

\*\*\*\*\*TO BE FILED UNDER SEAL\*\*\*\*\*

FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

MAY 13 PM 2:58  
U.S. DISTRICT COURT  
N.D. OF ALABAMA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 V. )  
 )  
 ERIC ROBERT RUDOLPH, )  
 )  
 Defendant. )

CR00-S-422-S

EX PARTE PLEADING – TO BE PLACED UNDER SEAL

EX PARTE PLEADING – TO BE FILED UNDER SEAL

PURSUANT TO THE ORDER OF THIS COURT, THIS DOCUMENT REMAINS PRIVILEGED AND CONFIDENTIAL AND MUST NOT BE DISCLOSED OR INSPECTED BY ANYONE IN ACCORD WITH THE ATTORNEY-CLIENT PRIVILEGE, AKE V. OKLAHOMA, 470 U.S. 68, 83 (1985); UNITED STATES V. NOBLES, 422 U.S. 225 (1975), AMENDMENTS FIVE, SIX, EIGHT AND FOURTEEN OF THE CONSTITUTION OF THE UNITED STATES.



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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
V.	)	CR00-S-422-S
	)	
ERIC ROBERT RUDOLPH,	)	
	)	
Defendant.	)	

DEFENDANT'S EX PARTE APPLICATION FOR AN EX PARTE ISSUANCE OF A  
RULE 17(c) SUBPOENA FOR PHOTOGRAPHS  
FROM BIRMINGHAM POST-HERALD

COMES NOW the Defendant, Eric Robert Rudolph, by and through his undersigned counsel of record, pursuant to the Due Process Clause of the Fifth Amendment, the Compulsory Process Clause of the Sixth Amendment and Fed. R. Crim. P. 17(c), and hereby makes this ex parte pre-trial application for the issuance of Rule 17(c) subpoenas duces tecum for the documents set forth below which are both necessary and relevant to the Defendant's preparation for the Change of Venue Hearing. It is requested that the subpoena be returned to the Court or defense counsel by the date specified on the attached subpoenas duces tecum so that the requested information can be followed up on by defense investigators. The Defendant hereby requests that the attached Rule 17(c) subpoenas be issued to the following:

Birmingham Post Herald  
Attn: Jim Willis  
2200 4<sup>th</sup> Avenue North  
Birmingham, AL 35203

As grounds for the issuance of said subpoena, the Defendant states as follows:

The subpoena seeks the following information from the Birmingham Post-Herald:

“Copies of any and all photographs appearing in the Birmingham Post-Herald on January 29, 1998, taken in the general vicinity, or which depict the general vicinity, of the New Woman All Women Health Care Clinic located at 1001 17<sup>th</sup> Street South, Birmingham, Alabama.”

The defense needs the information requested due to the following circumstances:

On or about January 29, 1998, a bomb was placed near a walkway in the front of the New Woman All Women Health Care Clinic located at 1001 17<sup>th</sup> Street South, Birmingham, Alabama. At approximately 7:30 AM this bomb detonated killing Birmingham Police Officer Robert Sanderson. Upon information and belief, the Birmingham Post-Herald placed on the front page of its paper, a very large photograph of Officer Robert Sanderson which was taken after the explosion. Upon information and belief, this image was so disturbing and grotesque that the Birmingham Police Department requested strongly that the Post-Herald withdraw the image from the January 29, 1998, edition of the Post-Herald. Upon information and belief, the Post-Herald agreed to the request from law enforcement. The defense has searched the archives of the Birmingham Post-Herald. These archives show that the January 29, 1998, edition of the Post-Herald is the edited version and not the version that initially hit newsstands.

One of the issues that will be contested in the Change of Venue Hearing will be the nature and breadth of the media. Further, it is anticipated that the experts the defense presents will testify that visual images such as photographs are more powerful than text and that the more disturbing the image the more likely it will have a lasting impact.

This request is made *ex parte* due to the fact that in making this request it has been necessary for the defense to disclose our strategy for an attorney work-product. For this reason, the Government is not entitled to any of the information contained in this pre-issuance application for a Rule 17(c). U.S. v. Beckford, 964 F.Supp. 1010 (E.D.Va. 1997) (“Therefore, the Sixth Amendment supplies justification for interpreting Rule 17(c) to permit *ex parte* procedures respecting the issuance of pre-trial subpoenas duces tecum in the rare instance in which a defendant would be required to disclose trial strategy, witness identities or attorney work-product to the Government in his pre-issuance application.”)

Rule 17(c) provides in pertinent part:

**For Production of Documentary Evidence and of Objects. . . .**

The court may direct that books, papers, documents or objects designated in the subpoena be produced before the court at a time prior to the trial or prior to the time when they are to be offered in evidence and may upon their production permit the books, papers, documents or objects or portions thereof to be inspected by the parties and their attorneys.

The Defendant is aware that Rule 17(c) subpoenas are not meant to provide a means for discovery. For a subpoena to issue pursuant to Rule 17(c) the Defendant, “in order to carry [its] burden, must clear three hurdles: (1) relevancy; (2) admissibility; (3) specificity.” United States v. Nixon, 418 U.S. 683, 700 (1974). The information the Defendant requests is relevant to the issues to be decided at the Change of Venue hearing and would be admissible at such a hearing. The subpoena is specific in its request and should not be the cause of any confusion or misunderstanding from the recipient. The Defendant’s preparation for this hearing and in presenting reasonable arguments in favor

of a Change of Venue will be substantially impaired without the production of the information requested in the subpoena.

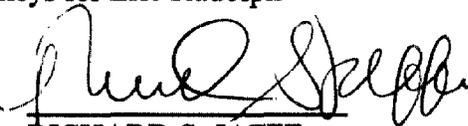
The Defendant is aware of its obligations to provide the Government with any documentary evidence it intends on relying. However, until the items that are due to be subpoenaed are viewed, the defense has no idea whether it will offer all, part, or none of the photographs the defense is attempting to subpoena. That portion of the photographs that the defense attempts to introduce at the hearing will be provided to the Government.

WHEREFORE, PREMISES CONSIDERED, the Defendant respectfully requests that this Honorable Court issue the subpoena requested ex parte, and to seal this pre-issuance application, as well as any subsequent Order related to the present motion.

RESPECTFULLY SUBMITTED,

RICHARD S. JAFFE  
WILLIAM M. BOWEN, JR.  
JUDY CLARKE  
EMORY ANTHONY, JR.  
MICHAEL BURT  
Attorneys for Eric Rudolph

By:

  
RICHARD S. JAFFE

OF COUNSEL:

JAFFE, STRICKLAND & DRENNAN, P.C.  
The Alexander House  
2320 Arlington Avenue  
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Facsimile: (205) 930-9809

OF COUNSEL:

WHITE, ARNOLD, ANDREWS & DOWD, P.C.  
2025 Third Avenue North, Suite 600  
Birmingham, Alabama 35203  
Telephone: (205) 323-1888  
Facsimile: (205) 323-8907

OF COUNSEL:

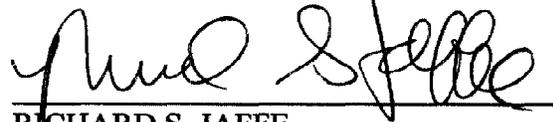
FEDERAL DEFENDERS OF SAN DIEGO, INC.  
225 Broadway, Suite 900  
San Diego, California 92101  
Telephone: (619) 544-2720  
Facsimile: (619)-374-2908  
LOCAL Telephone: (205) 930-9800

EMORY ANTHONY, JR.  
2015 1<sup>st</sup> Avenue North  
Birmingham, AL 35203  
Telephone: (205) 458-1100  
Facsimile: (205) 328-6957

MICHAEL BURT  
600 Townsend Street, Suite 329-E  
San Francisco, CA 94103  
Telephone: (415) 522-1508  
Facsimile: (415) 522-1506

CERTIFICATE OF SERVICE

THIS MOTION IS TO BE FILED UNDER SEAL  
AND  
WILL NOT BE SERVED UPON OPPOSING COUNSEL.

  
RICHARD S. JAFFE

# United States District Court

NORTHERN

DISTRICT OF

ALABAMA

## SUBPOENA IN A CRIMINAL CASE

UNITED STATES OF AMERICA V. ERIC ROBERT RUDOLPH

CASE NUMBER: CR00-S-422-S

TO:

JIM WILLIS  
BIRMINGHAM POST HERALD  
2200 4TH AVENUE NORTH  
BIRMINGHAM, AL 35203

YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE

COURTROOM

United States District Court  
U.S. Courthouse  
*101 Holmes Avenue N.E.*  
*Huntsville, Alabama 35801*

Honorable C. Lynwood Smith, Jr.  
DATE AND TIME *June 22, 2004*  
*June 22, 2004, 9:00 a.m.*

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):

COPIES OF ANY AND ALL PHOTOGRAPHS APPEARING IN THE BIRMINGHAM POST HERALD ON JANUARY 29, 1998, TAKEN IN THE GENERAL VICINITY, OR WHICH DEPICT THE GENERAL VICINITY, OF THE NEW WOMAN ALL WOMEN HEALTH CARE CLINIC LOCATED AT 1001 17TH STREET SOUTH, BIRMINGHAM, ALABAMA.

U.S. MAGISTRATE JUDGE OR CLERK OF COURT

*Henry D. Mathis*

(By) Deputy Clerk

*U. Berry*



DATE

*June 15, 2004*

ATTORNEY'S NAME, ADDRESS AND PHONE NUMBER:

Jaffe, Strickland & Drennan, P.C. 2320 Arlington Ave., Birmingham, AL 35205  
(205) 930-9800