

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

USA

V

NO. 4:06-po-00038-GMF

VAL FILLENWARTH

DEFENDANT'S DISCOVERY REQUESTS

Defendant in the above reference criminal case requests, pursuant to Federal Rule of Criminal Procedure 16 and other applicable Rules and law, the right to be furnished or to examine, inspect, copy, photograph, or make other facsimile copies of the items detailed below, which are either in the possession, custody, or control of government agents (including federal, military, state and local officials), and the existence of which is either known to the government or, by the exercise of due diligence, may become known to the government, prior to the trial of this action.

Note that these requests are made pursuant to defendant's rights under *Brady v. Maryland*, 373 U.S. 83 (1963) and *Kyles v. Whitley*, 514 US 419 (1995). These requests go not only to evidence which would have any tendency to negate guilt, but also any evidence which may have any tendency to establish any defense under the laws of the United States or International law; and any evidence which may have any tendency to mitigate punishment, in the event that any conviction may occur.

Note further that, pursuant to *California v. Trombetta*, 467 U.S. 479 (1984) and *Arizona v. Youngblood*, 488 U.S. 51 (1989), defendant respectfully requests that the government affirmatively take steps to ensure that no information, documents or material relevant to this matter is destroyed before all proceedings in this matter have been concluded.

DEFINITIONS:

The term “document” or “documents” includes oral statements, documents, reports, or tangible evidence, writings, drawings, graphs, charts, diagrams, photographs, video recordings, digital recordings, electronic mail, and includes, but is not limited to other data compilations from which information can be obtained, translated, if necessary, by the Government through detection devices into reasonably usable form.

DISCOVERY REQUESTED

One. A notice of the government’s intent to use in its case in chief at trial any evidence that the defendant may be entitled to discover under Fed R Crim P 16. Fed R Crim P 12(b)(4)(B).

Two. Any written or recorded statements made by the defendant.

Three. Any documents noting, recording or containing the substance of any oral statement that the government intends to offer in evidence at trial, made by a defendant, whether before or after arrest, in response to any interrogation by or conversation with any military personnel, civilian employee of the military, government agent or employee

Four. All records, judgments, convictions, plea agreements, photographs or other documents pertaining to prior arrests, convictions, or other bad acts, if any, of the defendant, including but not limited to defendant’s “rap sheet” and or NCIC computer check or information. Fed R Crim P 16(a)(1)(D), 16(a)(1)(E) and Federal Rules of Evidence 404(b) and 609.

Five. Immediately after any government witness has testified, any witness statement of any government witness who has so testified in the government’s case in chief. Fed R Crim P 26.2(a). So as to avoid unnecessary delay prior to cross-examination, it is requested that the government provide all documents available pursuant to Fed R Crim P 26.2(a) in advance of trial or motion hearings.

Six. Any material, information or documents which tends to negate the guilt of the defendant as to the offense charged, which could reasonably weaken or affect any evidence proposed to be introduced against the defendant or the credibility of the government’s case, or which would tend to reduce the punishment therefore pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963) and *U.S. v. Agurs*, 497 U.S. 97 (1976).

Seven. All electronic intercepts, and logs of intercepts, of conversations among or between defendant and any other person, including their attorneys and other individuals arrested on the same day. 18 U.S.C. 2518.

Eight. All e-mail communications between any of the parties their agents, or any witnesses relating to the defendant and to the activities or events of the SOA Watch Vigil and demonstration of November 2006, at, outside or inside the boundaries, fences or gates of Ft. Benning.

Nine. All electronic storage media including but not limited to diskettes, CD-ROMS, Zip disks, tapes, smart cards, personal digital devices and assistants, memory keys, and digital voice mail, relating to the defendant and to the activities or events of the SOA Watch Vigil and demonstration of November 19, and 20, 2005, at, outside or inside the boundaries, fences or gates of Ft. Benning.

Ten. Any and all videotapes, digital recordings, wiretaps, photographs or other pictorial documents or surveillance evidence of the activities or events of the SOA Watch Vigil and demonstration of November 2006, at, outside or inside the boundaries, fences or gates of Ft. Benning.

Eleven. A written statement by counsel for the government briefly setting forth the facts pertaining to the time, place, circumstances and persons involved in the gathering of evidence identified in the preceding paragraph.

Twelve. All arrest reports, investigator's notes, memos or other documents from arresting officers and military personnel, sworn statements and prosecution reports pertaining to the defendant. Fed R Crim P 16(a)(1)(B) and (C) and, Fed R Crim P 26.2 and 12(h).

Thirteen. All papers, documents and all other things taken from the possession of defendant or in the defendant's presence at the time of the defendant's arrest. Fed R Crim P 16(a)(1)(E).

Fourteen. Any evidence or documents that any prospective government witness is biased or prejudiced against any defendant or has a motive to falsely testify or distort his or her testimony. *Pennsylvania v. Ritchie*, 480 U.S. 39 (1985).

Fifteen. Any evidence or documents that any prospective government witness has engaged in any criminal act whether or not resulting in a conviction. Federal Rule of Evidence 608(b) and Brady, *supra*.

Sixteen. Any evidence that any prospective witness is under investigation by federal, state, or local authorities for any criminal or official misconduct. *U.S. v. Chitty*, 760 F.2d 425 (2nd Cir.) cert den, 474 U.S. 945 (1985).

Seventeen. Any evidence or documents, including any medical or psychiatric reports or evaluations, tending to show that any prospective witness's ability to perceive, remember, communicate, or tell the truth is impaired; and any evidence that a witness has ever used narcotics or other controlled substance, or has ever been an alcoholic. *U.S. v. Strifler*, 851 F.2d 1197 (11th Cir. 1988); *Chavis v. North Carolina*, 637 F.2d 213 (4th Cir. 1980); *U.S. v. Butler*, 457 F.2d 885 (9th Cir. 1978).

Eighteen. It is hereby requested that the government review each prospective witness's personnel file for information requested in paragraphs 14-17 above, and determine whether there is any impeaching information contained in the files. *U.S. v. Henthorn*, 931 F.2d 29 (9th Cir. 1991).

Nineteen. The names and last known address of each prospective government witness. *U.S. v. Neap*, 834 F.2d 1311 (7th Cir. 1987); *U.S. v. Tucker*, 716 F.2d 583 (9th Cir. 1983); *U.S. v. Cook*, 608 F.2d 1175 (9th Cir. 1979).

Twenty. The names and last known address of each witness to the crime or crimes charged, or any overt acts committed in furtherance thereof, who will not be called as a government witness. *U.S. v. Cadet*, 727 F.2d 1469 (9th Cir. 1984).

Twenty-One. The names and addresses of any witnesses who made arguably favorable statements concerning defendant or who could not identify the defendant or who were unsure of the defendant's identity or participation in the crime charged. *Jackson v. Wainwright*, 390 F.2d 288 (5th Cir. 1968); *Chavis v. North Carolina*, 637 F.2d 213 (4th Cir. 1980); *James v. Jag*, 575 F.2d 1164 (6th Cir. 1978); *Hudson v. Blackburn*, 601 F.2d 785 (5th Cir. 1975).

Twenty-Two. A written summary of the testimony of expert witnesses the government intends to use under Federal Rules of Evidence 702, 703, or 705, including a description

of the witnesses' opinions, the bases and the reasons thereof, and the witnesses qualifications. Fed R Crim P 16(a)(1)(G).

Twenty-Three. A copy of the Ft. Benning Base Regulations containing the specific Regulation which defendant is alleged to have violated together with a copy of and document or documents indicating the publication of said Regulations in the Code of Federal Regulations or elsewhere.

Twenty-Four. A copy of all documents prepared by any agent or employee of the government which indicate the cost and effect, if any, of the of the activities or events of the SOA Watch Vigil and demonstration of November 19, and 20, 2005, at, outside or inside the boundaries, fences or gates of Ft. Benning. Defendant further requests the name and address of every person, organization and entity that prepared these documents. Note: this request includes not only federal government employees but also any military, state or local government employees. *Kyles v. Whitley*, 514 US 419 (1995).

Twenty-Five. A copy of all of the press releases issued by any agent or employee for the government regarding the activities or events of the SOA Watch Vigil and demonstration of November 2006, at, outside or inside the boundaries, fences or gates of Ft. Benning.

Twenty-Six. Any and all notes, memos or other documents of any and all written or oral communications regarding the activities or events of the SOA Watch Vigil and demonstration of November 2006, by and between any agent or employee of the government and the court, if any.

Twenty-Seven. A copy of any and all deeds running to the people of the United States, the government, or any agency thereof indicating ownership or possession of the land and property commonly known as Ft. Benning, or any part thereof.

Twenty-Eight. A copy of any map or other diagram in the government's possession, showing the government's mapped understanding of the boundary of Ft. Benning nearest to where defendant was arrested.

Twenty-Nine. A copy of any and all native American claims of ownership or possession of any of the land or property commonly known as Ft. Benning.

Thirty. A copy of any and all treaties or grants by which the people of the United States, the government, or any agency thereof claims ownership or possession of the land or property commonly known as Ft. Benning, or any part thereof.

Thirty-One. A copy of any and all other information which is required to be disclosed pursuant to the defendant's Fourth, Fifth, Sixth, Eighth and Fourteenth Amendment rights.

Thirty-Two. It is requested that the government make specific inquiry of each government agent connected to the case – whether military, federal, state or local - for the discovery requested above. *Kyles v. Whitley*, 115 S. Ct. 1555 (1995).

Thirty-Three. It is requested that the government advise the undersigned counsel of any discovery or documents it claims are exempted from production or disclosure, and file a privilege log with the court.

Thirty-Four. It is requested that the government produce the requested materials prior to trial, in sufficient time for defendant to prepare for trial, in the office of the U.S. Attorney in Columbus, Georgia, or at any other time or location convenient to the parties, and that the government advise defendant's counsel when said documents are available.

January 6, 2007

s/ William P. Quigley, Pro Hac Vice
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Certificate of Service

I certify that I electronically filed this pleading with the Clerk of Court so that copies will be served on all counsel this day. s/ William P. Quigley