IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	**:**	**CRIMINAL NO. 98-362**
v.	**:**	
CARLOS IVAN LLERA-PLAZA, WILFREDO MARTINEZ ACOSTA and VICTOR RODRIGUEZ	**:**	

GOVERNMENT'S MOTION FOR RECONSIDERATION OF THE COURT'S EXCLUSION OF FINGERPRINT IDENTIFICATION EVIDENCE AND FOR PERMISSION TO PRESENT LIMITED ADDITIONAL EVIDENCE

The United States of America, by its attorneys, Patrick L. Meehan, United States Attorney for the Eastern District of Pennsylvania, and Thomas R. Perricone, David H. Resnicoff, and Paul A. Sarmousakis, Assistant United States Attorneys, hereby moves for reconsideration of the Court's January 7, 2002 order limiting the testimony of fingerprint examination experts, and for permission to reopen the record. In support of this motion, the government states as follows:

In this case, the Court has entered an order excluding vital expert testimony regarding fingerprint identification. This ruling has a significant impact in this case, in which there is important fingerprint evidence linking the defendants (and exonerating others who were arrested) in the charged murders for hire.

Moreover, as the first judicial opinion, to our knowledge,[1] to ever so limit the

testimony of fingerprint identification experts, the Court's decision is of substantial national importance and could have a profound impact on the investigation and prosecution of crime. The logical implications of the Court's opinion undermine not only the admission of fingerprint evidence, which has been relied upon both in court and in non-judicial settings for nearly a century, but all manner of forensic opinion testimony.

The government respectfully submits that the Court's exclusion of fingerprint identification testimony is erroneous, and therefore urges the Court to reconsider the matter. In furtherance of such reconsideration, the government seeks leave to supplement our written submission on the issue as well as the evidentiary record.

The Court's order focuses the issue of concern to the Court. The Court held that fingerprints are unique and permanent, and also concluded that the government may present fingerprint experts to testify to the techniques used in producing or recovering the fingerprints in question and to point to "observed similarities and differences between a particular latent print and a particular rolled print." However, the Court expressed concern in its Opinion that actual identifications expressed by experts in the field have not sufficiently been proven reliable, and on that basis the Court excluded all testimony "expressing an opinion of an expert that a particular latent print matches or does not match, the rolled print of a particular person and hence is, or is not, the fingerprint of that person."

The government respectfully disagrees with the Court's conclusion on the basis of the present record, and submits that requiring proof of complete practitioner competence in the performance of a scientifically valid technique in order to allow admission of expert opinion is at odds with the rulings in Daubert v. Merrell Dow

Pharmaceuticals, 509 U.S. 579 (1993), and its progeny. The government is presently preparing a substantial analysis of this matter, which we request permission to file by Monday, January 28, 2002, in support of this motion for reconsideration.

Moreover, in response to the Court's ruling, the government is gathering substantial additional evidence demonstrating that, even if substantial practitioner proficiency is now found to be a necessary prerequisite for Daubert admissibility, fingerprint identification testimony meets that test. For example, the government has amassed proficiency testing conducted by the FBI laboratory of all of its fingerprint examiners for the past several years, which demonstrates that the FBI practitioner proficiency rate is over 99%.

Some of the Court's concerns, regarding matters such as proficiency, error rate, and peer review, may be addressed through citation to the lengthy Mitchell record. However, additional evidence created or gathered since the Mitchell hearing is also extremely probative, and the government believes that it may be presented in less than one court day. The government submits that, given the great significance of this case to all parties, and the overriding importance of this issue in the criminal justice system, it is appropriate for the Court to exercise its discretion to permit this brief reopening of the record. The government will further address in its memorandum the legal basis of this request to reopen the record.

Accordingly, in support of this motion for reconsideration, the government respectfully requests leave (1) to file a supporting memorandum by Monday, January 28,

2002, and (2) to supplement the evidentiary record at a hearing to be held at the convenience of the Court.

Respectfully submitted,

PATRICK L. MEEHAN
United States Attorney

THOMAS R. PERRICONE
Assistant United States Attorney

DAVID H. RESNICOFF
Assistant United States Attorney

PAUL A. SARMOUSAKIS
Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served a true and correct copy of the attached Motion by fax and first class mail, postage prepaid, on:

Gerald Stein, Esquire
Gerald A. Stein, P.C.
2727 Centre Square West
1500 Market Street
Phila., PA 19102

Jules Epstein, Esquire
Kairys, Rudovsky, Epstein & Messing
Suite 500
924 Cherry Street
Philadelphia, PA 19107

L. Felipe Restrepo, Esq.
Krasner & Restrepo
239 So. Camac Street
Philadelphia, PA 19107

_____
Thomas R. Perricone
Assistant United States Attorney

Date:_____