

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA)	Criminal No. 1:05CR225
)	
v.)	Hon. T.S. Ellis, III
)	
STEVEN J. ROSEN,)	
)	
KEITH WEISSMAN,)	
)	
Defendants.)	

GOVERNMENT'S OPPOSITION TO DEFENDANTS' MOTION
FOR AN ORDER AUTHORIZING THE EXPERT WITNESS TESTIMONY
OF DEFENSE EXPERT J. WILLIAM LEONARD

The United States, by its undersigned counsel, respectfully submits this Opposition to Defendants' Motion for an Order Authorizing the Expert Witness Testimony of recently retired and now special government employee J. William Leonard. In a cursory eight-paragraph motion, the defendants request that this Court issue an order "authorizing" the testimony of J. William Leonard, recently a United States government executive branch official, the Director of the Information Security Oversight Office at the National Archives ("ISOO"). The defendants do not provide any basis for the Court to issue such an order, nor do they provide any authority for the Court to issue such an order. Indeed, the defendants' motion establishes that such an order would be contrary to the terms of 18 U.S.C. § 207(a)(1) and (j)(6)(A). This Court should deny defendants' motion.

BACKGROUND

Mr. Leonard is the former Director of ISOO, and was an employee of the executive branch of the United States government. Mr. Leonard is, according to the defendants' Motion, currently a "special Government employee." In 2006 the prosecution team in this case interviewed Mr. Leonard as Director of ISOO in connection with this case, including a discussion of the facts of this case.

DISCUSSION

The applicable ethics laws prohibit Mr. Leonard from serving as an expert witness for the defense in this matter. Employees of the executive branch are permanently restricted from making any communication or appearance in any United States court on behalf of any other person, on any matter in which the United States is a party or has a direct and substantial interest, in which the employee participated personally and substantially as such officer or employee and which involved a specific party or parties at the time of such participation. 18 U.S.C. § 207(a)(1)(A)-(C). Further, executive branch employees are restricted for a two-year period from appearing in any United States court on behalf of any other party in matters in which the United States is a party or has a direct and substantial interest and which such employee knew or reasonably should have known was actually pending under his official responsibility as such employee within a period of one year before the termination of his employment with the United States and which involved a specific party or parties at the time it was pending. 18 U.S.C. § 207(a)(2)(A)-(C). Finally, persons who are covered by 18 U.S.C. §207(a)(1) may not, except pursuant to court order, serve as an expert witness for any other person (except the United States)

in the matter from which they are conflicted. These ethics laws provide both criminal and civil penalties for violations. 18 U.S.C. § 216. Knowing violations of the law can be punished by not more than one year in jail and fine, and willful violations may be punished by up to five years in prison and fines. *Id.*

Mr. Leonard is subject to the restrictions of 18 U.S.C. § 207(a)(1) and is subject to a permanent restriction on appearing as an expert witness on behalf of any other party in this matter except the United States.¹ Mr. Leonard participated personally and substantially not only in this very matter, but in this very litigation in his discussion with the government prosecution team. Indeed, the defendants' Motion suggests that both the National Archives Ethics officials and the Office of Personnel Management found that he was subject to these restrictions and directed Mr. Leonard to the restrictions on expert testimony. See Def. Mot. At 5.

The defendants' motion provides no basis, grounds or authority for this Court to issue an extraordinary Order essentially granting Mr. Leonard an exception to the applicable ethics laws. Indeed, the importance of the restrictions in this statute is apparent by imposing a *permanent* restriction on this type of activity – a lifetime ban. Defendants have not put forth and there does

¹ The statutory restrictions enumerated herein may likewise apply to other expert witnesses the defense intends to present.

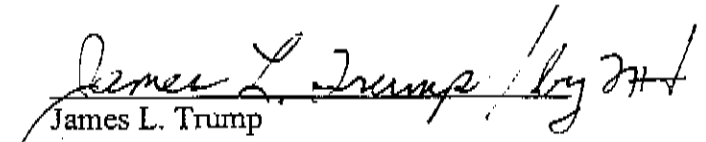
not exist any reason for this Court to contravene the express statutory requirements of 18 U.S.C.

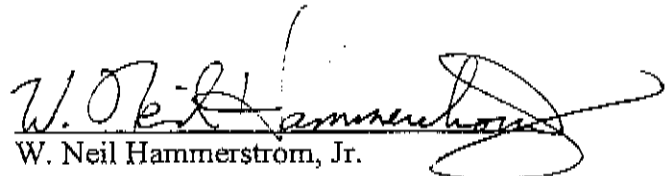
§ 207. Accordingly, this Court should deny the defendants' motion.

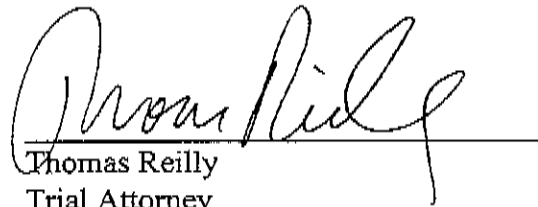
Respectfully submitted,

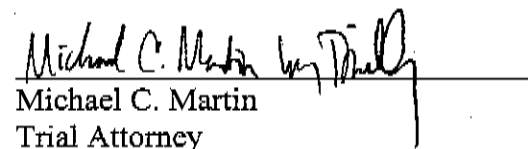
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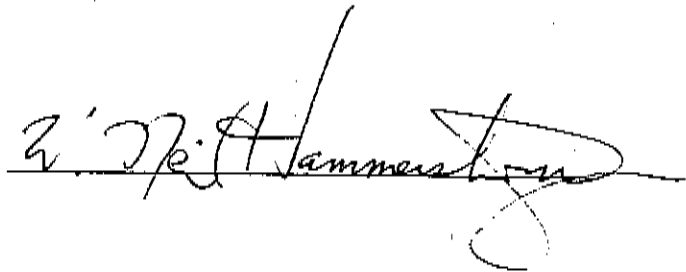
March 31, 2008

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing "Government's Opposition to Defendants' Motion for an Order Authorizing the Expert Witness Testimony of Defense Expert J. William Leonard" was sent by facsimile transmission this 31st day of March 2008 to:

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A handwritten signature in cursive script, appearing to read "E. J. Hammerstein", is written over a horizontal line.