.

This Court has the authority to provide McGregor with all of these materials pursuant to 18 U.S.C. § 2518(8)(d) (providing that the Court "may in [its] discretion make available to such person or his counsel for inspection such portions of the intercepted communications, applications and orders as the judge determines to be in the interest of justice.") *See United States v. Donovan*, 429 U.S. 413, 420 n.6, 97 S.Ct. 658, 664 n.6 (1977). Furthermore, the Government is required by § 2518(9) to turn over the applications and orders at least 10 days before any trial or hearing at which it will seek to use any such intercepted communication; and this Court has the inherent authority, as part of its case-management authority, to accelerate that obligation.

McGregor also requests that the Court order disclosure to McGregor of any and all "call logs" or similar documents, containing or reflecting information about the calls that were intercepted – including the date and time of each conversation, who the parties to each conversation were, and what telephones were involved in each conversation. The Court has the power to order such disclosure, and it would be appropriate to do so, because it would help in terms of both fairness and efficiency; furthermore, there is no valid reason to give the Government the advantage of being the only party that has such

information. *See U.S. v. Franco*, 585 F.Supp.2d 980 (N.D. Ohio 2008) (ordering disclosure of such "call logs" and explaining at length the reasons why such disclosure was in the interest of justice).

The Government has no legitimate interest in keeping such communications, information, applications and orders secret from McGregor. The communications covered by this motion are primarily – perhaps exclusively – communications that took place over McGregor's telephones, and/or communications to which he was a party. There is no reason why these matters should be kept from him. Delaying his access to these materials would do nothing more than give the Government an inappropriate trial advantage, a trial-by-ambush.

It is likely that there were hundreds of communications covered by this motion; the wiretaps seem to have covered a period of more than a month, and multiple phones apparently were tapped. It will take significant trial-preparation time for McGregor to go through all of the disclosed information including the communications. In order to enhance the chances of a fair trial, he should be allowed as much time as practicable for this task.

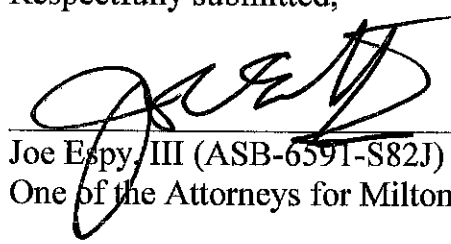
Moreover, allowing him prompt access to this information would mean that he could, then, bring any challenge to the wiretaps (such as any suppression motion, *see* 18 U.S.C. § 2518(10)) in adequate time for the Court to make a fully-informed and considered ruling on such challenges.

There are reported cases that can be cited for the proposition that disclosure under 18 U.S.C. § 2518(8)(d) is rare *while an investigation is still ongoing and before the*

movant has been indicted. See, e.g., Application of United States Authorizing Interception of Wire Communications, 413 F. Supp. 1321, 1328 (E.D. Pa. 1976). Such cases, of course, would not support the Government in opposing this motion. In the pre-indictment context, the movant's legitimate need for the information is lessened, and the Government's legitimate interest in withholding it is heightened, as compared to this post-indictment case. In this case, since an indictment has been returned, McGregor's interest in obtaining this information is important and is not at all speculative; and likewise any legitimate interest in secrecy that the Government may have had, during the investigatory phase, no longer exists.

For these reasons, McGregor respectfully asks the Court to order the disclosures requested above.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following electronically and via regular mail, postage prepaid and properly addressed on this the 5 day of October, 2010.

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