

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 05-00344-01/02-CR-W-ODS
)	
GARY EYE, et al.,)	
)	
Defendants.)	

**GOVERNMENT’S MOTION IN LIMINE TO EXCLUDE OPINION TESTIMONY BY
EXPERT WITNESS AS TO WHETHER DEFENDANTS ARE “RACIST”**

Comes now the United States of America, by and through its undersigned counsel, and files its Motion to Exclude Opinion Testimony from the “expert” witness, William Gregory Eggington, that defendant Eye or defendant Sandstrom is not a “racist.” In support, the government states the following:

Suggestions in Support

Defendant Eye filed a motion to preclude opinion testimony as to whether he or his co-defendant were or are racists (Doc. 261). Defendant Sandstrom sought to join Eye’s motion on November 26, 2007 (Doc. 269). In their motions, both defendants also sought to bar the introduction of any evidence at all demonstrating racist tendencies. The government filed its response on January 31, 2008 (Doc. 312). On March 17, 2008, this Court ruled on the defendants’ motions, granting defendants relief in part and denying relief in part.¹ Specifically,

¹This Court determined that “Defendants’ motivations are an issue in this trial, so witnesses will be permitted to provide factual testimony, including testimony about Defendants’ actions and statements, that reflect Defendants’ views towards racial minorities” (Doc. 345.) Of course, both defendants would be entitled to offer such *factual* testimony themselves.

the Court's Order stated that "[n]o witness will be permitted to *opine* that either Defendant is a 'racist'" (Doc. 345) (emphasis added).

If the friends, associates, and family members of the defendants – who have an intimate knowledge based upon their personal relationships with defendants – may be not permitted to offer their opinions based upon their own personal perceptions, then certainly Eye's proffered expert – who has never even interviewed Eye or Sandstrom – should not be permitted to testify to the contrary. Defendant Eye in correspondence with the government has stated:

Doctor Eggington has not provided the defense with any formal report supplementing his initial [sic] declaration of [the] value of the [proffered] testimony. He has indicated in verbable [sic] conversations that it will be his expert opinion that none of the evidence provided for review and described to him in our conversations, including use of the words nigga, nigger, negro, and other variations and slang words for African Americans is evidence of racial [sic] bias and animus [sic] and that the speech patterns merely reflect [sic] cultural influences and result from environmental [sic] and socioeconomic factors.

E-mail from John Osgood, Attorney at Law (April 12, 2008, 8:12 CST) (on file with government).² Putting aside the dubious nature of the proffered opinion under a *Daubert* analysis, the defendant is attempting to offer opinion testimony on the very issue to which he objected to opinion evidence in his pleading before this Court. Indeed, Eye's proffer is directly contradictory to the Court's prior ruling which determined that "[n]o witness" would be permitted to offer an opinion on this issue (Doc. 345).³

²This electronic correspondence was received in response to the government's formal written request of April 9, 2008, pursuant to Fed. R. Crim. P. 16(b)(1)(C) asking for summaries of any expert testimony being proffered under Fed. R. Evid. 702, 703, or 705.

³Clearly, neither defendant should be permitted to offer *lay* witness opinion testimony on the "racist" issue either since they have successfully sought to bar the government from introducing such opinion testimony. Such attempts would also be inconsistent with the Court's Order of March 17, 2008.

Conclusion

For the foregoing reasons, the government respectfully requests that the Court instruct the defense not to elicit any *expert* opinion as to whether or not the defendants are racists, or harbor racial biases.

Respectfully submitted,

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By */s/ Eric L. Gibson*

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was delivered on April 21, 2008, to the CM-ECF system of the United States District Court for the Western District of Missouri for electronic delivery to all counsel of record.

/s/ Eric L. Gibson _____

Eric L. Gibson

Trial Attorney

Civil Rights Division