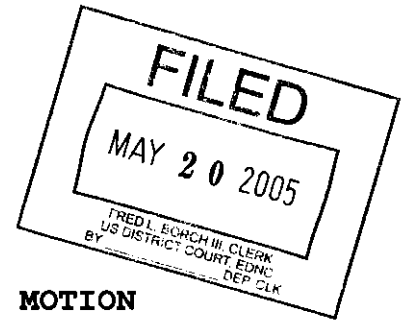


UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:04-CR-211-1BO



UNITED STATES OF AMERICA)
)
 v.)
)
 DAVID A. PASSARO)

**UNITED STATES' MOTION
FOR IN CAMERA REVIEW OF
TWO MANILA FOLDERS**

The United States of America, by and through the United States Attorney for the Eastern District of North Carolina, hereby moves the Court for an *in camera* review of the contents of two manila folders seized by the United States, and in the custody of the U.S. Marshal. The purpose of the review is to determine whether any of the documents contained in the two folders are covered by an attorney-client privilege held by defendant David A. Passaro ("Defendant").

1. On or about June 25, 2004, a black attache case belonging to Defendant was seized by the U.S. Marshal pursuant to a search warrant.

2. Based on a statement made by Defendant prior to the seizure - that the case contained "legal materials" - the United States walled-off the attache case from the prosecution team. Assistant United States Attorney Clay Wheeler was assigned to review the contents of the attache case.

3. AUSA Wheeler determined that the vast majority of the contents of the attache case were not subject to any attorney-client privilege. Defendant's attorney Joseph Gilbert reviewed the


contents AUSA Wheeler had determined to be non-privileged and agreed with that determination.

4. Out of an abundance of caution, AUSA Wheeler did not review the contents of two manila folders found in the *attache* case. Based on information provided by Defendant's attorneys, and by a review of non-privileged information found either on the folders themselves or the first page of the contents, AUSA Wheeler concluded those two folders may potentially contain attorney-client privileged documents.

5. The United States respectfully requests that the Court review the contents of these two manila folders *in camera* to determine whether they do in fact contain any documents covered by an attorney-client privilege held by the Defendant. The United States anticipates that the Court will require additional information from Defendant's attorneys in order to conduct this review.

Respectfully submitted, this 20th day of May, 2005.

FRANK D. WHITNEY
United States Attorney

BY: 
CLAY C. WHEELER
Assistant United States Attorney
Criminal Division

CERTIFICATE OF SERVICE

This is to certify that on the 20th day of May, 2005, a copy of the foregoing United States' Motion For In Camera Review of Two Manila Folders was placed in the United States mail, with postage provided, addressed as follows:

Mr. Joseph B. Gilbert
Federal Public Defender's Office
150 Fayetteville Street Mall, Suite 450
Raleigh, N.C. 27601



CLAY C. WHEELER
Assistant United States Attorney