

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Edward W. Nottingham

Criminal Case No. 05-cr-00545-EWN

UNITED STATES OF AMERICA,

Plaintiff,

v.

1. JOSEPH P. NACCHIO,

Defendant.

**TENDERED FOR FILING
MARCH 15, 2007**

Edward W. Nottingham
United States District Judge
by Jamie L. Hodges
Judicial Assistant/Deputy Clerk

ORDER

This matter is before the court on a “Motion for Forthwith Status Hearing Based Upon Recent Prejudicial Pretrial Publicity” filed by Defendant on March 15, 2007. Although the court was at first inclined to oblige by scheduling a hearing to commence at 6:30 o’clock a.m. on Friday, March 16, 2007, further reflection on the motion, the Government’s response, and the reply suggests that this little contretemps is beneath the sorry level of infighting which would merit such a hearing. There is less to the motion than meets the eye.

The factual lynchpins for the motion are (1) a purported time-line concerning the case which appeared this morning in one of the local newspapers and (2) a particular item in that time-line reporting that, in January of 2001, Qwest repurchased a billion dollars worth of its stock. Asserting that fact number (2) had never before been publically reported, Defendant implies that its source was a leak from the prosecutors’ team, that it “may well be a prosecution theory,” and

that, “since it reads like a prosecutor’s opening statement,” someone on the team must have assisted the newspaper in preparing it. The Government’s response soundly demonstrates that fact number (2) was contemporaneously reported in multiple media sources. The response further states, “[T]he suggestion that the government has provided a timeline to the reporter is absolutely false.” Although the court would have preferred a broader statement to the effect that no member of the prosecution team has ever discussed the facts of the case with any reporter, the court assumes that the quoted language, prepared as it was under obvious time constraints, implies the broader statement. The court accepts this statement from Government counsel as officers of this court and expects counsel to correct the record if this assumption is wrong.

Defendant uses this time-line and other recent publicity as a launching pad for individual juror voir dire. The court acknowledges that there has been recent publicity in the business sections of local newspapers but notes that not all of it has been about Defendant himself and not all of it casts him in a negative light. Although the publicity persists, there is nothing in it which would cause the court to re-assess its approach to voir dire. The court remains confident that a fair and impartial jury can be selected.

Based on the foregoing findings and conclusions, it is

ORDERED that the motion for forthwith hearing be DENIED.

Dated this 15th day of March, 2007.

BY THE COURT:

s/ Edward W. Nottingham
EDWARD W. NOTTINGHAM
United States District Judge