

July 30, 2008

Elisabeth A. Shumaker
Clerk of Court

PUBLISH

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JOSEPH P. NACCHIO,

Defendant-Appellant.

No. 07-1311

(D. Colo.)

(D.C. No. 1:05-CR-00545-EWN)

ORDER

Before **HENRY**, Chief Judge, **TACHA**, **KELLY**, **BRISCOE**, **LUCERO**,
MURPHY, **HARTZ**, **McCONNELL**, and **HOLMES**, Circuit Judges.*

The petition for rehearing en banc is **GRANTED**. This case is set for oral argument on Wednesday, September 24, 2008, at 2:00 P.M. in Denver, Colorado.

Within 30 days from the date of this order, the parties shall contemporaneously file supplemental briefs, not to exceed 60 pages in length, addressing the following questions:

1. Was the defendant sufficiently on notice that he was required either to present evidence in support of the expert's methodology or request an evidentiary hearing in advance of presenting the expert's testimony?
2. Did the defendant have an adequate opportunity to present such evidence or request an evidentiary hearing in advance of

* Circuit Judges O'Brien, Tymkovich, and Gorsuch are not participating.

presenting the expert's testimony?

3. Did the defendant bear the burden of requesting an evidentiary hearing?
4. Did the district court abuse its discretion in disallowing the evidence, and if so, is the appropriate remedy necessarily a new trial, or is a remand for purposes of conducting an evidentiary hearing adequate?

Parties shall file 15 copies of the supplemental briefs. At the time the parties file their supplemental en banc briefs, they shall also file an additional 15 copies of their original panel briefs on the merits.

Within 15 days after service of the initial supplemental briefs, the parties may contemporaneously file supplemental reply briefs. The supplemental reply briefs shall not exceed 30 pages in length. Parties shall file 15 copies of the supplemental reply briefs. All en banc briefs shall comply with the requirements of Fed. R. App. P. 32(a)(7).

Entered for the Court
ELISABETH A. SHUMAKER, Clerk

by:
Douglas E. Cressler
Chief Deputy Clerk

