

Joseph & Hollander LLC

Lawyers and Counselors

Reply To:
1508 SW Topeka Blvd.
Topeka, KS 66612-1887
Tel: (785) 234-3272
Fax: (785) 234-3610

Stephen M. Joseph
Ross A. Hollander
Julia A. Craft
Michelle K. Moe
Edward L. Robinson
Boyd R. McPherson
Bonnie M. Boryca

M. Kristine Savage
Christopher M. Joseph
Sonya L. Strickland
Bach T. Hang
Benjamin A. Reed
Casey Y. Meek
Jess W. Hoeme

Wichita Office:
500 North Market St.
Wichita, KS 67214-3514
Tel: (316) 262-9393

Lawrence Office:
123 West 8th St., Suite 204
Lawrence, KS 66044-2687
Tel: (785) 856-0143

TO: House Judiciary Committee
FROM: Christopher M. Joseph
DATE: January 31, 2012
RE: Opposition to HB 2464

I am following up on my offer from yesterday's testimony to provide copies of the protective orders entered by Judge Wilson and a federal Judge in the Second Circuit. Both are attached to this memorandum.

A reasonable compromise is to mandate that the judge enter a protective order placing reasonable limitations on the handling of the evidence, such as done by Judge Wilson.

After thinking about yesterday's testimony by the proponents, I have one follow-up comment. I absolutely agree with the testimony of Assistant Attorney General Amy Handley that child pornography evidence is like cocaine. Possession of either is illegal under both state and federal law. There are no exceptions for defense attorneys or defense experts. There are also no exceptions for prosecutors, judges, KBI lab analysts, or the police. There is no law that requires defense experts to examine cocaine evidence at a law enforcement facility. In the rare cases where such an examination is requested and approved, a sample of the cocaine is shipped to the independent laboratory for examination, usually via Federal Express. Why then should there be a law that treats child pornography differently than cocaine?

If the Legislature intends to require defense experts to go to police facilities with all of their computer equipment to conduct forensic examinations, I suggest that the same restriction should be placed on all evidence. Why not make the same requirement for drug evidence, or any physical evidence? And why make an exception for the KBI or the prosecution's experts? Let's keep all evidence locked down and secure in evidence rooms at all times. Or maybe such a rule is unnecessary? Maybe the proponents are trying to solve a problem that does not exist.

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

FILED BY CLERK
KS. DISTRICT COURT
THIRD JUDICIAL DIST.
TOPEKA, KS.

STATE OF KANSAS,

2010 APR 13 A 10:52

Plaintiff,

v.

Case No. 09 CR 2342

MARK GIESEKE,

Defendant.

PROTECTIVE ORDER

On April 2, 2010, the court ordered the state to produce evidence related to computer hard drives seized from the defendant's residence and alleged to contain child pornography. Specifically, the Court ordered the production of reports from the state's forensic computer examinations, the case and image files from the examinations, and copies of bit-for-bit images of certain hard drives seized from the defendant's home. The evidence is to be produced subject to the following restrictions:

1. The state shall provide the material to the Court, who shall maintain custody and control of such material until the completion of this case, except as provided below.
2. Only Christopher Joseph ("Defense Counsel,"), the Defense Counsel's computer expert and one associate to be designated by counsel, (collectively, the "Authorized Parties") are permitted to review the Material while it is in the custody of the Court. In the event that Defense Counsel determines that there is

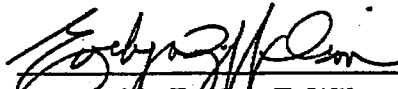
a need for anyone other than the Authorized Parties to review the Material, Defense Counsel shall notify the Court and government in writing as to the name of any such individual and the purpose of the contemplated review.

3. Each of the Authorized Parties shall submit an affidavit to the Court, with copies to the government, indicating that they are aware of the restrictions set forth in this protective order and will abide by such restrictions at all times. Additionally, Defense counsel shall provide hard drives of the appropriate size and quantity (the "Hard Drives") to the state to be used in making all necessary copies. Once the aforementioned affidavits and Hard Drives have been received, the state will copy the Material on to the Hard Drives to the Court.
 4. The defendant shall not be permitted to view or examine the Material at any time without prior notice to the government and the authorization of the Court.
 5. The court is responsible for ensuring that no unauthorized individual views or examines the Material, which shall be kept in a locked cabinet accessible only to the Court. Further, the court shall ensure that possession of the Hard Drives containing the Material remain with the Court at all times, except when being reviewed by the Authorized Parties. Further, the Authorized Parties are strictly prohibited from further copying, distributing or displaying any of the Material, except as necessary for a forensic examination by the defense computer expert.
-

6. An Authorized party shall not willfully print, destroy, erase, or alter the Material that he or she receives. However, once Defense Counsel's computer expert, who is an Authorized Party, has completed the indexing of the files, an Authorized Party may print copies of the indexing information, but not the video or image files themselves. The defendant shall be permitted to review the printed indexing information.
 7. The computer used to analyze the Material shall be a "stand alone" computer without internet access, which is not connected to any network, and only connected to a local printer.
 8. All Authorized Parties shall sign a written acknowledgment that they have received and understand the contents of this protective order prior to reviewing the Material. A copy of this protective order shall be provided to the court and filed with the district court clerk.
 9. At the conclusion of the case against the defendant before this Court, the Hard Drives shall be returned to the state. Further, Defense Counsel shall permit the state to examine the computer used to review the Hard Drives to ensure that no Materials remain copied or saved.
 10. The Court and the Authorized Parties are hereby protected from prosecution while possessing, in accordance with the restrictions set forth in this protective order, the Material that is the subject of this case.
-

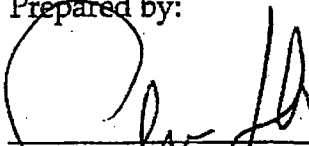
11. No later than 30 days following the conclusion of this case in this Court, Defense Counsel shall certify to the Court that, to the best of his knowledge and belief, all requirements set forth in the provisions of this protective order have been satisfied. Additionally, if Defense Counsel learns of any violation of the restrictions of this protective order, she shall immediately notify the Court.

IT IS SO ORDERED, this 12 day of April, 2010.




Honorable Evelyn Z. Wilson
District Court Judge

Prepared by:



Christopher Joseph
Counsel for Mr. Gieseke

Approved as to form:



Keith Henderson
Counsel for the State

C/m

MB:JD
F.#2005R02030

FILED
IN CLERK'S OFFICE
US DISTRICT COURT E.D.N.Y.
★ SEP 19 2006 ★

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

PM. _____
TIME A.M. _____

----- X

UNITED STATES OF AMERICA

PROTECTIVE ORDER

- against -

Cr. No. 05-0272 (CBA)

LEONARDO NALINI,

Defendant.

----- X

On August 18, 2006, the Court ordered the government, subject to certain restrictions to be set forth in a protective order signed by the Court, to provide the Court with copies of the mirror images of the hard drives and computer media containing the child pornography video and image files seized from the defendant LEONARDO NALINI (the "Child Pornography Material"). Accordingly, the Court hereby sets forth the following restrictions:

1. The government shall provide the Child Pornography Material to the Court, who shall maintain custody and control of such material until the completion of this case, except as provided below. As used herein "the Court" refers to the Honorable Carol B. Amon, United States District Judge, her law clerks and her courtroom deputy/case manager.

2. Only Mildred Whalen, Esq. ("Defense Counsel"), the Defense Counsel's computer expert and one associate to be designated by counsel, (collectively, the "Authorized Parties") are permitted to review the Child Pornography Material while it is in the custody of the Court. In the event that Defense Counsel determines that there is a need for anyone other than the Authorized Parties to review the Child Pornography Material, Defense Counsel shall notify the Court and government in writing as to the name of any such individual and the purpose of the contemplated review.

3. Each of the Authorized Parties shall submit an affidavit to the Court, with copies to the government, indicating that they are aware of the restrictions set forth in this protective order and will abide by such restrictions at all times. Additionally, Defense Counsel shall provide two, blank 120 gigabyte hard drives (the "Hard Drives") to the government. Once the aforementioned affidavits and Hard Drives have been received, the government will copy the Child Pornography Material on to the Hard Drives, password protect the Hard Drives and provide the Hard Drives to the Court. The government will provide Defense Counsel with the password(s) to the Hard Drives.

4. The defendant shall not be permitted to view or examine the Child Pornography Material at any time without prior notice to the government and the authorization of the Court.

5. The Court is responsible for ensuring that no unauthorized individual views or examines the Child Pornography Material, which shall be kept in a locked cabinet accessible only to the Court. Further, the Court shall ensure that possession of the Hard Drives containing the Child Pornography Material remain with the Court at all times, except when being reviewed by the Authorized Parties. Further, the Authorized Parties are strictly prohibited from further copying, distributing or displaying any of the Child Pornography Material.

6. An Authorized Party shall not willfully print, copy, destroy, erase, or alter the Child Pornography Material that he or she receives. However, once Defense Counsel's computer expert, who is an Authorized Party, has completed the indexing of the video and image files, an Authorized Party may print copies of the indexing information, but not the video or image files themselves. The defendant shall be permitted to review the printed indexing information.

7. The computer used to analyze the Child Pornography Material shall be a "stand alone" computer without internet access, which is not connected to any network, and only connected to a local printer.

8. All Authorized Parties shall sign a written acknowledgment that they have received and understand the contents of this protective order prior to reviewing the Child Pornography Material. A copy of this protective order shall be

kept with the Child Pornography Material during such time as they remain with the Court.

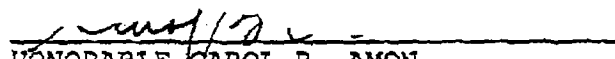
9. At the conclusion of the case against the defendant, before this Court, the Hard Drives shall be returned to the government. Further, Defense Counsel shall permit the government to examine the computer used to review the Hard Drives to ensure that no Child Pornography Materials were copied or saved.

10. The Court and the Authorized Parties are hereby protected from prosecution while possessing, in accordance with the restrictions set forth in this protective order, the Child Pornography Material that is the subject of this case.

11. No later than 30 days following the conclusion of this case in this Court, Defense Counsel shall certify to the Court that, to the best of her knowledge and belief, all requirements set forth in the provisions of this protective order have been satisfied. Additionally, if Defense Counsel learns of any violation of the restrictions of this protective order, she shall immediately notify the Court.

Dated: Brooklyn, New York
September 18, 2006

/S/ Hon. Carol B. Amon


HONORABLE CAROL B. AMON
UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF NEW YORK



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

JD
F.#2005R02030

*One Pierrepont Plaza
Brooklyn, New York 11201*

*Mailing Address: 147 Pierrepont Street
Brooklyn, New York 11201*

September 15, 2006

By Hand and Facsimile

The Honorable Carol B. Amon
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

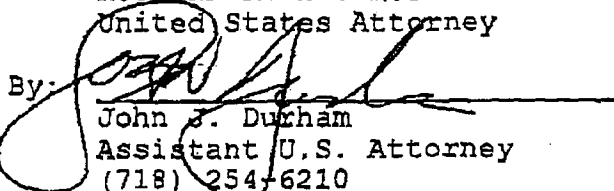
Re: United States v. Leonardo Nalini
Criminal Docket No. 06-0272 (CBA)

Dear Judge Amon:

Pursuant to the discussion at this morning's status conference in connection with the above-referenced child pornography case, the government attaches a revised version of the protective order hereto.

Respectfully submitted,

ROSLYNN R. MAUSKOPF
United States Attorney

By: 
John J. Durham
Assistant U.S. Attorney
(718) 254-6210

cc: Clerk of the Court (CBA) (by ECF)

Mildred Whalen, Esq. (by ECF and facsimile)