

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 99-CR-40006-GPM
)	
ANDREW J. JOHNSON, a/k/a "Jerome,")	
)	
Defendant.)	

**DEFENDANT'S MOTION IN LIMINE OR IN THE ALTERNATIVE
MOTION TO STRIKE**

Comes now Defendant, Andrew J. Johnson, by his attorney, John D. Stobbs II, and for his Motion in Limine or in the Alternative Motion to Strike, states:

1. At the final pretrial conference held on March 15,1999, the undersigned requested and was granted leave to file pretrial motions, and only three days later, on March 18, 1999 the following Motions were filed:

- a. Motion for Disclosure of Expert Testimony;
- b. Motion to Disclose 404 (b) Evidence;
- c. Motion for Kyles and Brady Information;
- d. Motion regarding informants; and
- e. Motion for Agents to Retain Rough Notes.

2. On March 29, 1999 the Court **granted** the aforesaid Motions, and the Government was ordered to comply with Defendant' discovery requests.

3. To date the Government has failed to comply with the Court's March 29, 1999 Order insofar as **no** documents have been produced since the date the Order was entered.

4. At the March 29, 1999 Motion Hearing the Court was clear in indicating to **all** of the parties that they proceeded at their own peril if they failed to obey any Orders of the Court.

5. Addressing the Motions filed by Defendant and the Government's failure to comply with the Court's March 29, 1999 Order seriatim:

a. Motion for Disclosure of Expert Testimony

Trial in this matter is less than one week away and the Government has not even advised the Defendant who their expert witness will be and likewise has failed to provide a report as to what the nature of its expert's testimony will be.

On April 1, 1999 (Exhibit A), the undersigned requested the curriculum vitae of the expert witness as well as the captions for any other trials he has testified in as an agent or expert. A copy of the expert's personnel file was also requested and to date nothing regarding an expert witness has been produced.

Because of the obvious time constraints, it will be absolutely impossible for Defendant to retain a "counter-expert" prior to trial and the Court should prohibit the Government from presenting any expert witness testimony at all.

b. Motion to Disclose 404 (b) Evidence

Similarly, the Court was clear regarding the Government's obligation to disclose 404 (b) evidence and concluded that it was not sufficient for the Government to shift the burden to Defendant to go through the "open file" to ascertain what constitutes 404 (b) evidence.

To date this has not been complied with by the Government and Defendant would request that any mention of any evidence which would conceivably constitute 404 (b) evidence be excluded.

c. Motion for Kyles and Brady Information

The Court correctly concluded that agents' files are part of Kyles and Brady and ordered the Government to provide Defendant with copies of the agents' files which would include not only the file number used in this case (166E-SI-49489), but also any file which was used as a precursor to this case. An example would be Diane Ross (Drakeford) , who in November of 1998 gave a statement to investigating officers under the file number 166E-SI-49408.

In the April 1, 1999, the undersigned requested additional discovery regarding any trials in which any Government witness has testified in (See Exhibit A), and to date no response has been received. This information would be used to cross-examine the Government's witness in the event they have testified previously.

Defendant would submit that the appropriate sanction in this regard would be to prohibit the Government from presenting any evidence which contains any information which could have been gleaned from these crucial reports.

The Government has provided a redacted F.B.I. form 302 of an interview with Rodney Lee Crabtree Yearian and the Court requested the Government to provide it with caselaw showing why it should be allowed to produce a three page statement containing perhaps two paragraphs. On April 1, 1999 (Exhibit A), the undersigned followed up on this request and nothing has been forthcoming from the Government.

Defendant would request that the jury be advised of this non-compliance and that no mention of Mr. Yearian be made at trial.

d. Motion regarding informants

The final Motion filed involves information regarding the various "snitches" used by the Government and more specifically the following:

1. copy of informant file including any FBI 302;
2. any debriefing reports;
3. any informant agreement, contract or anything similar thereto;
4. any internal memoranda prepared by a Government agent which would document the informant's conduct in any manner in which the informant has been used which the Government or its agents have knowledge of; and
5. any consideration given to the confidential informant.

As with the other discovery requests, and even though ordered to do so, the Government has failed to provide any information whatsoever regarding its informants, and it is crucial that the Defendant have this information so that he can attempt to prepare an intelligent cross-examination of the informants.

The requested sanction is that the Government be prohibited from calling any informant to the witness stand or make any mention of any informants.

e. Motion for Production of Witness Statements

Defendant would also remind the Court that he filed a Motion for Production of Witness Statements wherein he was requesting that he be provided with all Jencks Act material at a time prior to trial sufficient to prepare. If the Government follows the Jencks Act to the letter, which is its prerogative Defendant will request a continuance under Federal Rule of Criminal Procedure 26.2 (d) so that he can prepare for the witness' testimony.

This will dramatically slow down the trial and Defendant is requesting that the Court require the Government to provide the Jencks Act material to the Defendant on Monday April 12, 1999.

Conclusion

As early as the January 27, 1999 Detention Hearing, the Government promised that *“Defendants will get plenty of discovery at the appropriate time,”* (emphasis added) and apparently one week prior to trial is still not the “appropriate time.” Obviously, in any litigation, be it civil or criminal, the party who is slow to turn over discovery has a certain tactical advantage because the opposition never knows what he faces until the very last

minute. The result in civil litigation is multi-million dollar verdicts and in criminal cases the result should be drastic because the life of a human being hangs in the balance.

WHEREFORE, Defendant requests that the Court grant this Motion and sanction the Government as requested.

ANDREW J. JOHNSON

BY:

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CERTIFICATE OF SERVICE

The undersigned certifies that on the 7th day of April, 1999, a copy of the attached **DEFENDANT'S MOTION IN LIMINE OR IN THE ALTERNATIVE MOTION TO STRIKE** was served on the following persons by depositing a copy of same in an envelope with postage prepaid in the United States Mails in the Post Office in East Alton, Illinois addressed as set out, namely:

Ms. Amanda Robertson
Assistant U.S. Attorney
402 West Main, Suite 2A
Benton, Illinois 62812

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