

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
No. 08-CR-364 (RHK/AJB)

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UNITED STATES OF AMERICA,

Plaintiff,

vs.

THOMAS JOSEPH PETTERS,

Defendant.

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**DEFENDANT'S MOTION FOR  
DISCLOSURE OF SUITABILITY  
STUDIES AND OTHER  
INFORMATION REGARDING  
INFORMANTS AND/OR  
COOPERATING WITNESSES**

Defendant Thomas Joseph Petters, by and through his undersigned attorneys, hereby moves the Court for an order compelling the Government to disclose the following:

1. The names and addresses of any individuals that constitute informants and/or cooperating witnesses who are or were working with and/or were utilized by law enforcement officials in the above-captioned case;
2. Whether such individuals were alleged to have been active participants in the offenses charged in the indictment;
3. Whether such individuals are witnesses to the offenses charged in indictment;
4. Whether law enforcement officials followed internal guidelines in utilizing said individuals; and

5. The results of any suitability study and/or other internal documentation regarding the propriety of using said individuals as informants and/or cooperating witnesses.

The undersigned moves that the Government be required to make such informants and/or cooperating witnesses available for interview. This motion is based upon Rule 16, Federal Rules of Criminal Procedure, the United States Constitution, Brady v. Maryland, 375 U.S. 83 (1963) and its progeny.

The defense further bases this motion on the following:

1. The use of confidential informants and/or cooperating witnesses (“CIs”) in criminal actions is fraught with peril. They have an incentive to lie. Banks v. Dretke, 540 U.S. 668, 701 (2004) (“This Court has long recognized the ‘serious questions of credibility’ informers pose.”).

2. For this reason, the Department of Justice has promulgated The Attorney General’s Guidelines Regarding The Use Of Confidential Informants (May 30, 2002) (“CI Guidelines”) [Exhibit A] and the Procedures for Lawful, Warrantless Monitoring of Verbal Communications (May 30, 2002) (“Monitoring Procedures”) [Exhibit B].

3. In Roviaro v. United States, 353 U.S. 53, 60-61 (1957), the Supreme Court held that the Government must identify and produce the CI “[w]here the disclosure of an informer’s identity, or of the contents of his communication, is relevant and helpful to the defense of an accused, or is essential to a fair

determination of a cause.” See also United States v. Barnes, 486 F.2d 776, 780 (8th Cir. 1973).

4. Our Circuit has held: “[I]f the informant is an active participant in the conduct charged, the informant’s identity is ‘almost always’ material and thus the government must ‘make every reasonable effort to have the informant made available to the defendant.’” United States v. Sanchez, 429 F.3d 753, 756 (8th Cir. 2005).

5. Our Circuit has further held: “Special problems associated with locating and protecting informants may sometimes require the government to produce an informant, even if the defendant already knows the informant’s identity.” Id. (internal punctuation omitted).

6. The CI Guidelines require in part: a suitability determination by high-level DOJ officials prior to use of any CI, CI Guidelines § II.A; special high-level approval prior to use of any individual designated as a “High Level Confidential Informant,” CI Guidelines §§ I.B.9, II.D; guidelines regarding a CI who engages in unauthorized criminal activity, CI Guidelines § IV.B; and guidelines regarding a CI who obtains or has access to confidential or exculpatory information, CI Guidelines § IV.D.

7. The Monitoring Guidelines require in part: consent from appropriate DOJ officials prior to consensual monitoring; and internal procedures for supervising, monitoring, and approving consensual monitoring. Monitoring Guidelines § V.

8. The DOJ's Office of Inspector General has determined that there have been many failures by law enforcement officials to adhere to the CI Guidelines, Monitoring Guidelines, as well as other internal procedures with respect to the use of CIs. Office of Inspector General, The Federal Bureau of Investigation's Compliance with the Attorney General's Investigative Guidelines (Sept. 2005), available at <<http://www.usdoj.gov/oig/special/0509/final.pdf>>.

9. Evidence of law enforcement deviations from established procedures is relevant and admissible. United States v. Andreas, 23 F. Supp. 2d 835, 850 (N.D. Ill. 1998) (“The FBI ‘suitability’ and ‘taping’ guidelines are relevant because they show how far the investigation deviated from procedures which are intended to insure the integrity of evidence which is always relevant.”).

10. The defense believes that the Government has used CIs who it alleges were active participants in the offenses set forth in the indictment. The defense further believes that law enforcement officials failed to adhere to Government investigation guidelines in the use of said CIs. The defense further believes that some of the CIs (Deanna Coleman and Michael Catain certainly) have engaged in unauthorized criminal activity since they began cooperating with the Government. The above-listed information must be disclosed.

*[Remainder of page intentionally left blank.]*

Dated: February 25, 2009

**s/ Jon M. Hopeman**

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