

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

In the Matter of the Search of:)	
)	Case No. 06-231-M-01
RAYBURN HOUSE OFFICE BUILDING)	Chief Judge Thomas F. Hogan
ROOM NUMBER 2113)	
WASHINGTON, D.C. 20515)	UNDER SEAL

**CONSENT MOTION TO RESET THE BRIEFING AND HEARING SCHEDULE
RELATING TO CONGRESSMAN WILLIAM JEFFERSON’S
MOTION FOR RETURN OF PROPERTY**

For the reasons stated below, the United States of America, by and through its counsel, the United States Attorney for and in the District of Columbia, urges this Court to extend the time within which the government may file its response to the Motion for Return of Property to the close of business on Tuesday, May 30, 2006, and the time within which Congressman Jefferson may file a reply to the close of business on Monday, June 5, 2006. If the motion is granted, the Court would reset the hearing for a date and time convenient to the Court, but no earlier than the week of June 5, 2006. Counsel for Congressman Jefferson consents to the relief requested herein.

STATEMENT

1. On Thursday, May 18, 2006, based on information developed over a number of years from a wide-ranging investigation into bribery and related offenses, the government filed in this Court an application and affidavit for a warrant to search Mr. Jefferson’s congressional office for paper documents and computer files related to the bribery scheme. *See generally* Aff. ¶¶ 1-157.

The application and affidavit also reported that—in an effort to “minimize the likelihood that any potentially politically sensitive, non-responsive items” in the Congressman’s office would be subject to discovery—the government would implement a of “special search procedures” to prevent

investigators and the prosecution team from obtaining paper documents and computer files “that may fall within the purview of the Speech or Debate Clause * * * or any other pertinent privilege.” Aff. ¶ 136. Specifically, the application provided for a designated “Filter Team” to review the seized items to see whether they fell within the purview of the Speech or Debate Clause, and to provide those items that were possibly privileged to the Mr. Jefferson’s counsel within 20 days of the search, *id.* ¶ 142, and the Filter Team would ask this Court to review the records for a final determination about privilege, *id.* ¶ 143. If instead the Filter Team determined that the records were unprivileged, it would provide copies to the prosecution team and to Jefferson’s counsel within 10 days of the search. *Id.* ¶ 141. The application provided for similar procedures relating to computer files. *Id.* ¶ 151.

2. Late in the afternoon on Thursday, May 18, this Court granted the government’s application, issued the warrant, and ordered that the search be conducted on or before Sunday, May 21. *See* Aff., pp. 1-3. On Saturday, May 20, federal agents executed the warrant and searched Mr. Jefferson’s office for the paper records and computer files enumerated in the Schedules. In an effort to minimize disturbance of Mr. Jefferson’s office, the agents conducted imaging and verification of computer files instead of removing the computers themselves. During the search, the agents excluded Mr. Jefferson, his counsel, and counsel for the House of Representatives. The agents ultimately seized copies of several computer files and two boxes of paper records. *See generally* Inventory of Seized Items; *see also* CR-15 Vision Quest Search Event Log.

3. a. On Wednesday, May 24, Mr. Jefferson filed in this Court his motion for return of the seized materials under Rule 41 of the Federal Rules of Criminal Procedure. In addition to the return of property, the motion sought “emergency * * * interim relief” in the form of an order

directing: “that the FBI and the Department Justice, and their agents and employees[,] be immediately enjoined from any further review or inspection of the seized items”; “that the seized items be sequestered and locked in a secure place”; and “that the supervisor(s) of the search team and the ‘Filter Team’ file a report with the court detailing which documents or electronic records have been reviewed and what steps have been taken to sequester the documents from further review pending further order of the court.” Mot. 1-2; *see* Mem. in Support 2-3.

b. On the afternoon of Thursday, May 25, the President personally issued a Memorandum to the Attorney General and the Solicitor General of the United States, directing the Solicitor General to take sole custody of the materials seized from Jefferson’s office and to sequester them from anyone outside of the Solicitor General’s office for 45 days. Specifically, the Memorandum ordered the Solicitor General to “(a) preserve and seal the [seized] materials”; “(b) ensure that no use is made of the materials”; and “(c) ensure that no person has access to the materials, except that Office of the Solicitor General personnel under the direct supervision of the Solicitor General may have the minimum physical access to the materials essential to the preservation of the materials.” Mem. 1. With this sequestration in place to maintain the status quo, the Memorandum (which was also copied to the Speaker of the House of Representatives) further directed that “[t]he Attorney General shall endeavor, and the House of Representatives is respectfully encouraged to endeavor, to resolve any issues relating to the materials through discussions between them in good faith and with mutual institutional respect and, if it should prove necessary after exhaustion of such discussions, through appropriate proceedings in the courts of the United States.” Mem. 1-2. In its concluding sentence, the Memorandum provided that it “shall expire on July 9, 2006.” Mem. 2. In a public Statement issued in conjunction with the Memorandum, the President

reiterated that the Memorandum “direct[ed] the Department of Justice to seal all the materials recovered from Congressman Jefferson’s office for the next 45 days and not to allow access to anyone involved in the investigation.” Statement 1.

c. Also on the afternoon of May 25, pursuant to the President’s Memorandum and Statement, the Office of the Solicitor General took sole custody of the materials seized from Jefferson’s office. The Solicitor General will now sequester them from anyone outside of his office, including, of course, all FBI agents and DOJ attorneys investigating or potentially prosecuting this case. Significantly, and because of the filtering procedures described in the warrant application and affidavit, *at no time* between the search and the Solicitor General’s assumption of custody *has any agent or attorney investigating or potentially prosecuting the case viewed any of the paper records or computer files seized from Jefferson’s office.*

d. Finally, and also on May 25, this Court ordered, *inter alia*, that the government respond to Mr. Jefferson’s motion for return of property “by no later than close of business on Friday, May 26, 2006.”

4. The prosecution team has not received any of the documents seized from Mr. Jefferson’s office.

ARGUMENT

5. The President has directed the Solicitor General to seal the seized documents and computer files and to deny all agents and attorneys access to them for 45 days. Moreover, no copies of the seized documents were provided to the prosecution team prior to the President’s order. Accordingly, there will be no “review or inspection of the seized items” for 45 days; “the seized items [have been] sequestered and locked in a secure place”; and, by way of this motion, the

government has advised the Court that no “documents or electronic records have been reviewed.”

Mot. 1-2.

6. It is appropriate to give the parties additional time to address the important constitutional questions he raises in his Motion for Return of Property. This motion is not made for reasons of delay. In that regard, if the government completes its response prior to Tuesday, May 30, it may file before that date. In light of all the foregoing facts, the Government requests, and counsel for Congressman Jefferson agrees, that the Court should Order the following:

- a. The Government’s opposition to the Motion for Return of Property shall be due on or before Tuesday, May 30, 2006.
- b. Congressman Jefferson’s reply shall be due on or before Monday, June 5, 2006.
- c. The hearing previously scheduled for May 30, 2006 shall be postponed to a date selected by the Court after June 5, 2006.
- d. As an agreed substitute for the procedures proposed by Congressman Jefferson in his Motion for Interim Relief, the Government shall comply with the procedures set forth in the President’s order, and shall maintain the materials under seal beyond the 45 days, if necessary, in accordance with its terms pending further Order of this Court.

CONCLUSION

FOR THE FOREGOING REASONS, the time for filing the Government's response should be extended to close of business on May 30, 2006. The time for filing Congressman Jefferson's reply should be extended to close of business on June 5, 2006. And the Court should reschedule the hearing on this motion for some time thereafter, as is the convenient to the Court. Finally, the Court should order the government to maintain the seized materials under seal in accordance with the terms of the President's order pending further order of this Court.

Respectfully submitted,

KENNETH L. WAINSTEIN
UNITED STATES ATTORNEY IN
AND FOR THE DISTRICT OF COLUMBIA

Michael K. Atkinson
Assistant United States Attorney
Bar No. 430517
555 4th Street, N.W.
Washington, D.C. 20530
Phone: (202) 616-3702
Fax: (202) 307-2304

DATED: May 26, 2006

CERTIFICATE OF SERVICE

This is to certify that this 26th day of May, 2006, a copy of the Consent Motion to Reset the Briefing and Hearing Schedule Relating to Congressman William Jefferson's Motion for Return of Property was served by email and hand-delivery on the following:

Robert P. Trout
Amy Berman Jackson
Trout Cacheris PLLC
1350 Connecticut Avenue, N.W.
Suite 300
Washington, D.C. 20036
rtrout@troutcacheris.com

Michael K. Atkinson