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February 9, 2013

BY ECF & E-MAIL

Hon. Dennis M. Cavanaugh, U.S.D.J.
U.S. District Court, District of New Jersey
Post Office Building & Federal Courthouse, Room 451
Newark, New Jersey 07101-0999

Re: United States v. Bergrin, Crim. No. 09-369 (DMC)

Dear Judge Cavanaugh:

Starting in jury selection and continuing on into trial, Mr. Bergrin and/or his standby counsel have lodged various complaints about discovery. Given that no such grievances were aired at the 2011 trial, the Government was more than a little taken aback by those complaints. This is especially so since Mr. Bergrin has had more than three years to prepare for this trial, and did not file any discovery-related motions after the Government's December 14, 2012 letter (Exhibit A), which responded to Mr. Bergrin's December 3rd discovery letter (Exhibit B). Having investigated these accusations, the Government has concluded that they are unfounded (except for the Carolyn Velez videotape—Jencks material that Mr. Bergrin timely received, had ample time to review, and used to his advantage).

I. MATERIALS RELATED TO LACHOY WALKER.

The severed trial on Counts 12 and 13 commenced on October 17, 2011. Before that trial, the Government provided Jencks/Giglio materials relating to Lachoy Walker and other witnesses who were expected to testify. On January 23, 2013—in the middle of his cross-examination of Walker—Mr. Bergrin for the first time requested additional items from the Government. See Tr. at 285-89.¹ Notably, Mr. Bergrin could have learned of the items he identified in Court only by reviewing the Jencks/Giglio materials the Government had provided him more than fifteen

¹ "Tr." refers to the pages of the consecutively paginated trial transcript.

months ago. As set forth below, the Government has previously provided to Mr. Bergrin many of the items he identified. The remainder consists of physical evidence the DEA gathered during its investigation of Hakeem Curry's drug organization. But none of those physical items: (1) was listed as a Government Exhibit at either the prior or current trial; (2) constitutes Brady material; or (3) represents Jencks/Giglio material for Mr. Walker. Accordingly, the Government was under no prior obligation to produce these items to Mr. Bergrin. However, since he has now requested them, the Government will make all efforts to provide Mr. Bergrin with an opportunity to review these items, even though he completed his cross-examination of Walker without demanding their production.

1. The first, second and fourteenth items on Mr. Bergrin's list relate to the Drug Enforcement Administration (DEA) report of investigation entitled "post arrest statements of Lachoy Walker on 3-4-2004." (J-05535 through 37). That report was provided to Mr. Bergrin more than one year ago. Given that Mr. Bergrin implicitly acknowledges having received it, it is unclear what he is claiming the Government did not provide him. Of course, this statement was also the subject of Walker's and Snowden's testimonies in the Hakeem Curry trial, but the Government provided that testimony to Mr. Bergrin more than one year ago. Accordingly, the Government has provided all Jencks material relating to Walker's post-arrest statement.

2. The third item is DEA Exhibit N-83, the New Jersey drivers license in the name of "Ricky DAI" with a photo of Lachoy Walker. While the Jencks/Giglio materials provided to Mr. Bergrin more than one year ago describe the driver's license, the actual license was not provided to the defense. Accordingly, to the extent this physical item contains impeachment information, that impeachment information was made clear to Mr. Bergrin more than one year ago. Yet, despite having had more than one year's notice, Mr. Bergrin waited until the middle of his cross-examination of Walker to request the actual license.

3. The fourth and fifth items are DEA Exhibits N-86 and N-87—the nine millimeter handgun and the 19 nine millimeter bullets recovered from Walker on March 4, 2004. Pursuant to DEA policy, the nine millimeter handgun has been destroyed. However the 19 nine millimeter bullets are still in evidence at DEA. (We will address later in this letter Mr. Bergrin's related request for documents relating to the entry of the test fire evidence of this handgun into the IBIS system.)

4. The sixth, seventh, eighth, and thirteenth items relate to DEA Exhibits N-91, N-92 and N-119—the March 5, 2004 recordings reflecting Walker's controlled delivery to Curry of the 100 bricks of heroin Walker had been storing for Curry. There was one audio recording of the conversation between Walker and Curry during the controlled delivery (N-91) and one video recording that captured the exterior of Curry's van during the controlled delivery (N-92). As Mr. Bergrin is aware, the Government introduced into evidence at this trial the audio recording (N-

91) as Government Exhibit 4211. See Tr. at 738. The Government did not introduce the video recording (N-92). But N-92 does not contain Brady, Giglio or Jencks material. So understood, Mr. Bergrin received a copy of the audio recording more than one year ago prior to the trial on Counts 12 and 13. Moreover, as Mr. Bergrin was given the Jencks materials identifying N-92 more than one year ago, he has been on notice of the existence of that video recording since that time. Yet he waited until the middle of his cross-examination of Walker to request the videotape. Finally, DEA Exhibit N-119 contains the recorded telephone conversation between Curry and Walker, and J-05875 confirms it is “a” recorded conversation. That recording was provided to Mr. Bergrin before the 2011 trial on Counts 12 and 13.

5. The ninth item relates to DEA Exhibit N-120, a recorded telephone call between Walker and Tyheed Mitchell. That recording was not a Government exhibit at this trial. While we believe that we provided that recording to Mr. Bergrin, our records do not conclusively prove that we did so. Nevertheless, as Mr. Bergrin conceded, a transcript of that conversation was provided to him (J-05161). The transcript shows that recording does not contain Brady or Giglio material. To the extent it was Jencks material for Walker, the verbatim transcript of that recording satisfied the Government’s obligation to provide Jencks material. Moreover, as Mr. Bergrin has had the Jencks materials identifying N-120 for more than one year, he should not have waited until he began cross-examining Walker to inform the Government that he did not have the recording.

6. The tenth item relates to DEA Exhibit N-105, a Motorola cellphone belonging to Walker assigned telephone number 973-687-1345. That item was not an exhibit at the trial on Counts 12 and 13 and is not a Government exhibit at this trial. Nor is it Brady, Giglio, or Jencks material. Moreover, as Mr. Bergrin was given the Jencks materials identifying N-105 more than a year ago, he (again) has no good reason for having waited until the middle of his cross-examination of Walker to request it.

7. The eleventh item relates to DEA Exhibit N-180. This is a cassette tape of a voice exemplar taken of Kareem Herrill at the time of his arrest. N-180 is not a Government Exhibit at this trial, and Kareem Herrill is not a Government witness. Thus, this voice exemplar is not Brady, Giglio, or Jencks material for any witness who testified at the trial of Counts 12 and 13 or who will testify at this trial. Further, this voice exemplar has nothing to do with the subject matter of the testimony of any of the witnesses who will testify at this trial. Moreover, as Mr. Bergrin was given the Jencks materials identifying N-180 more than a year ago, he has no good reason for waiting until he began his cross-examination of Walker to request it.

8. The twelfth item relates to DEA Exhibit N-181. It is a statement of David Lyons implicating Hakeem Curry in drug trafficking. David Lyons will not be a witness at this trial. Further, we do not anticipate that Lyons, his statement, or any

of his actions will be the subject of any testimony at this trial. Nor will his statement be admitted as an Exhibit at this trial. It thus is not Brady, Giglio, or Jencks material. Moreover, at the risk of endless repetition, Mr. Bergrin could have asked for that statement long before this trial started as he has known of its existence for more than one year.

9. The fifteenth item relates to a report of George Snowden regarding the Darnell “Buck” Anderson murder. The report was turned over to Mr. Bergrin more than a year ago (J-03702-03). Moreover, Walker testified extensively about the subject of that report at the Hakeem Curry trial. Walker’s testimony on this (and all subjects) was provided to Mr. Bergrin more than one year ago.

10. The sixteenth item relates to Snowden’s testimony that Walker may have been a suspect in a homicide. (In fact, Snowden describes it as a non-fatal shooting.) This, too, was the subject of Walker’s testimony during the Hakeem Curry trial (See May 24, 2006 Tr. at 85-115; May 30, 2006 Tr. at 172-81). Transcripts of Walker’s and Snowden’s testimony were provided to Mr. Bergrin more than a year ago prior to the trial on counts 12 and 13. And to the extent these uncharged/unfounded allegations would be considered Giglio for Walker, Mr. Bergrin learned of those allegations more than one year when he received Walker’s Jencks materials. Since he referenced these allegations during his January 23, 2013 on-the-record request, he obviously was aware of them. Nonetheless, Mr. Bergrin not only waited until Walker’s cross-examination to raise this issue, he did not even bother to cross-examine Walker about this subject.

11. The seventeenth request relates to reports that Walker was a fugitive with warrants in February 2004. That was detailed not only in Snowden’s testimony (which was provided as Jencks more than one year ago) as referenced by Mr. Bergrin in his request, but also in a DEA report provided as Jencks material more that one year ago (J-05538). Walker also testified about that fact at the Hakeem Curry trial, at the 2011 trial on Counts 12 and 13, and during his direct examination in this trial. Mr. Bergrin has no basis for complaint as he has had copies of Walker’s testimony in the Curry trial and in the 2011 trial for more than one year.

12. The eighteenth item asks for three surveillance reports of Walker for the three days before his March 4, 2004 arrest (referring to three defense exhibits at the Hakeem Curry Trial). The trial testimony actually refers to three surveillances of a particular location, not of Walker. Regardless, those three reports (dated April 18, 2003, April 30, 2003 and May 3, 2003) were provided to Mr. Bergrin more than one year ago (J-03534-39).

13. The nineteenth item relates to any DEA reports documenting that Walker had taken breaks at times from distributing drugs. Other than the reports that have been turned over to Mr. Bergrin, the Government is unaware of any reports

memorializing Walker's statements. However, this subject was covered by Walker during his testimony in the Hakeem Curry trial. Mr. Bergrin was given that testimony more than one year ago.

14. The twentieth item seeks reports documenting that Walker had greater responsibilities in the distribution of drugs after Ishmael Pray was shot in December 2003. That report was provided to Mr. Bergrin more than a year ago (J-03782).

15. The twenty-first item relates to reports of Walker's proffer sessions. Mr. Bergrin has received all reports memorializing Walker's statements at any meeting with law enforcement.

16. The final two items relate to the boxes of ammunition recovered in the March 5, 2004 search of Curry's stash house (known as "the Dungeon"), and the three firearms recovered during the arrests of various Curry Organization members. The ammunition recovered from the Dungeon is currently in the evidence room at DEA's New Jersey field office. Law enforcement agents did not request that any scientific analysis be conducted on any of the boxes of ammunition. As for the three guns that were recovered, each has been destroyed pursuant to DEA policy. At this time, we are currently searching for all reports relating to Newark Police Department's ballistics analysis of these guns. As stated in the Government's letter of December 14, 2012 (Exhibit A), we have located the reports showing that the results of the ballistics analysis were entered into the IBIS computer system. Those reports were provided to Mr. Bergrin on December 14, 2012. The IBIS computer system checks to see if a particular gun matches the ballistics evidence for any shootings or homicides. It is the Government's understanding that if such a match is found, a report is generated and the relevant investigative agents are notified. However, if no match is found, the investigative agent is not notified and no report is generated. Since Detective Snowden was not notified (meaning there was no match for any of the guns), the Government does not expect to find any report indicating that there was no match, as no such report would have been generated.

In sum, it appears that in preparing to cross-examine Lachoy Walker for a second time, Mr. Bergrin more closely examined information that was provided to him prior to the October 2011 trial and decided that additional items would be useful. Yet instead requesting those items before trial (when the Government might have provided them despite having no legal obligation to do so), Mr. Bergrin waited until Mr. Walker was on cross-examination to enumerate a list of items that, he made it seem, the Government had failed to produce. With all respect, we do not consider these accusations of non-disclosure to have been made in good faith, which is confirmed by the fact that Mr. Bergrin concluded his cross-examination of Mr. Walker without demanding that the Government produce the items he had enumerated.

II. JENCKS MATERIAL.

Near the start of trial, this Court asked the Government to produce any remaining Jencks material for Government witnesses who had not yet testified. The Government has done so and produced the following, amounting to approximately 790 pages:

McCloud testimony: 34 pages, emailed January 28, 2013
Jimenez documents: 19 pages, produced January 25, 2013
Cino DEA Binder: 178 pages, produced January 25, 2013
Castro DEA Binder – 323 pages, produced January 25, 2013
Castro Passaic County – 192 pgs, produced January 25, 2013
O. Cordova’s testimony in U.S. v. Flores: 12 pages, emailed January 25, 2013
MOI: 2 pages, produced January 28, 2013.
Bergrin summation transcript certification page (J-12520a) produced in court.
Recently discovered material related to Richard Pozo.

Further, as the Government has received additional material (*e.g.*, Dr. Shaikh’s handwritten notes on his autopsy report), it has timely produced it. Tr. at 1990-91.

III. GOVERNMENT EXHIBITS.

The defense has also complained about the marking and production of trial exhibits. The Government explains below how the Exhibit List was created and identifies those exhibits that were marked since January 3, 2013. But it is important to note that many of the exhibits in question were previously produced in discovery and were marked as trial exhibits in the event Mr. Bergrin’s cross-examination opened the door to them; many were never introduced. And for those that were, Mr. Bergrin never objected that he had had insufficient time to review them, obviating any Rule 16 issue.

Initially, Mr. Bergrin received the Exhibit List for the entire RICO case in 2011, prior to the severed trial on Counts 12 and 13. Thus, since at least that time, he has had the ability to cross-reference the Exhibit List to the items he received in discovery and identify almost all of the Government’s exhibits. But beyond that, during the January 3, 2013 status conference, we provided a CD-ROM to defense counsel containing (1) a copy of the updated Exhibit List and, (2) all of our electronic documents in PDF format. Each PDF file was named by exhibit number. Thus, Exhibit 100 was named “Exhibit 100.pdf,” and all standby counsel had to do was print it out. The only exhibits not contained on that disc were:

1. Items contained on individual CD-ROMS that were identified by their Government Exhibit Number. For example, if Verizon provided the Government

with a CD-ROM containing phone records, we produced a copy of that CD-ROM in discovery, but we did not produce a second copy once we marked it as a Government Exhibit. That said, most of the documents contained on such a CD-ROM have been printed and sub-marked as exhibits, which would appear as PDF files on the CD-ROM provided to Mr. Bergrin on January 3, 2013. Additionally, as set forth above, our Exhibit List contains the bates numbers used in discovery to assist the defense in locating the items.

2. Audio and Video. Because audio and video recordings take up so much space, we obviously could not include them on the CD-ROM provided to the defense on January 3, 2013. However, but for the Carolyn Velez video mentioned earlier, any audio or video recordings were produced to the defense in discovery (most of them by December 2009), and our Exhibit List cross-references the bates number affixed to those items.

The following exhibits were not identified on the January 3rd CD-ROM, because they had been marked as exhibits after that date. Nonetheless, most all of them had been provided to Bergrin in discovery. And some of the items that the Government recently obtained (such as the Curry wedding photographs recently obtained from Anthony Young) were immediately marked as Government Exhibits and produced to the defense:

Exhibits 602a to 602h: photos from the crime scene in the case against Norberto Velez. However, these photos were taken out of Exhibit 602 and submarked. Exhibit 602 was listed on the January 3rd disc, and the submarked exhibits were introduced through Detective McAloon without objection. Tr. at 469.

Exhibit 647: Transcript of Marilu Bruno's testimony at the 8/29/2002 bail hearing in the Norberto Velez case. While this transcript did not appear on an exhibit list prior to January 3rd, it had been provided to defense counsel as Jencks on January 7, 2013. It was not moved into evidence.

Exhibits 648a to 648d: transcripts of testimony by Carolyn Velez, Marilu Bruno, Detective McAloon and Ofelia Rodriguez-Pieve in the 12/23/2002 suppression hearing in the Velez case. These transcripts were provided to defense counsel when they were marked on January 7th. Exhibit 648c was admitted through the testimony of Carolyn Velez without any Rule 16 objection. Tr. at 952. The other exhibits were not offered into evidence.

Exhibit 649: Paul Bergrin's summation in State v. Velez. Although this was not provided on the January 3rd disc, it was provided to counsel on January 3, 2013 on a separate disc marked "Box 64." The Government moved to admit this exhibit into evidence, but Mr. Bergrin raised a non-Rule 16 objection that remains pending before the Court, Tr. 1400-01, 2258.

Exhibit 1060a: Deposit ticket and check from the Valley National Bank Business Account for Pope, Bergrin & Verdesco. Although this was not on the January 3rd disc, it is contained in Exhibit 1060 (which was) and was submarked. It was also provided in the very first round of discovery on a disc marked "Box 1." The bates numbers for the submarked exhibit are PBVABA-001280 – PBVABA-001281. This exhibit has not yet been admitted.

Exhibit 1302g: Check 186 from the Wachovia Business Checking Account for Premium Realty. Although this was not on the January 3rd disc containing the trial exhibits, it is contained in Exhibit 1302, which was provided on the January 3rd disc. It was just submarked. It was also provided in the very first round of discovery on a disc marked "Box 2." The bates number for the submarked exhibit is PREM-000162. This exhibit has not yet been admitted.

Exhibit 1302h: HUD-1 for the purchase of 45 Ocean Avenue. Although this was not on the January 3rd disc, it was produced in the first round of discovery on a disc marked "Box 3." The bates numbers for the submarked exhibits are PB45MORT-000012 – PB45MORT-000013. This exhibit has not yet been admitted.

Exhibit 1334: American Express credit card statements for Isabela's Restaurant. Although it was not on the January 3rd disc, it was produced in the first round of discovery on a disc marked "Box 2." This exhibit has not yet been admitted.

Exhibit 2006: C.V. for Attila Mathe. This was first produced in discovery on a disc marked "Box 27." An updated CV was produced on January 8, 2013 via e-mail. This exhibit would be used, if at all, only to refresh Mr. Mathe's recollection.

Exhibit 2293b: Medical Examiner Investigative Data Sheet. This exhibit consists of the last five pages of Exhibit 2239a, which was provided on the January 3rd disc. This exhibit was shown to Beverly Barbito, but was not offered in evidence. Tr. at 1252-53.

Exhibits 2320 to 2329: Curry wedding photos recently provided by Anthony Young, which were emailed to defense counsel January 27, 2013. These were made relevant by Mr. Bergrin's suggestion in opening statement and through cross-examination of Government witnesses that Young was not close to or had little interaction with Curry. These were admitted without any Rule 16 objection from Bergrin through the testimony of Young. Tr. at 2226, 2379-80.

Exhibit 2411: Disc containing EZ-Pass records for Paul Bergrin, bates numbers PBEZPAY-CD-2, produced on August 24, 2011. Exhibit 2411 is

largely a duplicate of Exhibit 2410, which was admitted into evidence at the prior trial. Exhibit 2411 was thus marked and produced in an abundance of caution.

Exhibit 3099: Photo of Lavinia Mears – produced on January 18, 2013 on disc marked “Box 65.” This was admitted without any Rule 16 objection through the testimony of Johnnie Davis. Tr. at 1435.

Exhibits 3346 to 3375: photographs of the following locations:

242 Emmitt Street, Newark NJ; 257 Riverwalk, Nutley, NJ; Comfort Suites, Newark, NJ; GNC on Main Street in Belleville, NJ; Gold’s Gym, Belleville, NJ; La Quinta Hotel, Nutley, NJ; Corner of Verona & Broadway, Newark, NJ—all produced on January 25, 2013 on disc marked “Box 66.”

International Youth Organization – produced on January 25, 2013 via e-mail.

Exhibits 3370–73 were admitted without any Rule 16 objection from Bergrin through Anthony Young. Tr. at 2369.

Exhibits 3530 to 3531: photo of Arlindo Araujo and Hikima Williams – produced on January 18, 2013 on disc marked “Box 65.” These have not been offered in evidence.

Exhibit 4314: Video surveillance of Yolanda Jauregui from strip mall, bates marked YBSURVEILLANCE-CD-2, and provided in discovery and in court on January 22, 2013. The defense was informed on February 1, 2013 that the DEA inadvertently destroyed a video depicting the interior of a Dunkin Donuts; that video did not show Mr. Bergrin. Exhibit 4314 has not yet been offered in evidence.

Exhibit 7021: marked in court during Lachoy Walker’s testimony. Provided to defense on January 7, 2013 as Jencks (J-05349–J-05355). This was not offered in evidence.

Exhibit 7505: disc containing Quickbook records, provided by taint team. This exhibit has not yet been offered in evidence.

Exhibit 7506: Fingerprint card for Norberto Velez. This exhibit was offered into evidence through the testimony of Detective McAloon without any Rule 16 objection from Mr. Bergrin. Tr. at 494-95.

Exhibit 7507: Carlos Camacho phone records – produced on January 25, 2013 on disc marked “Box 66.” This exhibit was marked in an abundance of caution, and we do not expect to offer it in evidence.

Exhibit 7508: Jose Rios phone records – produced on January 25, 2013 on disc marked “Box 66.” This exhibit was marked in an abundance of caution, and we do not expect to offer it in evidence.

Exhibit 7510: Letter from Paul Bergrin to Passaic County Court – produced on January 25, 2013 on disc marked “Box 66.” This exhibit has not yet been offered in evidence.

Exhibit 7511: Letter from Paul Bergrin to Judge Raymond Reddin – produced on January 25, 2013 on disc marked “Box 66.” This exhibit has not yet been offered in evidence.

Beyond all of this, this Court has asked the Government to provide the defense with advance notice of: the Government’s witnesses; the exhibits to be introduced through those witnesses; and physical copies of those exhibits. The Government has complied, as reflected by the emails attached hereto as Exhibit C. Those emails also show an ongoing dialogue between the Government and the defense aimed at clarifying or resolving discovery issues without this Court’s intervention.

In sum, the Government has complied with its discovery obligations by timely producing items in discovery and by providing advanced notice of its trial exhibits. Except for the Velez video, which was timely produced Jencks material, Bergrin thus far has not complained that he has had insufficient time to analyze any exhibit marked after January 3, 2013. Nor has he complained about the Government’s alleged failure to produce information under Rule 16 or Brady (except for his meritless claims regarding Lachoy Walker and the polygraph of Ben Hahn).

Respectfully submitted,

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United States Attorney

By: s/ JOHN GAY
Assistant U.S. Attorney

encls.

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December 14, 2012

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Re: United States v. Paul Bergrin
Criminal Number 09-369

Dear Mr. Lustberg:

The following constitutes the Government's response to the discovery requests contained in your letter of December 3, 2012. The Government provides these responses (1) without conceding that Rule 16, Brady v. Maryland, 373 U.S. 83 (1963), or Giglio v. United States, 405 U.S. 150 (1972), requires the Government to produce the information requested, and (2) without accepting as true the factual premises embedded in your discovery requests. Further, "Brady . . . does not require the government to act as a private investigator and valet for the defendant, gathering evidence and delivering it to opposing counsel." United States v. Tadros, 310 F.3d 999, 1005 (7th Cir. 2002); accord United States v. Merlino, 349 F.3d 144, 154-55 (3d Cir.2003) (Government had no duty to acquire from Bureau of Prisons and listen to 200 jailhouse recordings to determine if they contained exculpatory information). Thus, the Government is not required to acquire potentially exculpatory information in the hands of parties who are not part of the prosecution team, especially where the defendant can obtain the information with reasonable diligence.

1. There are no additional reports, notes, or other documents responsive to this request.

2. Stacey Webb Williams was the eye witness about whom Federal Bureau of Investigation ("FBI") Special Agent Shawn Brokos referred. You were provided previously with a copy of the Newark Police Department statement made by Stacey Webb Williams.

3. Enclosed is an FBI report (J-12040) related to your inquiry. As noted above, you were provided previously with a

EXHIBIT A

copy of a Newark Police Department statement made by Stacey Webb Williams. The report does not exculpate Mr. Bergrin.

4. Enclosed are notes taken by Agent Brokos related to your inquiry (J-12441 through J-12443). The notes do not exculpate Mr. Bergrin.

5. The Government is not in possession of the requested notes. As you are aware, Mr. Jimenez is represented by counsel. The Government has made a request through Mr. Jimenez's counsel for any such notes that may exist. Based upon the testimony at trial and the documents already disclosed related to the subject, there is no reason to believe any such notes would contain exculpatory information. Nevertheless, should the Government obtain any such notes, the Government will comply with its obligations under Brady, Giglio, and the Jencks Act.

6. The individual referred to in J-02840 is Shelton Leverett. The individual referred to in J-03126 is Anthony Young. The Government will not identify the individual referred to in J-02866. None of those individuals can provide information which may exculpate Mr. Bergrin.

7. The Government is not in possession of any information other than what was provided previously. Nevertheless, the Government is providing you with a copy of all documents received from the Essex County Prosecutor's Office for your review. Although much of this file was provided previously, we have included all of the documents received from the Essex County Prosecutor's Office related to this file. (J-12041 through J-12440). There is no additional information contained in the file that is responsive to your request or exculpates Mr. Bergrin.

8. Enclosed is a copy of the requested recording (Bates # 000001). The recording contains no information exculpating Mr. Bergrin of the Kemo Murder.

9. The Government has previously provided all documents in its possession related to the identification made by C. Spruill. Nevertheless, the Government is providing you with a copy of all documents received from the Essex County Prosecutor's Office for your review. Although much of this file was provided previously, we have included all of the documents received from the Essex County Prosecutor's Office related to this file. (J-12041 through J-12440). There is no additional information contained in the file that is responsive to your request or exculpates Mr. Bergrin.

10. The Government is making appropriate inquiries and will provide any relevant documents if and when such documents are received.

11. The Government does not understand how the requested information may exculpate Mr. Bergrin. Please provide additional

details explaining how the requested information is likely to contain information confirming the defense theory that Anthony Young's testimony is fabricated.

12. The Government is not in possession of any documents consistent with the theory that Anthony Young's testimony is fabricated. The Government responds to Mr. Bergrin's specific requests as follows:

- a. This is a Court document. The document is not in the Government's possession.
- b. You are not entitled to any psychological report except to the extent such report contains Brady or Giglio material. The Government does not intend to produce any such report. The Government has and will continue to comply with its Brady and Giglio obligations.
- c. The Government has and will continue to comply with its Giglio obligations relating to Anthony Young.
- d. Anthony Young's conversation with FBI Special Agent William Gale was not recorded. The recording of Anthony Young's voice mail was previously provided to Mr. Bergrin - see Exhibit # 2316a. Nevertheless, enclosed is an additional copy (AYVM-CD-1).

13. The Government is not in possession of any of the requested recordings, and the Hudson County Correctional Center is not a member of the prosecution team. If Mr. Bergrin uses a trial subpoena to obtain the information he seeks, the Government requests copies of any information Mr. Bergrin may obtain.

14. The Government repeats and incorporates herein its response to request Number 13.

15. The Government neither has possession nor is aware of any such recordings.

16. The Government has and will continue to comply with its Giglio obligations relating to Thomas Moran. The Government is not aware of any information that would tend to exculpate Mr. Bergrin of involvement in the pending charges. The Government provides the following additional responses:

- a. You are not entitled to any psychological report except to the extent such report contains Brady or Giglio material. The Government does not intend to produce any such report. The Government has and will continue to comply with its Brady and Giglio obligations.

- b. (i) It is the Government's understanding that the case to which you refer has not been resolved.
- (ii) The Government does not understand this request, and therefore cannot respond. Please provide additional information regarding this request.

17. The Government has and will continue to comply with its obligations under Giglio and the Jencks Act.

- a. The Government has already provided the relevant information regarding Mr. Pozo's prior bad acts. The Government does not intend to provide additional materials regarding those acts. The Government has provided all reports in its possession relating to Mr. Pozo's debriefings in Texas. As you are aware, all materials relating to Mr. Pozo's case in Texas were destroyed in a terrorist attack. Other than what was provided previously, the Government is not in possession of any of the requested materials.
- b. The Government does not believe the requested materials relating to the substance of Mr. Kelley's cooperation in an unrelated investigation in another District is discoverable. The Government does not intend to produce the requested materials. The Government is aware of and will comply with its obligations under Giglio and the Jencks Act.

18. The Government has no information or documents beyond what has already been or will be timely provided pursuant to Giglio and the Jencks Act.

19. All information provided to the Government by the Monmouth County Prosecutor's Office pertaining to its case against Vicente Esteves was provided previously. To the extent that any of those materials may exculpate Mr. Bergrin, they are already in his possession.

20. The Government has satisfied its obligations by providing the recording of this conversation. In event Mr. Bergrin intends to use a transcript of this conversation at trial, the Government requests that he provide a copy of the transcript to the Court and the Government sufficiently in advance of his intended use so that it can be reviewed for accuracy.

21. The Government is aware of and will comply with its obligations under Giglio and the Jencks Act.

22. The Government is not obligated to produce the requested materials. The Government does not intend to produce such materials.

23. The Government has and will continue to comply with its Brady obligations. However, the Government does not understand how the information sought "is material to Mr. Bergrin's defense that government delays resulted in losses of exculpatory evidence material to his innocence." The Government requests that Mr. Bergrin explain how the requested information is exculpatory.

24. No polygraph tests have been administered to any Government witness pertaining to the subject matter of their testimony.

The Government has requested previously reciprocal discovery under Fed. R. Crim. P. 16(b). The Government renews that request. Specifically, we request that you allow inspection and copying of: (1) any books, papers, documents, data, photographs, tangible objects, buildings or places, or copies or portions of any of these items that are in the defendant's possession, custody, or control and which the defendant intends to use in the defendant's case-in-chief at trial; and (2) any results or reports of any physical or mental examination and of any scientific test or experiment that is in the defendant's possession or control and which the defendant intends to use in the defendant's case-in-chief at trial or which was prepared by a witness whom the defendant intends to call at trial. We further request that you disclose a written summary of testimony you intend to use under Fed. R. Evid. 702, 703 and 705 as evidence at trial. This summary should describe the opinions of the witness, the bases and reasons therefore, and the witness's qualifications.

Pursuant to Fed. R. Crim. P. 26.2, the Government also renews its request that the defendant disclose prior statements of witnesses the defendant will call to testify. We request that such material be provided on the same basis upon which we agree to supply the defendant with Section 3500 material relating to Government witnesses.

Very truly yours,

Paul J. Fishman
United States Attorney



By: John Gay
Assistant U.S. Attorney



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Director

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December 3, 2012

VIA E-MAIL AND REGULAR MAIL

John Gay, Assistant U.S. Attorney
United States Attorney's Office
970 Broad Street, Suite 700
Newark , NJ 07102

Re: United States v. Bergrin
Case No. 09-369

Dear Mr. Gay:

As you know, this firm serves as standby counsel to defendant Paul W. Bergrin in the above-captioned matter. During the defense investigation of the pending charges, Mr. Bergrin has become aware of certain potentially exculpatory documents material to preparing his defense that the government has not yet provided. Pursuant to Federal Rule of Criminal Procedure 16, as well as *Brady v. Maryland*, 373 U.S. 83 (1963), and *Giglio v. United States*, 405 U.S. 150 (1972) and their progeny, Mr. Bergrin now requests, in lieu of immediately proceeding by way of motion, the following discovery:

1. During the 2011 Kemo murder trial, Federal Bureau of Investigation (FBI) Special Agent Shawn Brokos testified that she "asked sources whether or not they had seen" Mr. Bergrin's vehicle in the vicinity of Avon Avenue and 17th Street in Newark, New Jersey during the period of November 26, 2003 to November 30, 2003. Tr. (10/19/11) at 161. Mr. Bergrin now requests all documents and information related to those queries, including the names of any individuals who were questioned in this regard, as well as any reports, notes or statements taken with respect thereto, which are likely to exculpate Mr. Bergrin of involvement in the Kemo murder alleged as substantive offenses in Counts Twelve and Thirteen of the Second Superseding Indictment ("Indictment").

2. During the 2011 Kemo murder trial, Special Agent Brokos also testified that an eyewitness to Kemo McCray's shooting indicated that the shooter was positioned behind Mr. McCray. Tr. (10/20/11) at 39-40. Mr. Bergrin now requests all documents and information related to this potential witness, including the identity of that individual, as well as any statements taken from him or her, and any reports or notes concerning this potential witness, which are likely to exculpate Mr. Bergrin of involvement in the Kemo murder.

3. In that trial, Special Agent Brokos also testified that she took a statement from Stacey Webb Williams, an eyewitness to Mr. McCray's shooting, subsequent to the March 4, 2004 statement taken during an interview with Newark Police Department Detective Rashid Sabur (see J-04470-J-04473). Tr. (10/19/11) at 180-81. Agent Brokos testified that during this interview with Mr. Williams, she may have shown him photographs of potential suspects. *Id.*

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Mr. Bergrin now requests all documents and information concerning this interview, including any and all reports, interview notes, statements taken, or photographs presented in connection with interviewing Mr. Williams, which are likely to exculpate Mr. Bergrin of involvement in the Kemo murder.

4. Finally, Special Agent Brokos testified that some time after June 14, 2006, she spoke with the assistant prosecutor in Rashida Tarver's aggravated assault case against Anthony Young in Essex County, and that she may have memorialized those conversations. Tr. (11/9/11) at 131-133. Mr. Bergrin now requests any existing documentation with respect to those conversations, as well as any reports, notes or memoranda prepared with respect to Special Agent Brokos's June 14, 2006 interview with Ms. Tarver, which information is likely to support the defense theory that Anthony Young's testimony is fabricated, thereby exculpating Mr. Bergrin of involvement in the Kemo murder.

5. During the 2011 Kemo murder trial, government witness Ramon Jimenez testified that he took notes to memorialize his meetings with the FBI, which he relied upon in drafting an Attorney Ethics Grievance form against his attorney alleging that the government pressured him to produce inculpatory information about Mr. Bergrin. Tr. (11/21/11) at 21-22, 55-57, 79, 93, 139, 142, 155, 157, 159-162. He further testified that he may have retained some of these notes. *Id.* at 21-22, 55-5, 79, 93, 139. Mr. Bergrin now requests a copy of any notes that Mr. Jimenez took with respect to his interactions with the FBI and the United States Attorney's Office tending to indicate that he was pressured or enticed to provide information against Mr. Bergrin. These documents are likely to exculpate Mr. Bergrin of involvement in the Kemo murder case and the drug conspiracy alleged as a substantive offense in Count Five ("drug conspiracy"). Should these notes not be in the possession of the government, Mr. Bergrin respectfully submits that the government should request them of Mr. Jimenez.

6. Documentation of several FBI interviews that the government provided in accordance with the Jencks Act, 18 U.S.C. §3500, shows that unidentified subjects made statements supporting defense theories that may exculpate him of involvement in the Kemo murder case. As a result, Mr. Bergrin now seeks the identity of the informants specifically described in J-02840, J-02866, and J-03126.

7. An FBI report, also provided in accordance with the Jencks Act, states that an unidentified individual reported that on the day Mr. McCray was killed, "the barber from the barber shop on the corner of 19th and South Orange allegedly ran out and tackled the shooter. He also witnessed four males across the street who appeared to be involved in the shooting." J-02707. Accordingly, Mr. Bergrin now requests all documents and information related to this barber, including the barber's identity and any additional reports, statements taken, interview notes, or photographs presented in connection with this potential witness, who is in a position to

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provide a first-hand account of the shooter's appearance consistent with the defense theory, and exculpate him of involvement in the Kemo murder case.

8. An FBI report from December 1, 2004, also provided in accordance with the Jencks Act, states that an unidentified individual recorded Horatio Joines discussing William Baskerville's federal drug case. J-02616. Mr. Bergrin seeks that recording, as well as any and all written or recorded statements made by Mr. Joines concerning William Baskerville's federal drug case or the Kemo murder, which Mr. Bergrin believes may contain evidence consistent with defense theories and exculpate him of involvement in the Kemo murder case.

9. In the Essex County Prosecutor's Office "File Preparation Checklist" for the Kemo murder case, provided in accordance with the Jencks Act, there are notations that a "C. Spruil" identified "Lattimore" from a photographic array, and that "C. Spruill" stated "Shawn McPhall for pulling gun on him. Susp. mentioned prior shooting." J-04455-56. To date, Mr. Bergrin has not received any materials related to these notations, which, consistent with the defense theory that Malik Lattimore and not Anthony Young was the shooter in the Kemo murder case and that Young's testimony is fabricated, tend to exculpate him of involvement in the Kemo murder. *See* Tr. (10/19/11) at 81. Accordingly, Mr. Bergrin requests all documents and information related to the identifications made by C. Spruil (or Spruill), including any reports, notes, statements taken, or photographic arrays presented with regard thereto.

10. On March 4, 2004, Drug Enforcement Administration (DEA) agents seized a 9 millimeter handgun and 9 millimeter ammunition from Lachoy Walker, which Walker stated had been given to him by Hakeem Curry. *See* J-04320, J-04324-25. DEA agent George Snowden also seized Winchester 9 millimeter Luger ammunition from 353 South Center Street, Orange, New Jersey, a/k/a "the Dungeon." *See* J-06679-80. The ammunition used to kill Mr. McCray were also Winchester 9 millimeter Luger bullets. *See* J-04441. Mr. Bergrin seeks all documents and information pertaining to these weapons, including any statements, ballistics or fingerprint records, or other reports comparing the weapons and ammunition seized from these three crime scenes, as such material is likely to be consistent with defense theories that Anthony Young's testimony is fabricated, thereby exculpating Mr. Bergrin of involvement in the Kemo murder.

11. Likewise, during the 2011 Kemo murder trial, DEA Agent George Snowden testified that in February 2004, DEA agents installed a GPS tracking device on a white Range Rover belonging to Hakeem Curry. *See* Tr. (10/26/11) at 104-05. Mr. Bergrin now seeks all documents and information pertaining to any tracking devices placed on any vehicle owned or driven by a member of the Curry drug gang, from any time between November 2003 through March 2004, as such material is likely to contain evidence confirming the defense theory that

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Anthony Young's testimony is fabricated, and thereby exculpating Mr. Bergrin of involvement in the Kemo murder.

12. Mr. Bergrin requests the following additional information with respect to Anthony Young, all of which is likely to contain evidence that is consistent with the defense theory that Mr. Young's testimony is fabricated, and thereby tending to exculpate Mr. Bergrin of involvement in the Kemo murder:

a. The financial affidavit accompanying the appointment of counsel for Mr. Young in 2005 under the Criminal Justice Act, 18 U.S.C. § 3006A.

b. Any psychological records of Anthony Young in the government's possession.

c. Documentation of any additional benefits received by Anthony Young. This material includes any information pertaining to whether Special Agent Shawn Brokos used her influence as a federal agent to facilitate Mr. Young's release from jail when, in around January 2005, he violated a restraining order against him by threatening Rashida Tarver and her sister with a gun. *See* Tr. (11/9/11) at 43.

d. Any recordings of telephone calls between Anthony Young and the FBI, including those that took place on January 14, 2005 to Deputy Agent William F. Gale and Special Agent Brokos, *see* J-02933; Tr. (11/28/11) at 68- 71, as well as the voicemail message Mr. Young left for Special Agent Brokos claiming Jamal McNeil shot Mr. McCray. *See* Tr. (10/28/11) at 37-38.

13. An FBI report, also provided in accordance with the Jencks Act, *see* J-04978-05042, documents that government witness Yolanda Jauregui informed the government that at some time between May 20, 2009 and November 20, 2009, she and Alejandro Barraza-Castro had multiple telephone conversations with Abdul Williams while he was incarcerated at the Hudson County Correctional Center to set up a cocaine transaction with Williams's family members. J-05029-30. Such conversations were certainly recorded in accordance with the policy of the company that administers inmate telephone calls at that facility. *See* Hudson County Department of Corrections, "Visiting, Records, Services and Links," <http://www.hudsoncountynj.org/visiting-records-services-and-links.aspx> (last visited November 30, 2012); *see also* Global Tel*Link, <http://www.gtl.net/familyandfriends/index.shtml> ("Global Tel*Link has a policy of recording incoming customer calls to its Customer Service Call All inmate telephone calls are likely to be monitored and recorded.") (last visited November 30, 2012). Although the government has provided the defense with, for example, the recordings of Abdul Williams's jailhouse calls from the Essex County Correctional Facility in discovery letters dated May 4, 2011 and August 24, 2011, the defense has not received the recordings that

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Jauregui references in J-05029. Accordingly, Mr. Bergrin now requests these recordings, which are likely to impeach the credibility of Abdul Williams and Yolanda Jauregui at the next trial, and which are likely to demonstrate their motives for providing testimony against Mr. Bergrin, thereby tending to exculpate him of involvement in the Kemo murder case, the drug conspiracy, and the drug and bribery schemes alleged as substantive offenses in Counts 17 through 19. *See United States v. Risha*, 445 F.3d 298, 303-06 (3d Cir. 2006) (federal prosecutors have duty to obtain and disclose exculpatory evidence possessed by state agents).

14. Mr. Bergrin requests the attorney visitation records of Anthony Young, Yolanda Jauregui, and Alberto Castro at Essex County and Hudson County correctional centers, which the defense investigation has led him to believe contain evidence supporting the defense theory that the testimony of these witnesses is fabricated, tending to exculpate him of the Kemo murder and the drug conspiracy.

15. Mr. Bergrin requests any and all interviews between the United States Attorney's Office and Abdul Williams that were surreptitiously recorded by his attorney, Wanda M. Akin, which will enable Mr. Bergrin to impeach the testimony of Mr. Williams and which will tend to exculpate Mr. Bergrin of involvement in the drug conspiracy and the drug trafficking and bribery schemes alleged against him in Counts 17 through 19 of the Indictment.

16. Mr. Bergrin requests the following additional information with respect to Thomas Moran, all of which is likely to contain evidence that is consistent with the defense theory that Mr. Moran's testimony is fabricated, and which would therefore tend to exculpate Mr. Bergrin of involvement in the pending charges:

a. Any psychological records of Thomas Moran in the government's possession

b. Any additional documentation of benefits received by Thomas Moran, including: i) any correspondence, telephone contacts, memoranda, or other communication between the United States Attorney's Office and the Hudson County Prosecutor's Office with respect to Mr. Moran's January 4, 2010 guilty plea in *State v. Moran*, Indictment No. 09-04-00914; and ii) any materials pertaining to the fact that Mr. Moran's father was not arrested after contacting members of the New Jersey State Policemen's Benevolent Association who worked in Thomas Moran's correctional facility.

17. Mr. Bergrin requests additional documents and information, including surveillance recordings, criminal records, plea and cooperation agreements, sentencing materials, and FBI and other investigative reports, with respect to the following witnesses expected to testify for the government at the upcoming trial against Mr. Bergrin: Richard Pozo, Shelton Leverett, Rondre Kelly, and Oscar Cordova.

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John Gay, Assistant U.S. Attorney
United States Attorney's Office
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a. In addition to the materials the government has already provided with respect to Richard Pozo, Mr. Bergrin now also seeks any existing information concerning any orders of protection placed against Mr. Pozo, or violations of such an order, including any information related to whether Mr. Pozo was permitted to remain on supervised release after violating an order of protection against him. Mr. Bergrin also requests any existing information pertaining to government debriefings of Mr. Pozo in Texas, statements other individuals have made against him, and any additional recordings or wiretaps featuring Mr. Pozo.

b. In addition to the materials the government has already provided with respect to Rondre Kelly, Mr. Bergrin now additionally seeks all transcripts of recordings featuring Mr. Kelly, his grand jury testimony in *United States v. Kirkland*, as well as any recordings, testimony, statements -- by either Mr. Kelly or by other witnesses against him, or documents pertaining to any debriefings in the Pittsburgh investigation, *see* J-03917.

18. Mr. Bergrin requests all documents and information with respect to Tito Cepeda which tend to exculpate Mr. Bergrin of the murder-for-hire plot alleged as substantive offenses in Counts 20 through 26 of the Indictment, including any reports, notes, or statements demonstrating that Mr. Cepeda was not contacted by Mr. Bergrin, or anyone working for Mr. Bergrin, to obtain a weapon.

19. Mr. Bergrin requests all documents and information with respect to Dennis Kousos, which tend to exculpate Mr. Bergrin of the murder-for-hire plot alleged as substantive offenses in Counts 20 through 26 of the Indictment, including any reports, notes, or statements demonstrating that their relationship in the Vicente Esteves case was cordial and professional.

20. Mr. Bergrin requests a transcript of the November 18, 2008 meeting between himself, Oscar Cordova, Nelson Esteves, Jason Nieves and Michael Lopez at the Law Office of Paul Bergrin, which contains exculpatory statements with respect to the charges related to the murder-for-hire plot. *See* CW1-000022.

21. Mr. Bergrin seeks all documents and information pertaining to statements made by Gregory Smith, including his testimony in *State v. Peoples*, Indictment No. 06-08-2643, and any government benefits he may have received.

22. The government has provided documentation of certain records obtained through subpoenas *duces tecum*, *see, e.g.*, Discovery Letter of June 21, 2011, PBTMOBL-000002, however Mr. Bergrin requests the date of every subpoena the government has issued seeking records of Mr. Bergrin's telephone and EZPass use, which information is material to Mr. Bergrin's defense that government delays resulted in losses of exculpatory evidence material to his innocence.

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John Gay, Assistant U.S. Attorney
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23. Mr. Bergrin requests all documents and information pertaining to communications between the New York Police Department, the New York District Attorney's Office, the FBI, and the United States Attorney's Office for the District of New Jersey concerning Paul W. Bergrin from about November 2011 through May 2009 coordinating when to arrest and charge Mr. Bergrin, including any shared emails, reports, or memoranda, which information is material to Mr. Bergrin's defense that government delays resulted in losses of exculpatory evidence material to his innocence.

24. Mr. Bergrin also seeks the results of any polygraph examinations administered to any witnesses as well as a list of the questions asked, which Mr. Bergrin believes will support the defense theory that the testimony of the government's witnesses is fabricated.

Please feel free to call me if you would like to discuss these requests further. In the meantime, your prompt attention and cooperation with respect to this request will be very much appreciated.

Sincerely yours,
Gibbons P.C.



By:

Lawrence S. Lustberg
Bruce A. Levy
Amanda B. Protes

Standby counsel for Paul W. Bergrin

cc: Paul W. Bergrin

Sanders, Steven (USANJ) 1

From: Levy, Bruce A. <BLEvy@gibbonslaw.com>
Sent: Thursday, January 10, 2013 7:32 PM
To: Gay, John (USANJ); Minish, Joseph (USANJ); Sanders, Steven (USANJ) 1
Cc: Lustberg, Lawrence S; Protess, Amanda B.
Subject: Bergrin - Jencks and Disclosure Request

John: We have two requests. First, in order to ensure that the upcoming trial goes as smoothly as possible, and specifically in order to avoid the need for the defense to request adjournments and/or additional time to prepare for cross-examination, we are requesting that you adopt a more meaningful practice regarding Jencks material. The problem is this: your Office has now provided 13,774 pages of Jencks material with no index whatsoever and no way for the defense to ascertain which, if any, of these 13,000 plus pages relates to any of the dozens of witnesses the Government intends to call at trial. More to the point, the relevance or potential impeachment value of this paper is frequently not readily apparent. Indeed, in going through the discovery just provided, we realize that we missed important impeachment material the last time around, which we attribute to the opaque way in which the Jencks material has been produced. For example, in the Jencks provided in advance of the 2011 trial, we discovered well after that trial began that the materials provided commingled the Alejandro-Barraza Castro assault and Isabella's homicide reports with some pages of the Kemo homicide reports. Moreover, the photographs of suspects from a 2004 identification were placed with documents accompanying a 2005 identification and vice versa. These issues additionally surfaced when the defense learned for the first time during the government's opening that Alberto Castro would be the witness who was not identified by name in the SSI; the government had failed to include Alberto Castro's Jencks material in the Jencks then provided. Of course, there was no clear way to track what had been provided at the time since there was no index. That experience is now water under the bridge, and we have to live with it. You have now provided the defense approximately 7,000 additional pages. To be sure, much of this is trial transcript that we are familiar with. But as for the rest of it we find ourselves adrift in a sea of paper that includes, as just a few examples, unidentified handwritten notes; chemistry reports that are not readily associated with any particular witness; testimony that is presented out of context, sometimes with no cover page to indicate the name of the witness or proceeding from which it emanates, etc. Most significantly, never in my experience have I heard of Jencks material being provided without any kind of index, or any means of determining which document relates to which witness. If such an index exists (as we assume is the case) and you have decided simply not to share it with us, we hereby request it now. If not, you should anticipate that we will be asking for explanations regarding these documents and, if necessary, requesting continuances or recalling witnesses as a result of this extraordinary manner of production. This will necessitate applications to the Court and trial delays which we all want to avoid and which was the reason for the early disclosure of Jencks to which the government agreed (as well as, for example, the requests for stipulations which were discussed yesterday) -- but which may well be inevitable under the circumstances.

Please advise us whether such indices exists and if so whether you are willing to share them with us, or of how you would otherwise propose to resolve this problem.

Second, we hereby request that the full names of the persons referenced as "D.C." and "C.N." in paragraph 61 of the Second Superseding Indictment, as well as the identities of the certain witnesses, "the Targeted Monmouth County Witnesses" that the defendant allegedly arranged to have killed as well as the "certain other witnesses" that the defendant is alleged to have threatened, intimidated, and otherwise influenced not to implicate "V.E." in V.E.'s Monmouth County Case (paragraph 46) be disclosed. Thank you.

Bruce A. Levy
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Sanders, Steven (USANJ) 1

From: Gay, John (USANJ)
Sent: Saturday, January 12, 2013 2:49 PM
To: Levy, Bruce A.; Minish, Joseph (USANJ); Sanders, Steven (USANJ) 1
Cc: Lustberg, Lawrence S; Protess, Amanda B.
Subject: RE: Bergrin - Jencks and Disclosure Request

Bruce,

Thank you for your email. I am sorry that the procedure we worked out with Mr. Bergin and Larry at the last trial is not working for you at this trial. I look forward to working out an acceptable alternative. Before I address your concerns, I want to make sure you are aware that the 13,774 pages of Jencks/Giglio impeachment materials we provided to you this past Monday include: (1) the 7062 pages that were turned over more than a year ago for the last trial; (2) 3418 pages of transcripts from the first trial; and (3) 3356 pages of new materials. I assume that during the past year you have had adequate time to review and catalogue all of the materials from the last trial, especially since you received daily copy of the trial transcripts. Although we certainly were not obligated to provide those transcripts to you, we nonetheless produced a "J" numbered copy of them to facilitate identification in the event these materials are referenced at trial. As for the new materials, they should be readily identifiable because they begin with the J-numbers that follow the last page of the transcript from the prior trial (which I believe is J-10481). I hope this information reassures you that there is not a sea of paper, but rather a manageable amount of new documents--which have been provided to you in advance of the time required by statute. Of course, since you have requested and received an approximately two week continuance in the case, I am sure that you and the other lawyers assigned to this case will have more than ample time to review and catalogue the new documents. To facilitate that process, the materials have been provided to you in searchable format. If for some reason the technical staff at Gibbons is unable to navigate these search capabilities, please contact me and I will have one of our technical staff explain the procedures. My review of these new materials indicates that most, if not all, of the documents are readily identifiable as to author and subject matter. As for the prior testimony contained in these new documents, while it is true that the first page of the transcript does not necessarily identify the witness, the body of the transcript clearly does (generally at the top of each page). If after actually looking at the new documents you are unable to determine the identity of the author (or the witness in a transcript), I would be more than happy to provide you with assistance. You seek an index from the Government to assist you in determining which impeachment material is relevant for which witness. In my experience, however, such an index fosters misunderstanding rather than clarity. For example, an agent's report may contain impeachment material for that agent, a witness referenced in the report, and/or a person about whom the witness was providing information. An index characterizing

that report as materials related to the agent would not accurately capture the full potential impeachment relevance of that document. More importantly, since I am unaware of your defense strategy, I cannot possibly assess the full potential impeachment value of any of the materials we have provided to you (of course the Government will object to any improper use of the material it has provided). As a result, it would be impossible for me to create an accurate index. Since I do not want to create a misunderstanding regarding the potential impeachment value of any of these materials, I do not intend to make or provide such an index. Given your experience, I am certain you understand that the only way to evaluate the import of these materials is to review them yourself in their entirety. If after doing so, (or even during your review) you have questions about any of the materials, I request we handle this the way Larry and I did at the last trial – give me a call and I we can discuss it. If you can't reach me at my office, my cellphone number is 201-306-9923. Although we have provided these materials to you in advance of the time we are required to do so, I want to be clear that there are likely going to be additional materials we will provide to you during the course of the trial. We will provide any additional materials to you in a timely manner in advance of a witness's testimony.

Regarding your second set of requests: (1) "D.C." is Danilo Chen-Pui and "C.N." is Carlos Noyola. (2) In summary, I expect the evidence will show that the following individuals were targets of tampering in that racketeering act: an individual referred to as Junior (identified as Danilo Chen-Pui), an individual referred to as the truck driver (identified as Carlos Noyola), an individual referred to as the guy who opens the door (never positively identified), Jose Tapia, Arsenio Alejo, Tineo-Paulino, and an individual referred to as the accountant (identified as Dennis Krousos). Tapia and Alejo were spoken to and thereafter provided statements to the defense effectively exculpating Esteves. Junior (Chen-Pui), the truck driver (Noyola) and "the guy who opens the door" were supposed to be murdered. Tineo-Paulino was also identified as a cooperator to be murdered. There was discussion about whether or not the accountant (Krousos) was to be murdered – your client favored murdering him. There will be evidence that your client threatened to kill the accountant (Krousos) and his family if the accountant cooperated against Esteves. As I said the foregoing is a brief summary, there will be additional evidence presented at trial regarding this racketeering act.

I hope I have answered all of your questions. Please let me know if you have any other questions. Thanks.

John

From: Levy, Bruce A. [mailto:BLEvy@gibbonslaw.com]
Sent: Thursday, January 10, 2013 7:32 PM
To: Gay, John (USANJ); Minish, Joseph (USANJ); Sanders, Steven (USANJ) 1
Cc: Lustberg, Lawrence S; Protess, Amanda B.
Subject: Bergrin - Jencks and Disclosure Request

John: We have two requests. First, in order to ensure that the upcoming trial goes as smoothly as possible, and specifically in order to avoid the need for the defense to request adjournments and/or additional time to prepare for cross-examination, we are requesting that you adopt a more meaningful practice regarding Jencks material. The problem is this: your Office has now provided 13,774 pages of Jencks material with no index whatsoever and no way for the defense to ascertain which, if any, of these 13,000 plus pages relates to any of the dozens of witnesses the Government intends to call at trial. More to the point, the relevance or potential impeachment value of this paper is frequently not readily apparent. Indeed, in going through the discovery just provided, we realize that we missed important impeachment material the last time around, which we attribute to the opaque way in which the Jencks material has been produced. For example, in the Jencks provided in advance of the 2011 trial, we discovered well after that trial began that the materials provided commingled the Alejandro-Barraza Castro assault and Isabella's homicide reports with some pages of the Kemo homicide reports. Moreover, the photographs of suspects from a 2004 identification were placed with documents accompanying a 2005 identification and vice versa. These issues additionally surfaced when the defense learned for the first time during the government's opening that Alberto Castro would be the witness who was not identified by name in the SSI; the government had failed to include Alberto Castro's Jencks material in the Jencks then provided. Of course, there was no clear way to track what had been provided at the time since there was no index. That experience is now water under the bridge, and we have to live with it. You have now provided the defense approximately 7,000 additional pages. To be sure, much of this is trial transcript that we are familiar with. But as for the rest of it we find ourselves adrift in a sea of paper that includes, as just a few examples, unidentified handwritten notes; chemistry reports that are not readily associated with any particular witness; testimony that is presented out of context, sometimes with no cover page to indicate the name of the witness or proceeding from which it emanates, etc. Most significantly, never in my experience have I heard of Jencks material being provided without any kind of index, or any means of determining which document relates to which witness. If such an index exists (as we assume is the case) and you have decided simply not to share it with us, we hereby request it now. If not, you should anticipate that we will be asking for explanations regarding these documents and, if necessary, requesting continuances or re-calling witnesses as a result of this extraordinary manner of production. This will necessitate applications to the Court and trial delays which we all want to avoid and which was the reason for the early disclosure of Jencks to which the government agreed (as well as, for example, the requests for stipulations which were discussed yesterday) -- but which may well be inevitable under the circumstances.

Please advise us whether such indices exists and if so whether you are willing to share them with us, or of how you would otherwise propose to resolve this problem.

Second, we hereby request that the full names of the persons referenced as "D.C." and "C.N." in paragraph 61 of the Second Superseding Indictment, as well as the identities of the certain witnesses, "the Targeted Monmouth County Witnesses" that the defendant allegedly arranged to have killed as well as the "certain other witnesses" that the defendant is alleged to have threatened, intimidated, and otherwise influenced not to implicate "V.E." in V.E.'s Monmouth County Case (paragraph 46) be disclosed. Thank you.

Bruce A. Levy
Gibbons P.C.
One Gateway Center
Newark, NJ 07102-5310
Direct: 973-596-4841
Fax: 973-639-6223
Email: blevy@gibbonslaw.com
Web Site: <http://www.gibbonslaw.com>

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Sanders, Steven (USANJ) 1

From: Lustberg, Lawrence S <LLustberg@gibbonslaw.com>
Sent: Tuesday, January 22, 2013 11:24 AM
To: Gay, John (USANJ); Minish, Joseph (USANJ); Sanders, Steven (USANJ) 1
Cc: Levy, Bruce A.; Protes, Amanda B.
Subject: Discovery

Our review of the discovery received thus far does not include either (a) the Carolyn Velez videotape or (b) the McCloud trial testimony that you mentioned. At least the former would appear to be Rule 16 material that should have been provided earlier. In any event, please provide both of those to us as soon as possible. If, as you said, we already have those materials, then please forgive this email and just let us know where we might find it in the discovery provided. Thank you.

Lawrence S. Lustberg
Gibbons P.C.
One Gateway Center
Newark, New Jersey 07102-5310
tel. (973) 596-4731
fax (973) 639-6285
mobile (201) 407-4765

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Sanders, Steven (USANJ) 1

From: Minish, Joseph (USANJ)
Sent: Tuesday, January 22, 2013 1:44 PM
To: Lustberg, Lawrence S
Cc: Protes, Amanda B.; Levy, Bruce A.; Gay, John (USANJ); Sanders, Steven (USANJ) 1; Santos, Arabelys (USANJ) 1; Minish, Joseph (USANJ)
Subject: US v. Paul Bergrin

Larry-

In response to your request earlier today:

(1) By letter dated December 4, 2009 you were provided with the video you requested as YBURVEILLANCE-CD-2. We will bring an additional copy to Court for you. The video will be marked with an exhibit number and we will provide you with that number.

(2) We will bring a copy of Mr. McLeod's testimony to Court for you also.

John was not sure if he previously informed you, so please be advised that during the period of 2006 to the present the U.S. Marshals Service spent \$118,077.42 for the safety, movement, housing, relocation, production, documents, medical, employment, child visitation, and subsistence related expenses related to Lachoy Walker.

-Joe

Sanders, Steven (USANJ) 1

From: Protess, Amanda B. <AProtess@gibbonslaw.com>
Sent: Tuesday, January 22, 2013 5:49 PM
To: Sanders, Steven (USANJ) 1
Cc: Lustberg, Lawrence S; Levy, Bruce A.; Gay, John (USANJ); Minish, Joseph (USANJ)
Subject: Trial Exhibit List

Hi Steve,

As I was packing up tonight, Scott mentioned that, at his request, you had sent him a trial exhibit list today. After comparing notes, his appears to be more up to date than ours. Can you please provide us with the most up-to-date copy? Also, if there are any new exhibits listed, would you mind providing us with a copy of those exhibits as well? Thanks so much.

Regards,
Amanda

Amanda B. Protess, Esq.
Gibbons P.C.
One Gateway Center
Newark, New Jersey 07102-5310
Direct Dial: (973) 596-4877
Direct Fax: (973) 639-6335
aprotess@gibbonslaw.com
www.gibbonslaw.com

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Sanders, Steven (USANJ) 1

From: Sanders, Steven (USANJ) 1
Sent: Tuesday, January 22, 2013 6:00 PM
To: 'AProtess@gibbonslaw.com'; Gay, John (USANJ); Minish, Joseph (USANJ)
Subject: Fw: exhibit list
Attachments: Bergrin Exhibit List.docx

Sorry, Amanda, we thought you had the most updated version.

From: Sanders, Steven (USANJ) 1
Sent: Tuesday, January 22, 2013 11:13 AM
To: scott_creegan@njd.uscourts.gov <scott_creegan@njd.uscourts.gov>
Cc: Santos, Arabelys (USANJ) 1
Subject: exhibit list

<<Bergrin Exhibit List.docx>>

Steven G. Sanders, Assistant U.S. Attorney
U.S. Attorney's Office, District of New Jersey
Appeals Division

970 Broad Street, 7th Floor

Newark, New Jersey 07102

973-297-2019 (phone)

973-297-2007 (fax)

Sanders, Steven (USANJ) 1

From: Protess, Amanda B. <AProtess@gibbonslaw.com>
Sent: Tuesday, January 22, 2013 6:10 PM
To: Sanders, Steven (USANJ) 1
Subject: RE: exhibit list

Thanks so much.

-----Original Message-----

From: Sanders, Steven (USANJ) 1 [<mailto:Steven.Sanders@usdoj.gov>]
Sent: Tuesday, January 22, 2013 6:00 PM
To: Protess, Amanda B.; Gay, John (USANJ); Minish, Joseph (USANJ)
Subject: Fw: exhibit list

Sorry, Amanda, we thought you had the most updated version.

From: Sanders, Steven (USANJ) 1
Sent: Tuesday, January 22, 2013 11:13 AM
To: scott_creegan@njd.uscourts.gov <scott_creegan@njd.uscourts.gov>
Cc: Santos, Arabelys (USANJ) 1
Subject: exhibit list

<<Bergrin Exhibit List.docx>>

Steven G. Sanders, Assistant U.S. Attorney
U.S. Attorney's Office, District of New Jersey
Appeals Division

970 Broad Street, 7th Floor

Newark, New Jersey 07102

973-297-2019 (phone)

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Sanders, Steven (USANJ) 1

From: Levy, Bruce A. <BLEvy@gibbonslaw.com>
Sent: Tuesday, January 22, 2013 6:34 PM
To: Gay, John (USANJ)
Cc: Minish, Joseph (USANJ); Sanders, Steven (USANJ) 1; Lustberg, Lawrence S; Protess, Amanda B.
Subject: Bergrin

John: Regarding the trial exhibits, thank you for agreeing to let us know the day before which exhibits you intend to use with each witness. Assuming we get past Walker tomorrow, please let us know what exhibits you intend to use tomorrow. Additionally, in talking to Scott Cregan after Court today it appears that he is working from an exhibit list that is different than the one provided to us. Can you please confirm that we have the most recent exhibit list. Thanks. Bruce

Bruce A. Levy
Gibbons P.C.
One Gateway Center
Newark, NJ 07102-5310
Direct: 973-596-4841
Fax: 973-639-6223
Email: blevy@gibbonslaw.com
Web Site: <http://www.gibbonslaw.com>

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Sanders, Steven (USANJ) 1

From: Levy, Bruce A. <BLEvy@gibbonslaw.com>
Sent: Tuesday, January 22, 2013 9:10 PM
To: Santos, Arabelys (USANJ) 1
Cc: Lustberg, Lawrence S; Protess, Amanda B.; Gay, John (USANJ); Sanders, Steven (USANJ) 1; Minish, Joseph (USANJ)
Subject: Re: U.S. v. Paul Bergrin

Thank you.

Bruce A. Levy
 Gibbons P.C.
 One Gateway Center
 Newark, NJ 07102-5310
 Direct: 973-596-4841
 Fax: 973-639-6223
 Email: blevy@gibbonslaw.com
 Web Site: <http://www.gibbonslaw.com>

On Jan 22, 2013, at 9:07 PM, "Santos, Arabelys \ (USANJ) 1" <Arabelys.Santos@usdoj.gov> wrote:

As requested, below is a list of witnesses and related exhibits. Please be advised that we expect that these are the exhibits that will be used, but obviously additional exhibits may become necessary during the course of the testimony.

<u>Marilu Bruno</u>	<u>Carolyn Velez</u>	<u>Det. McAloon</u>	<u>Hinfey</u>	<u>Tony Guitierrez</u>
3076	3063			
3074	3076			
3075	3324			
600a	3325			604
3325	3320			608
3324	3322			609
3320	3269	602a		610
3322	3318	602b		611
3269	3315	602c	646	613
3318	3312	602d	646a	616
3312	3314	3313	646b	618a
3315	3307	602e	646c	618b
646	2264	602f	650	644
646a	3073	602g	651	620
640	3256	602h		621
604	3257			622
606	3000			628
641	3001			612
603	627			645
612	610			
610	643			

647
3090
3073

646c
3001
3005
3006
3007
3008
618a
618b
3090
624
625
629a
3530

Arabelys Santos
Paralegal Specialist
United States Attorney's Office | Criminal Division
970 Broad Street | Newark, NJ 07102
Phone: +1 973 645-2710
arabelys.santos@usdoj.gov

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Sanders, Steven (USANJ) 1

From: Proress, Amanda B. <AProress@gibbonslaw.com>
Sent: Wednesday, January 23, 2013 11:33 AM
To: Sanders, Steven (USANJ) 1; Gay, John (USANJ); Minish, Joseph (USANJ)
Cc: Lustberg, Lawrence S; Levy, Bruce A.
Subject: RE: exhibit list

Hi Steve,

Thanks again for sending on the most recent version of the Government's Trial Exhibit List. In light of today's discussion about the confusion over what has been turned over, and to expedite our ability to identify what we have received, could you please identify when the list was revised, why it was revised, why the new exhibits were not previously marked, and most importantly, what is new from the 1/3/13 list (the last list we received prior to last night's request)? Thanks so much.

Regards,
Amanda

-----Original Message-----

From: Sanders, Steven (USANJ) 1 [<mailto:Steven.Sanders@usdoj.gov>]
Sent: Tuesday, January 22, 2013 6:00 PM
To: Proress, Amanda B.; Gay, John (USANJ); Minish, Joseph (USANJ)
Subject: Fw: exhibit list

Sorry, Amanda, we thought you had the most updated version.

From: Sanders, Steven (USANJ) 1
Sent: Tuesday, January 22, 2013 11:13 AM
To: scott_creegan@njd.uscourts.gov <scott_creegan@njd.uscourts.gov>
Cc: Santos, Arabelys (USANJ) 1
Subject: exhibit list

<<Bergrin Exhibit List.docx>>

Steven G. Sanders, Assistant U.S. Attorney
U.S. Attorney's Office, District of New Jersey
Appeals Division

970 Broad Street, 7th Floor

Newark, New Jersey 07102

973-297-2019 (phone)

973-297-2007 (fax)

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Sanders, Steven (USANJ) 1

From: Protes, Amanda B. <AProtes@gibbonslaw.com>
Sent: Wednesday, January 23, 2013 12:17 PM
To: Sanders, Steven (USANJ) 1; Gay, John (USANJ); Minish, Joseph (USANJ)
Cc: Lustberg, Lawrence S; Levy, Bruce A.
Subject: RE: exhibit list

And in that same vein, is it possible to get an electronic (and searchable if possible) copy of the Jencks that you provided today, with J-numbers? The set provided today are not numbered. Also, is this the remainder of the Jencks, as directed by the Court today, or is there some more coming with regard to the Court's direction? Thanks.

-----Original Message-----

From: Protes, Amanda B.
Sent: Wednesday, January 23, 2013 11:33 AM
To: 'Sanders, Steven (USANJ) 1'; 'Gay, John (USANJ)'; 'Minish, Joseph (USANJ)'
Cc: Lustberg, Lawrence S; Levy, Bruce A.
Subject: RE: exhibit list

Hi Steve,

Thanks again for sending on the most recent version of the Government's Trial Exhibit List. In light of today's discussion about the confusion over what has been turned over, and to expedite our ability to identify what we have received, could you please identify when the list was revised, why it was revised, why the new exhibits were not previously marked, and most importantly, what is new from the 1/3/13 list (the last list we received prior to last night's request)? Thanks so much.

Regards,
Amanda

-----Original Message-----

From: Sanders, Steven (USANJ) 1 [<mailto:Steven.Sanders@usdoj.gov>]
Sent: Tuesday, January 22, 2013 6:00 PM
To: Protes, Amanda B.; Gay, John (USANJ); Minish, Joseph (USANJ)
Subject: Fw: exhibit list

Sorry, Amanda, we thought you had the most updated version.

From: Sanders, Steven (USANJ) 1
Sent: Tuesday, January 22, 2013 11:13 AM
To: scott_creegan@njd.uscourts.gov <scott_creegan@njd.uscourts.gov>
Cc: Santos, Arabelys (USANJ) 1
Subject: exhibit list

<<Bergrin Exhibit List.docx>>

Steven G. Sanders, Assistant U.S. Attorney
U.S. Attorney's Office, District of New Jersey
Appeals Division

970 Broad Street, 7th Floor

Newark, New Jersey 07102

973-297-2019 (phone)

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Sanders, Steven (USANJ) 1

From: Proress, Amanda B. <AProress@gibbonslaw.com>
Sent: Thursday, January 24, 2013 10:50 PM
To: Gay, John (USANJ); Minish, Joseph (USANJ); Sanders, Steven (USANJ) 1
Cc: Lustberg, Lawrence S; Levy, Bruce A.
Subject: U.S. v. Bergrin

Hi John,

In preparation for Agent Brokos's testimony -- which, as you mentioned today could occur soon -- we are seeking some additional discovery from the Government. At the last trial, Agent Brokos testified about a reprimand that she received at the FBI for insubordination, as well as commendations that she received on the job, Tr. (10/17/11) at 105, (10/19/11) at 169. We request that you provide us with any documentation or information pertaining to Agent Brokos's disciplinary record and any bonuses or commendations that she has received as well. Please let us know if you are willing to provide this material, or if we should be prepared to raise this with the Court in consultation with Mr. Bergrin. Thanks so much.

Regards,
Amanda

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Sanders, Steven (USANJ) 1

From: Santos, Arabelys (USANJ) 1
Sent: Friday, January 25, 2013 6:05 PM
To: Protess, Amanda B. (AProtess@gibbonslaw.com); Lustberg, Lawrence S (LLustberg@gibbonslaw.com); Levy, Bruce A. (BLevy@gibbonslaw.com)
Cc: Gay, John (USANJ); Minish, Joseph (USANJ); Sanders, Steven (USANJ) 1
Subject: U.S. v. Paul Bergrin
Attachments: Exhibit 3369.pdf; Exhibit 3370.pdf; Exhibit 3371.pdf; Exhibit 3372.pdf; Exhibit 3373.pdf; Exhibit 3374.pdf; Exhibit 3375.pdf; Exhibit 3531.pdf; 14587-14598.PDF

Attached please find the following items:

- Newly marked Government Exhibits 3369-3375, photos of the International Youth Organization
- Twelve pages of additional Jencks marked J-14587-14598

Please reach out to John or Joe with any questions.
Have a good weekend.

Arabelys Santos

Paralegal Specialist

United States Attorney's Office | Criminal Division

970 Broad Street | Newark, NJ 07102

Phone: +1 973 645-2710

arabelys.santos@usdoj.gov

Sanders, Steven (USANJ) 1

From: Santos, Arabelys (USANJ) 1
Sent: Sunday, January 27, 2013 5:25 PM
To: Proress, Amanda B. (AProress@gibbonslaw.com); Lustberg, Lawrence S (LLustberg@gibbonslaw.com); Levy, Bruce A. (BLevy@gibbonslaw.com)
Cc: Gay, John (USANJ); Minish, Joseph (USANJ); Sanders, Steven (USANJ) 1
Subject: U.S. v. Paul Bergrin
Attachments: Exhibit 2320.pdf; Exhibit 2321.pdf; Exhibit 2322.pdf; Exhibit 2323.pdf; Exhibit 2324.pdf; Exhibit 2325.pdf; Exhibit 2326.pdf; Exhibit 2327.pdf; Exhibit 2328.pdf; Exhibit 2329.pdf; 13842-.13875.pdf

Attached are newly marked Government Exhibits 2320-2329, which are photos provided by Anthony Young. Additionally, I have attached Marvin McLeod's testimony in State v. Peoples.

Please reach out to John or Joe with any questions.

Arabelys Santos

Paralegal Specialist

United States Attorney's Office | Criminal Division

970 Broad Street | Newark, NJ 07102

Phone: +1 973 645-2710

arabelys.santos@usdoj.gov

Sanders, Steven (USANJ) 1

From: Santos, Arabelys (USANJ) 1
Sent: Tuesday, January 29, 2013 9:07 PM
To: Lustberg, Lawrence S (LLustberg@gibbonslaw.com); Levy, Bruce A. (BLevy@gibbonslaw.com); Protess, Amanda B. (AProtess@gibbonslaw.com)
Cc: Minish, Joseph (USANJ); Sanders, Steven (USANJ) 1; Gay, John (USANJ); Minotti, Douglas (USANJ)
Subject: U.S. v. Paul Bergrin
Attachments: Notes SA Brokos Re Kemo Murder Investigation.pdf; Ex Parte Brief.pdf

Attached please find the following items:

- J-16047 – J-16050: Notes from SA Brokos relating to the Kemo Murder Investigation
- J-16051 – J-16064: Ex Parte Brief in U.S. v. William Baskerville containing information about threats to Kemo – used by SA Brokos in preparation for testimony.

We will provide you with paper copies in court tomorrow morning. Have a good evening.

Arabelys Santos

Paralegal Specialist

United States Attorney's Office | Criminal Division

970 Broad Street | Newark, NJ 07102

Phone: +1 973 645-2710

arabelys.santos@usdoj.gov

Sanders, Steven (USANJ) 1

From: Santos, Arabelys (USANJ) 1
Sent: Wednesday, January 30, 2013 6:58 PM
To: Protes, Amanda B. (AProtes@gibbonslaw.com); Levy, Bruce A. (BLevy@gibbonslaw.com); Lustberg, Lawrence S (LLustberg@gibbonslaw.com)
Cc: Minish, Joseph (USANJ); Gay, John (USANJ); Sanders, Steven (USANJ) 1
Subject: U.S. v. Paul Bergrin

Attached is a copy of the exhibits identified and admitted through Richard Hosten, Dr. Junaid Shaikh and Eric Dock during the 2011 trial. We will be using the same exhibits for their testimony in this trial and will provide you copies in court.

If you have any questions, please reach out to John or Joe. Thanks.



Identified and
Admitted Exhibi...

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Paralegal Specialist
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970 Broad Street | Newark, NJ 07102
Phone: +1 973 645-2710
arabelys.santos@usdoj.gov

Sanders, Steven (USANJ) 1

From: Levy, Bruce A. <BLEvy@gibbonslaw.com>
Sent: Wednesday, January 30, 2013 7:04 PM
To: Santos, Arabelys (USANJ) 1
Cc: Minish, Joseph (USANJ); Gay, John (USANJ); Sanders, Steven (USANJ) 1; Protess, Amanda B.; Lustberg, Lawrence S
Subject: RE: U.S. v. Paul Bergrin

Arabelys: Thank you. Bruce

Bruce A. Levy
Gibbons P.C.
One Gateway Center
Newark, NJ 07102-5310
Direct: 973-596-4841
Fax: 973-639-6223
Email: blevy@gibbonslaw.com
Web Site: <http://www.gibbonslaw.com>

-----Original Message-----

From: Santos, Arabelys (USANJ) 1 [<mailto:Arabelys.Santos@usdoj.gov>]
Sent: Wednesday, January 30, 2013 6:58 PM
To: Protess, Amanda B.; Levy, Bruce A.; Lustberg, Lawrence S
Cc: Minish, Joseph (USANJ); Gay, John (USANJ); Sanders, Steven (USANJ) 1
Subject: U.S. v. Paul Bergrin

Attached is a copy of the exhibits identified and admitted through Richard Hosten, Dr. Junaid Shaikh and Eric Dock during the 2011 trial. We will be using the same exhibits for their testimony in this trial and will provide you copies in court.

If you have any questions, please reach out to John or Joe. Thanks.

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Sanders, Steven (USANJ) 1

From: Proress, Amanda B. <AProress@gibbonslaw.com>
Sent: Thursday, January 31, 2013 9:31 AM
To: Gay, John (USANJ); Minish, Joseph (USANJ); Sanders, Steven (USANJ) 1; Santos, Arabelys (USANJ) 1
Cc: Lustberg, Lawrence S; Levy, Bruce A.
Subject: Marc Joseph materials

Dear Counsel,

Yesterday, Agent Brokos testified that she spoke to an individual named Marc Joseph, who advised her that William Baskerville was responsible for Mr. McCray's murder. Tr. (1/30/13) at 1602. Mr. Bergin recalls that there is a recording of Mr. Joseph as well as a transcript. We do not appear to have them in our files. Would you kindly provide us with copies of the materials pertaining to Marc Joseph? We do apologize for the inconvenience if they have been previously provided. Thank you so much.

Regards,
Amanda

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Sanders, Steven (USANJ) 1

From: Santos, Arabelys (USANJ) 1
Sent: Thursday, January 31, 2013 6:14 PM
To: Protes, Amanda B. (AProtes@gibbonslaw.com); Levy, Bruce A. (BLevy@gibbonslaw.com); Lustberg, Lawrence S (LLustberg@gibbonslaw.com)
Cc: Gay, John (USANJ); Minish, Joseph (USANJ); Sanders, Steven (USANJ) 1
Subject: U.S. v. Paul Bergrin

This email serves as confirmation that you were given copies of the following documents today in court:

- **J-16065 – J-16083:** A transcript of Laura Shreck's testimony before the Grand Jury in People v. Bergrin
- **J-16084 – J-16096:** A transcript of Thomas Lambert's testimony before the Grand Jury in People v. Bergrin
- **J-03083, J-03086, J-03097, J-03099, J-03100, J-03109, J-03113, J-03114, J-03121, J-03135, J-03149, J-03150:** Shelton Leverett 302s that previously provided in October 2011, prior to the start of the of the first trial. These 302s were provided again on January 7, 2013.
- **Shelton Leverett (CW5) transcripts:** We previously provided on 8/31/2012 and 9/10/2012, transcripts for the following recordings:
 - Exhibit 4130b, NK# 55184, recording bate number CW5-000020
 - Exhibit 4131b, NK# 55541, recording bate number CW5-000028
 - Exhibit 4132b, NK# 55621, recording bate number CW5-000030
 - Exhibit 4133b, NK# 55810, recording bate number CW5-000035
 - Exhibit 4134b, NK# 55813, recording bate number CW5-000038
 - Exhibit 4232b, NK# 55812, recording bate number CW5-000037
 - Exhibit 4232b1, NK# 55812, recording bate number CW5-000037
 - Exhibit 4232b2, NK# 55812, recording bate number CW5-000037
 - Exhibit 4232b3, NK# 55812, recording bate number CW5-000037
 - Exhibit 4232b4, NK# 55812, recording bate number CW5-000037
 - Exhibit 4233b, NK# 56654, recording bate number CW5-000048
 - Exhibit 4234b, NK# 56672, recording bate number CW5-000049
 - Exhibit 4235b, NK# 56674, recording bate number CW5-000050

Have a good evening.

Arabelys Santos

Paralegal Specialist

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Sanders, Steven (USANJ) 1

From: Minish, Joseph (USANJ)
Sent: Friday, February 01, 2013 8:21 AM
To: Protess, Amanda B. (AProtess@gibbonslaw.com); Levy, Bruce A. (BLevy@gibbonslaw.com); Lustberg, Lawrence S (LLustberg@gibbonslaw.com)
Cc: Gay, John (USANJ); Sanders, Steven (USANJ) 1; Minish, Joseph (USANJ); Santos, Arabelys (USANJ) 1
Subject: U.S. v. Paul Bergrin

Counsel-

The Government hereby makes the following disclosures pertaining to 2 witnesses who will testify today:

Eric Dock

After the prior trial, a safety issue arose related to his testimony in that trial. In order to address that issue, Mr. Dock relocated. The Government provided Mr. Dock \$5600 to cover relocation expenses.

Richard Hosten

Mr. Hosten has been promised by the Government if a safety issue arises because of his testimony, the Government will provide financial assistance in relocating Mr. Hosten. No specific dollar figure has been set.

If you have any questions about these disclosures, please let me know.

-Joe Minish

Sanders, Steven (USANJ) 1

From: Levy, Bruce A. <BLEvy@gibbonslaw.com>
Sent: Saturday, February 02, 2013 11:01 AM
To: Minish, Joseph (USANJ); Gay, John (USANJ); Sanders, Steven (USANJ) 1
Cc: Lustberg, Lawrence S; Protess, Amanda B.; Chang, Christopher D.
Subject: U.S. v. Paul Bergrin

Gentlemen: The new Jencks material provided yesterday -- transcripts of Laura Shreck and the other witness -- lack cover pages or identifiable dates of the proceedings. Kindly supplement this material so that we can identify the proceedings and dates of the testimony. Thank you. Bruce

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