

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THOMAS JOSEPH PETTERS,

Defendant.

REDACTED

FILED UNDER SEAL

**DEFENDANT'S SUPPLEMENTAL
MOTION FOR DISCLOSURE
OF BRADY INFORMATION**

MOTION

Defendant Thomas Joseph Petters, by and through his undersigned attorneys, hereby moves the Court for an order requiring the Government to disclose all exculpatory information within the possession, custody or control of the Government, or the existence of which is known or by the exercise of due diligence could become known to the Government. This motion is based on: the United States Constitution; Brady v. Maryland, 373 U.S. 83 (1963) and its progeny; and the following:

1. The defense brought pretrial motions seeking discovery and disclosure of Brady information, including: criminal background, cooperation agreements, psychiatric test results, suitability studies, federal witness security program participation, and the like regarding alleged co-conspirators, including the indicted co-conspirator known as [REDACTED] [Docket Nos. 110-111, 113-116.]

2. The Court ordered the USAO to comply with its Brady obligations, and the USAO promised that it would do so. [Docket No. 163 at 6; 3/18/2009 Tr. at 130.]

3. As shown in our accompanying Motion for Sanctions, the USAO has suppressed Brady information relating to ██████ including ██████ participation in the WITSEC program, true identity, cooperation agreements, and criminal background.

4. Given this state of affairs, the only reasonable conclusions are: (a) the USAO is unable to identify Brady information; or (b) the USAO is willfully concealing Brady information.

5. Either way, the USAO has proven itself unable or unwilling to make timely Brady disclosures to the defense. Thus, the Court's generalized ruling that the USAO comply with Brady is a nullity.

6. The remedy, in our view, is a Court order:

(a) Requiring the USAO to make a broad and diligent inquiry to all Executive Branch agencies (e.g., USAO, FBI, IRS, SEC, etc.) that reasonably may possess Brady information, as defined in the United State Attorneys' Manual and the defense's Motion for Sanctions, and as delineated in this and prior defense motions; and

(b) Compelling the USAO to turn over all Brady information to the defense forthwith and, to the extent that information constitutes a "close case," to turn over the information to the Court for in camera review.

7. The defense therefore moves the Court for an Order requiring the USAO to search for and disclose Brady information, as follows:

REQUESTS FOR DISCLOSURE

A. All Brady information, as the term is defined in the United States Attorneys' Manual and the accompanying Motion for Sanctions.

B. The specific items requested in Mr. Petters prior pretrial motions [Docket Nos. 110-111, 113-117], including:

1. The names and addresses of any individuals that constitute informants and/or cooperating witnesses who are or were working with and/or were utilized by law enforcement officials in the above-captioned case.
2. Whether such individuals were alleged to have been active participants in the offenses charged in the indictment.
3. Whether such individuals are witnesses to the offenses charged in indictment.
4. Whether law enforcement officials followed internal guidelines in utilizing said individuals.
5. The results of any suitability study and/or other internal documentation regarding the propriety of using said individuals as informants and/or cooperating witnesses.
6. With respect to any witnesses the Government may call at trial and with respect to any alleged co-conspirator or informant, whether indicted or unindicted, the following information:
 - a. Names and addresses of all such persons;
 - b. Any criminal arrests, charges, convictions, or criminal records of any kind;
 - c. Any information of criminal conduct regardless of whether the person has been arrested, charged and/or convicted;

- d. Any information pertaining to whether any such person has any psychiatric or emotional disorders;
 - e. Any information pertaining to whether any such person has been treated for alcoholism or drug abuse;
 - f. Any information pertaining to whether the veracity of any such person has been submitted to polygraph or other veracity-probing examination;
 - g. Any evidence tending to show that the reputation of any such person for truth-telling is diminished;
 - h. Any information pertaining to whether any such persons have been witnesses at any other trial or civil proceeding related in any way to the subject matter of this case;
 - i. Any inconsistent statements or communications of any such person or between them, statements of bias or prejudice against Mr. Petters by such persons, and/or admissions of poor memory or lack of knowledge of any such persons;
 - j. Any evidence inculpatory of others in the offenses charged, or evidence indicating a witness's refusal to inculcate Mr. Petters; and/or
 - k. Any plea bargain agreement entered into with the Government, including grants of any type of immunity or any other type of consideration.
7. Information or other evidence which shows or tends to show, directly or indirectly, that Mr. Petters knew or had reason to know, or believed or had reason to believe, that any representations or statements of fact which were made by his alleged co-conspirators, alleged victims, or their agents were true, correct and/or legal.
8. Any evidence indicating any alleged co-conspirator or alleged victim (such as any hedge fund) was aware of the alleged scheme and/or concealed same from Mr. Petters.
9. Any evidence indicating that the monies specified in the money laundering counts of the indictment constitute receipts rather than profits.

10. Any and all materials which evince the Government's knowledge of and study of potential fraud by hedge funds in general, but more particularly any hedge fund involved in this case.
11. The personnel files of each Government agent witness that would reflect on the credibility of the agent witness or otherwise would be favorable to the defense.
- C. As it relates to [REDACTED] or any other WITSEC enrollee in this

matter:

1. WITSEC guidelines and policies.
2. The enrollee's entire WITSEC file.
3. The enrollee's convictions, judgments and sentences.
4. The enrollee's cooperation agreement with the United States or any other sovereign, including but not limited to the cooperation that led to the initial application, all cash/rewards paid for past cooperation, plea agreements, and the like.
5. Cooperation of any type by the enrollee with the United States or any other sovereign, including but not limited to the cooperation that led to the initial application, all cash/rewards paid for past cooperation, and the like.
6. Transcripts of prior testimony, witness statements, or the like.
7. What steps, if any, the WITSEC program took to monitor the enrollee, audit his books and records, and ensure that his conduct was a law-abiding.

8. Information indicating whether the enrollee's lifestyle was of concern to WITSEC. For example, WITSEC's determination as to the enrollee's source of income and its legitimacy.

9. Each WITSEC enrollee is required to undergo a battery of psychological tests, as well as what is known as a "risk assessment," prepared to discern whether the witness poses a "threat to the community" upon relocation. We request the test results.

10. Each WITSEC participant is required to sign a "Memorandum of Understanding," so there isn't "any confusion" as to the witness's duties and obligations, including the requirement that he be law-abiding. We request any enrollee's "Memorandum of Understanding."

Dated: June 30, 2009

s/ Jon M. Hopeman

Jon M. Hopeman, MN #47065
Eric J. Riensche, MN #309126
Jessica M. Marsh, MN #388353
Felhaber, Larson, Fenlon & Vogt, P.A.
220 South Sixth Street, Suite 2200
Minneapolis, MN 55402-4504
Telephone: (612) 339-6321

Paul C. Engh, MN #134685
Engh Law Office
220 South Sixth Street, Suite 215
Minneapolis, MN 55402
Telephone: (612) 252-1100