

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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JOSEPH MELINO,

Plaintiff,

v.

9:06-CV-1173  
(GTS/DRH)

WILLIAM TOTTEN, PHILIP ABITABLE,  
PAULETTE MILLER; LOYCE DUKE,  
FRANCIS CARUSO, PAUL CUSHMAN;  
and DEBRA JOY,

Defendants.

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APPEARANCES:

LAW OFFICE OF ANTHONY J. COLLELUORI  
Counsel for Plaintiff  
180 Froehlich Farm Boulevard  
Woodbury, NY 11797

HON. ANDREW M. CUOMO  
Attorney General for the State of New York  
Counsel for Defendants  
The Capitol  
Albany, NY 12224-0341

OF COUNSEL:

ANTHONY J. COLLELUORI, ESQ.  
DIANE C. PETILLO, ESQ.

CHRISTOPHER W. HALL, ESQ.  
Assistant Attorney General

HON. GLENN T. SUDDABY, United States District Judge

**ORDER**

Currently before the Court in this prisoner civil rights action, filed by Joseph Melino (“Plaintiff”) against the seven above-captioned employees of the New York State Department of Correctional Services (“Defendants”), is Defendants’ motion to quash Plaintiff’s trial subpoenas for Defendants’ personal financial information, and Plaintiff’s trial subpoenas for two nonparty witnesses (specifically, Deputy Commissioners Donald Selsky and Israel Rivera). (Dkt. No. 74.) After carefully considering the parties’ motion papers (Dkt. Nos. 74, 88), and the oral arguments

they made to the Court on August 6, 2010, the Court grants Defendants' motion to the extent it requests the quashing of Plaintiff's trial subpoenas for Defendants' personal financial information. However, the Court denies the remainder of Defendants' motion as unsupported by a showing of cause based on the current record.<sup>1</sup>

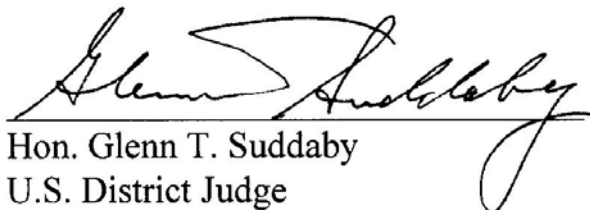
The Court hastens to add that this Order in no way precludes Defendants from making objections at trial that, even if the proffered testimony of Deputy Commissioners Selsky and Rivera is relevant under Fed. R. Evid. 401, the danger of unfair prejudice, confusion of the issues, and/or misleading the jury substantially outweighs the bulk of that testimony under Fed. R. Evid. 403. Of particular concern to the Court is the extent to which the proffered testimony in question is not based on the witness's personal knowledge, and/or invades the province of the jury as the determiner of ultimate facts.

**ACCORDINGLY**, it is

**ORDERED** that Defendants' motion to quash Plaintiff's trial subpoenas is (Dkt. No. 78)

**GRANTED in part and DENIED in part**, as stated above.

Date: August 10, 2010  
Syracuse, New York

  
Hon. Glenn T. Suddaby  
U.S. District Judge

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<sup>1</sup> The Court notes that, during the parties' oral argument on August 6, 2010, Plaintiff voluntarily withdrew four other trial subpoenas (specifically, his subpoenas for Deputy Commissioner Richard Roy, Temporary Release Reviewer Rachel Young, Parole Officer Ronald Hotaling, and Parole Officer Robert Mroczek). As a result, to the extent Defendants' motion to quash regarded those four trial subpoenas, that motion has been rendered moot.