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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

J.N. FILED
SEP 23 2005
MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 02 CR 1050-6
)	
PAUL SCHIRO,)	Judge James B. Zagel
)	
Defendant.)	Second Superseding Indictment

DEFENDANT SCHIRO'S MOTION FOR
DISCLOSURE OF FAVORABLE EVIDENCE

DEFENDANT PAUL SCHIRO, through his attorney, PAUL A. WAGNER, and pursuant to Rule 16(a)(1)(C) of the Federal Rules of Criminal Procedure (documents "material to the preparation of the defendant's defense") and the principles of Brady v. Maryland, 373 U. S. 83 (1963), Giglio v. United States, 405 U. S. 150 (1972), United States v. Bagley, 473 U. S. 667 (1985) and Kyles v. Whitley, 514 U. S. 419 (1995), moves for entry of an order directing the government to disclose all favorable evidence to the defendant within its possession, custody or control, or the existence of which is known to the government or by the exercise of due diligence could become known, including but not limited to the below-listed information. Favorable evidence is evidence that could be deemed exculpatory or mitigating.

The following requests for information are not limited to information memorialized in written form, but include information in any form, whether written, oral or recorded. Where the identity of persons is requested, the name

and last known address should be given, if known. Furthermore, the identity of persons is requested regardless of whether the government is in possession of a statement from said individual.

For purposes of this motion, the term "witness" includes any person who may be called to testify by the government or who has assisted the government in its investigation of defendant, including but not limited to the following individuals: Nicholas W. Calabrese, Frank Cullotta, Fred Poradyla, and various other individuals presently listed as "confidential sources" or "cooperating witnesses," but otherwise unidentified by the government.

By this motion the defendant requests that the government disclose the following regarding potential witnesses:

1. Criminal Records

Any and all records and information revealing prior felony convictions, guilty verdicts or juvenile adjudications attributed to each witness, including but not limited to relevant "rap sheets."

2. Other Misconduct and Bad Acts

(a) Any and all records and information, whether written, oral, or contained in documents, regarding any misconduct or bad acts of, or attributed to, the witness, regardless of whether the witness admits the misconduct or bad acts.

(b) Any and all agency investigative files of the FBI or any other federal or state agency, including but not limited to interviews, documents, tape recordings, and case reports, or any investigations for bribery, extortion, RICO, fraud, corruption, or any other offense, for any person who will be a witness for the government.

3. Immunity, Plea Agreements, and Other Benefits

(a) Any and all consideration or promises of consideration, given to, or on behalf of, the witness, or expected by the witness. By "consideration" defendant refers to absolutely anything, whether bargained for or not, which arguably could be of value or use to a witness, or to persons of concern to the witness, including but not limited to formal or informal plea agreements; direct or indirect examples of leniency, favorable treatment, or recommendations of other assistance with respect to any pending criminal or civil, legal or administrative proceeding; criminal, civil or tax immunity grants; relief from forfeiture; payments of money, rewards or fees and special witness fees; provision for food, clothing, shelter, transportation, legal services or other benefits; and anything else which arguably could reveal an interest, motive, or bias in the witness in favor of the government or against the defense, or might otherwise act as an inducement to testify or to color testimony.

(b) Copies of statements, if any, submitted by the government or intended for submission by the government to the pretrial services department or the probation department of the United States District Court on behalf of any witness who has been previously sentenced.

4. Inconsistent or Exculpatory Statements of Witnesses

- (a) Identify any and all occasions on which a witness made:
- (1) a statement inconsistent with any other statement made by that witness;
 - (2) a statement inconsistent with his predicted trial testimony;
 - (3) a statement that he had no knowledge of the crimes

charged in the indictment;

(4) a statement that he was not involved in any criminal activity;

(5) a statement that the defendant was not involved in any criminal activity, including but not limited to the criminal activity charged in the indictment;

(6) a statement inconsistent with any other statement made by any other person or any other witness, irrespective of whether that person or witness will be called to testify by the government.

(b) As to each occasion above, identify and provide any notes, written statements, summaries of statements, or memoranda of such statements. Where no written record of evidence of such statements exists, identify the date, place and persons present for the statement, and set forth a summary of the statement.

5. Potential Prosecution

Any and all expressed or implied, direct or indirect, threats or coercive expressions, regarding criminal prosecutions, investigations, or forfeiture proceedings, about presently pending actions or actions that could be brought against a witness, whether made directly to the witness or to his attorney or representative.

6. Personnel and Other Files

Any and all personnel files for the witness; the existence and identity of all federal, state and local government files for the witness; the existence and identity of all internal affairs, internal investigation or public integrity investigation files concerning the witness; the existence and identity of any investigation of misconduct by an employer or other entity or person concerning

the witness; the existence and identity of any complaints regarding misconduct by the witness.

7. Alcohol and Drug Use; Psychiatric and Physical History

Any and all information, records, or documents, whether oral or recorded, related to any witness regarding:

- (a) physical conditions affecting cognitive abilities and memory;
- (b) psychiatric or psychological disorders, including symptoms, treatments, examinations, tests, therapies and hospitalizations;
- (c) excessive alcohol use, abuse or addiction, including treatments and hospitalizations; and
- (d) use of illegal drugs, and addiction thereto, and addiction to other drugs both prescriptive and non-prescriptive, including treatments, counseling and hospitalizations.

BRIEF MEMORANDUM IN SUPPORT

In Brady v. Maryland, 373 U. S. 83, 87 (1963), the Supreme Court held “that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.” Although the defense is required to make specific requests regarding favorable evidence, the failure of the defense to do so does not relieve the prosecution of all obligation to provide such evidence. United States v. Agurs, 427 U. S. 97, 103-08 (1976).

In clarifying aspects of the Agurs opinion and noting that for Brady purposes there is no difference between exculpatory and impeachment evidence, the Supreme Court in United States v. Bagley, 473 U. S. 667, 682 (1985), held that

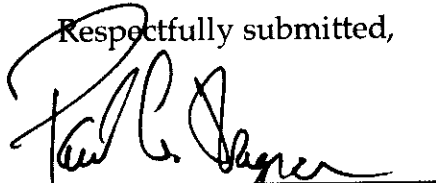
favorable evidence is material “if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.” This does not mean, however, that the favorable but undisclosed evidence would have resulted in the defendant’s acquittal. “Bagley’s touchstone of materiality is a ‘reasonable probability’ of a different result, and the adjective is important. The question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence. A ‘reasonable probability’ of a different result is accordingly shown when the government’s evidentiary suppression ‘undermines confidence in the outcome of the trial.’” Kyles v. Whitley, 514 U. S. 419, 434 (1995), citing Bagley, 473 U. S. at 678.

The Kyles’ Court places a heavy burden on the prosecution, since it “alone can know what is undisclosed” and determine when the “cumulative effect of suppression” would amount to a Brady violation. Id. at 437-38. Thus, “the prudent prosecutor will resolve doubtful questions in favor of disclosure.” Agurs, 427 U. S. at 108.

The failure to provide the information requested in this motion would deprive defendant of his ability to prepare his defense adequately and would thereby constitute a deprivation of defendant’s right to due process and a fair trial. Inasmuch as much of the information requested is peculiarly within the possession of the government, or is available to them upon the exercise of due diligence, defendant urges this court to enter the order requested.

WHEREFORE, for the reasons stated above, defendant PAUL SCHIRO respectfully requests this Honorable Court to grant his motion.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paul A. Wagner", written over a horizontal line.

PAUL A. WAGNER
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