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FILED & SERVED ELECTRONICALLY

Honorable Dennis Cavanaugh
United States Distrit Judge
U.S. Post Office & Federal Courthouse
Newark, NJ 07102

Re: United States v. Paul W. Bergrin
Criminal No. 09-369

Dear Judge Cavanaugh:

I am in receipt of Mr. Sanders' letter to Your Honor of late last evening, bringing to the Court's attention the decision of the United States Court of Appeals for the Sixth Circuit in *United States v. Harvey*, 653 F.3d 399 (6th Cir. 2011). Please accept this letter by way of very brief response, in order to bring to Your Honor's attention the authority upon which the defense relied in its argument of yesterday morning, to the effect that, in implementing the so-called Rule of Completeness embodied in Federal Rule of Evidence 106, the Court ought not admit the entirety of the videotape of Carolyn Velez's interview by the authorities, as the Government argues, but only those portions necessary to allow the jury to fairly evaluate the statements that were elicited by Mr. Bergrin, as the defense contended.

The law of the Third Circuit supports the position of the defense. Thus, in *United States v. Hoffecker*, 530 F.3d 137, 192 (3d Cir. 2008), the Court of Appeals, in refusing a defendant's request to play the entirety of a tape under Rule 106, wrote:

> Federal Rule of Evidence 106 provides that "[w]hen a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time ofany other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it." As we have explained, additional portions of a recording may be played "if it is necessary to (1) explain the admitted portion, (2) place the admitted portion in context, (3) avoid misleading the trier of fact, or (4) insure a fair and impartial understanding." *United States v. Soures*, 736 F.2d 87, 91 (3d Cir. 1984) (citing *United States v. Marin*, 669 F.2d 73, 84 (2d Cir. 1982)). *"The Rule does not require introduction of portions of a statement that are neither explanatory of nor relevant to the passages that have been admitted." Id.*

(emphasis added). In this Circuit, at least, the Court of Appeals requires that the Court "carefully review[] the portions that were used and require[] additions where … a misleading impression could be created." *Soures*, 736 F.2d at 91. That is all that Mr. Bergrin asks, and it is what, he understood, Your Honor undertook to do after yesterday's oral argument.

Thank you for your kind consideration of this matter.

Respectfully submitted,

/s/

Lawrence S. Lustberg

LSL/leo

cc: Steven G. Sander, Assistant U.S. Attorney
Paul W. Bergrin