UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

'03 OCT -1 P3:19

In re: Standing Order for Discovery and Inspection and Fixing Motion Cut-Off Date in Criminal Cases

Administrative Order
No. 03-AO-027

At its meeting on September 8, 2003, the Court approved a recommendation to eliminate the criminal pretrial conferences that are routinely held by magistrate judges with the understanding that government counsel will file the Discovery Notice (see paragraph 1 below) within ten (10) days of arraignment. The Court's action does not affect the district judges that prefer to hold their own pretrial conferences. This order supersedes Administrative Order No. 99-AO-003.

To eliminate unnecessary motions for discovery and to expedite the trial and eliminate delays in the presentation of evidence and the examination of witnesses, this order is entered in all criminal cases in this district. Nothing in this order shall be construed to impose any obligation on any party not otherwise provided by law.

IT IS ORDERED:

1. Conference and Disclosure. Within ten (10) days from the date of arraignment, or such other date as may be set by the Judge to whom the case is assigned, government and defense counsel shall meet and confer, or government counsel shall file the attached Discovery Notice. Upon request of defense counsel the government shall:

(a) Provide defense counsel with the information described in Federal Rules of Criminal Procedure 16 (a)(1).

(b) Permit defense counsel to inspect, copy or photocopy any exculpatory

evidence within the meaning of Brady v. Maryland, 373 U.S. 83 (1983) and United States v. Agurs, 427 U.S. 97 (1976).

A list of the items of evidence so inspected shall be made and such list signed by all counsel and copies of the items so disclosed shall be initialed or otherwise marked. Government counsel is reminded that the government proceeds at its peril if there is a failure to disclose such evidence.

Nothing herein shall be deemed to require the disclosure of Jencks Act material prior to the time that the Jencks Act requires its disclosure, nor shall government counsel be required to automatically disclose the names of government witnesses.

2. Disclosure Declined. If, in the judgment of government counsel, it would be detrimental to the interests of justice to make any disclosures set forth in paragraph 1 and requested by defense counsel, disclosure may be declined, and defense counsel so advised. The declination shall be made or confirmed in writing. If a defendant seeks to challenge the declination, he or she shall move forthwith for relief.

3. Continuing Duty. The duty of disclosure and discovery described in this order is continuing.

4. Discovery by the Government. This order is not intended to preclude discovery by the government under Rule 16 (b) of the Federal Rules of Criminal Procedure.

5. Exhibits.

(a) Pre-Marking and Listing of Exhibits. Each party intending to offer exhibits shall mark the exhibits prior to commencement of trial. Marking labels may be obtained from the court reporter in advance of trial. Each party shall thereafter prepare a

typed list of proposed exhibits for submission to the Court three (3) days prior to the commencement of trial. Exhibits should be designated by numbers or letters on a logical basis. The listing should reflect the proposed exhibit number or letter and description of the exhibit. Proposed exhibits so listed, if in the possession or control of the parties, must be examined by the opposite party at a reasonable time in advance of trial.

(b) Foundation for Exhibits. When defense counsel at the conference set forth in paragraph 1 has inspected an exhibit which the government intends to introduce in evidence, the foundation for its receipt into evidence will be deemed admitted unless defense counsel files with the Court three (3) days prior to trial a notice that the foundation for admission into evidence of the exhibit will be contested.

(c) Objections to Exhibits. This order shall not affect the right of a defendant to object at time of trial to the introduction of an exhibit other than on the basis of foundation.

6. Chain of Custody. When defense counsel at the conference set forth in paragraph 1 or subsequent thereto has inspected an exhibit which the government has permitted defense counsel to review the documents or records relating to the chain of possession, the chain of custody will be deemed uncontested unless defense counsel files with the Court at least five (5) days prior to the date of trial, a notice that the chain of custody of the exhibit will be contested.

7. Scientific Analysis. When the government has disclosed to defense counsel, at the conference set forth in paragraph 1, the scientific analysis of a proposed exhibit, which analysis has been determined by an expert in the field of science involved, the

results of the scientific analysis of the exhibit and the opinion of the scientist will be deemed admitted unless the defendant's counsel files with the Court seven (7) days prior to the trial a notice that the scientific analysis of the exhibit will be contested. Such notice shall state whether the expert is desired as a witness.

8. Refreshing Memory. In complying with the requirements of Federal Rules of Evidence 612, counsel shall bear in mind the delay occasioned by the in-trial inspection of documents used to refresh memory. Therefore, whenever government counsel intends to provide, or provides, a witness with a document to refresh the memory of the witness for the purpose of testifying at trial, government counsel shall to the extent reasonable, permit defense counsel to inspect and copy the document in advance of trial, provided that such a copy shall not be further duplicated, shall remain in the possession of defense counsel and shall be used only for the purpose of representing a defendant.

9. Witness List. To enable the judge to better estimate the length of trial, each party shall file directly with the judge the day before trial (but not the opposite party) a list of witnesses by name or description which it reasonably anticipates will be called to testify at trial noting the approximate amount of time the party anticipates will be required for examination of each witness.

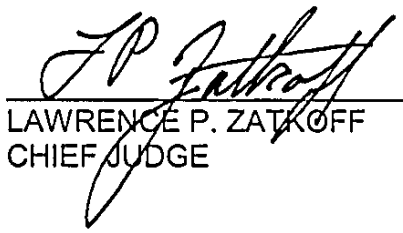
10. Jury Instructions. The parties shall submit requested jury instructions in duplicate at the beginning of trial.

11. Motion Cut-Off Date. Any pretrial motion shall be filed within twenty (20) days of the date of arraignment of the defendant involved.

12. Authority of District Judge. The judge to whom a case is assigned may

amend, modify, or set aside, in whole or in part, any of the provisions of this order on motion of either party or sua sponte with prior notice given to the parties.

FOR THE COURT



LAWRENCE P. ZATKOFF
CHIEF JUDGE

Attachment

Dated: 9/30/03

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA

Plaintiff, CRIM. NO.

v. HON.

Defendant,
_____/

DISCOVERY NOTICE

1. The attorney for the government knows that the defendant made

   a. relevant written or recorded statements, (including grand jury testimony), and/or

   b. relevant oral statements made in response to interrogation, whether before or after arrest, by a person then known to the defendant to be a government agent, whether or not the statement is included in a written record, as follows:

   Date Agent/Agency Type (written, recorded, grand jury, oral) Not Applicable ☐

2. The attorney for the government knows that defendant has a prior criminal record:
   NO ____ YES ____

3. The following books, papers, documents, photographs and tangible objects are within the possession, custody or control of the government and are intended to be used as evidence in chief at trial, are known to the government to be material to the preparation of the defense, or were obtained from or belong to the defendant: _____
   _____.

4. Results or reports of the following physical or mental examinations, or scientific tests or experiments, are within the possession, custody or control of the government, and are either intended to be used as evidence in chief at trial or are known to the government to be material to the preparation of the defense: _____

5. The government intends to introduce at trial testimony from one or more experts in the following areas of expertise: _____.

6. The government may introduce evidence obtained from execution of the following search warrants:

Date(s) Docket Number(s) Not Applicable ☐

7. The government may introduce evidence obtained through wiretaps or other electronic surveillance:

Type: (wiretap, bug, etc.) Docket Number(s) Not Applicable ☐

8. The government intends to offer evidence under Rule 404(b), Fed. R. Evid.
Yes _____ No _____ Unsure _____

9. The attorney for the government is aware of the obligations imposed by Brady v. Maryland, 373 U.S. 83 (1963), and its progeny and will comply with their obligation to provide defense counsel with exculpatory evidence that is material to either guilt or to punishment in time for effective use at trial.

If the government discovers additional information of the type described in Paragraphs One through Eight, it will advise defense counsel in writing.

Upon specific request of the defendant the government will make available for inspection or copying the items described in Paragraphs One, Three, and Four; will furnish the record referred to in Paragraph Two; will provide a summary (which will include the witnesses' qualifications, opinions, and the bases and reasons for the opinions) of the anticipated testimony described in Paragraph Five and will provide notice of the general nature of the evidence referred to in Paragraph Eight. The government's compliance with any specific request will trigger the defendant's duty to provide the reciprocal discovery denoted in Fed. R. Crim. P. 16(b)(1)(A)-(C). If the defendant makes a general request for discovery the government will construe it as a request for each item described in Fed. R. Crim. P. 16(a)(1) (A)-(E). The government's compliance with the defendant's general request will trigger the defendant's duty to provide reciprocal discovery of each item specified in Fed. R. Crim. P. 16(b)(1)(A)-(C).

JEFFREY G. COLLINS
United States Attorney

Dated:

Assistant U.S. Attorney