

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

| | | |
|---------------------------|---|-----------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | CR. NO. 2:10cr186-MHT |
| |) | |
| MILTON E. McGREGOR, |) | |
| |) | |
| Defendant. |) | |

**MOTION TO COMPEL, FOR AN EVIDENTIARY HEARING, AND FOR
SANCTIONS AND APPROPRIATE RELIEF, REGARDING LATE-DISCLOSED
INFORMATION CONCERNING LEGISLATIVE REFERENCE SERVICE AND
IMPROPER GOVERNMENT CONDUCT AT THE FIRST TRIAL**

Milton McGregor respectfully moves for an order compelling the Government to provide information as discussed herein; setting an evidentiary hearing with testimony from Government personnel in order to fully determine the facts; and thereafter issuing relief including sanctions against the Government and/or particular personnel and possibly dismissal of Counts 15 and 16.

The gravamen of this motion is that the Government withheld highly important information, before and during the first trial; and beyond that, the Government improperly asked the jury as well as the Court to make inferences that the Government knew (by virtue of the undisclosed information) to be wrong.

As the Court is aware, there was a great deal of evidence and discussion at the first trial about Legislative Reference Service protocols and standards, in particular for the

interaction between LRS staff and authorized outside persons (constituents, lawyers, lobbyists, etc.). Counsel for Mr. McGregor and counsel for Mr. Crosby presented evidence and argument that (a) authorization from a bill's sponsoring legislator, designating an outside person as one with whom LRS staff should work on a given bill, could be oral or written; (b) when such authorization existed, the LRS staff was to be responsive to the authorized person, making such changes in draft legislation as the authorized person requested; and (c) Mr. McGregor as well as his attorney and lobbyists were orally authorized by Senator Bedford to interact with Mr. Crosby on SB 380. These points were highly important to the defense against Counts 15 and 16. They helped to show that to the extent Mr. Crosby may have drafted bill provisions that were in the interest of Mr. McGregor, there was no reason to infer that this was an intended result of payments to Mr. Crosby; on the contrary, it was the nature of Mr. Crosby's job by virtue of Mr. McGregor's status as an authorized person. Similarly, these points dispelled the Government's contention that the recorded conversations between Mr. McGregor and Mr. Crosby were inappropriate.

The Government, by contrast, (a) attempted to convince the jury that there was a material distinction between a written authorization and one that was merely oral; (b) thereby attempted to call into question whether Mr. McGregor and others were actually "authorized" to work with Mr. Crosby on SB 380; (c) attempted to convince the jury that it was improper for LRS staff to make changes in draft legislation at the request of an interested outside person, as exemplified in J-127; and (d) attempted to convince the jury that it was inappropriate, and evidence of corrupt wrongdoing, for Mr. McGregor to ask

Mr. Crosby not to tell Senator Bedford of their conversation, on J-127.¹ Most of these contentions were also relevant to oral argument before the Court on the Rule 29 motions.

It is now known that the Government knew the falsity of its position on these things, by virtue of Government interviews before the first trial with the Director of LRS, Mr. Jerry Basset and with LRS employee Helen Hanby.²

As explained below, the Government's conduct is highly inappropriate on multiple grounds. Mr. McGregor requests that the Court take such steps as are necessary to find out all the facts regarding which Government personnel were involved with the decision to withhold this information and to make misleading arguments to the jury; and to find out the extent to which the misconduct was intentional, and on whose part. After finding out that information, the Court should issue such sanctions as are appropriate.

The January 12, 2012 disclosure and subsequent correspondence

On January 12, 2012, Mr. Shur wrote the following letter (Exhibit A hereto) to defense counsel, disclosing information that had been gathered by the Government before the first trial, but which the Government had not disclosed:

This is to inform you that, during the government's preparation for the initial trial of this matter, Jerry Basset advised in sum and substance that:

- Ray Crosby told Bassett that Milton McGregor was authorized to interact with Crosby on behalf of Senator Roger Bedford with respect to Senate Bill 380

¹ Specific portions of the record reflecting these things will be cited below.

² See Transcript of June 15, Doc. 1298, p. 45 (Mr. Basset is director of LRS); Transcript of June 30, Doc. 1573, p. 16 (Ms. Hanby is employee of LRS).

- Bassett believed that Bedford authorized McGregor to interact with Crosby on behalf of Bedford with respect to Senate Bill 380
- Bassett believed that the telephone conversation between Crosby and McGregor [Call No. 01173] was proper if McGregor had been authorized as a legislative proxy who could interact with Crosby
- Bassett did not believe there was anything improper in McGregor instructing Crosby to start making changes to the bill without telling Bedford that McGregor and Crosby had spoken

In addition, during the same time period, Helen Hanby advised:

- The procedure by which legislators authorized proxies to interact with LRS analysts could be informal and unwritten
- Hanby expected any LRS employees receiving income from outside the LRS to disclose the outside income to the LRS.
- Hanby was aware of instances in which outside income had not been disclosed, but those instances involved things such as holiday work (for example, making extra money through gift wrapping)

Counsel for Mr. McGregor responded the same day (Exhibit B):

As you can imagine, we were shocked to receive your email today regarding information in the possession of the government prior to the June 2011 trial. In connection with that information, please provide the following:

1. Those persons present when such information was provided;
2. The dates such information was provided; and
3. Any notes, documents or other information related to the matters set forth in your letter.

Please provide the above immediately.

Mr. Shur responded the same day (Exhibit C):

This is in response to your below-referenced letter. The individuals present when such information was provided include Barak Cohen, Joe Herman, and the witness. There were no agent notes generated. The description of the witness' statements – as relayed in my letter – came from attorney notes

generated after trial prep sessions with those witnesses. While we are unable to pinpoint specific dates, those trial prep sessions occurred approximately two to four weeks prior to trial.

It is thus established that the information in question was known to at least one attorney member of the Government's trial team, and one non-attorney investigator, prior to the first trial. Mr. McGregor's counsel asked (Exhibit D) for further information to determine whether others on the Government team knew this information as well.

Justin,

Acknowledge and appreciate your response to my letter of today. I want to make certain that we are clear on what you are representing to defense counsel. Are you representing to defense counsel that Barak Cohen and Joe Herman did not provide the information contained in your letter of today to any other attorneys for the Government in the case or any of the FBI agents including, but not limited to Baker and McEachern? As you are aware, Barak Cohen was in the Courtroom and participated in the trial. I am sure you can understand why we need this information. I need to know if any other Government attorney or any other Government agent was in possession of the information which you provided today in your January 12th letter. Again, I would appreciate your immediate response.

Joe

The Government, however, refused to provide more information.

Joe - I believe my response to your letter is sufficient. The government satisfied its discovery obligations prior to the first trial. Nonetheless, this additional disclosure was made out of an abundance of caution.

(Exhibit E).

At the first trial, the Government took positions that the Government knew to be wrong in light of this information; and the withheld information would have been relevant to the Court as well as to the jury.

On several points implicated in the January 12 disclosure, the Government's conduct at trial was contrary to what the Government knew to be true. In any event, the undisclosed information was highly relevant to important points of contention, and should have been disclosed.

1. Counsel for Mr. McGregor and for Mr. Crosby attempted to show the jury at the first trial that a sponsor's authorization of an outside person to work with LRS staff could be informal and unwritten. (*E.g.*, Transcript of June 15, Doc. 1298, p. 22 lines 20-22). The point was important enough that, for instance, it was even part of Mr. Crosby's opening statement. (Transcript of June 10, Doc. 1263, p. 168 lines 12-16).

We now know, from the January 12 disclosure, that the Government knew that Mr. McGregor and Mr. Crosby were correct about this. Ms. Hanby told it to the Government, before the first trial. And there is no hint that the Government had any reason to doubt Ms. Hanby on it, nor any hint that the Government had contrary information from any other source.

Yet instead of conceding that counsel for Mr. McGregor and Mr. Crosby were correct about this, and instead of telling the defense that Ms. Hanby could testify to corroborate the important point if necessary, the Government attempted to insinuate to the jury that there was a material distinction between an oral and a written authorization. The Government made that improper insinuation twice – once through an otherwise-pointless objection to a defense question (Transcript of June 30, Doc. 1573, p. 119 lines

16-18), and once through an otherwise-pointless and objectionable question of its own agent (Transcript of July 5, Doc. 1737, p. 148 lines 15-17). There would have been no reasonable purpose for such question and objection, except to insinuate to the jury that there was something suspect about the contention that an oral authorization had been made. In fact, the Government knew that there was nothing suspect about informal oral authorization at all.

2. Counsel for Mr. McGregor and for Mr. Crosby also attempted to show the jury at the first trial that Mr. McGregor, and those working with him (attorney and lobbyists) were authorized by Senator Bedford to work with Mr. Crosby. Again, given the information that the Government had, the Government's response should have been to concede that the defense was correct on this point. The Government certainly had no reason to dispute it. Yet again, the Government insinuated that there was doubt about this – for instance, by its objectionable and otherwise-pointless question to Agent McEachern about whether he had seen any written authorization. (Transcript of July 5, Doc. 1737, p. 148 lines 15-17). And again, the Government did not even tell the defense that Mr. Bassett, the head of LRS, would have been ready to testify that it was his understanding that proper authorization existed in this matter.

3. The problem significantly intensifies further when it comes to the parties' battle over the question of what LRS staff are supposed to do, at the request of an "authorized" person. It was integral to the defense, on Count 15 and 16, that LRS staff are *supposed* to be responsive to the desires and requests of such authorized persons. LRS staff are *supposed* to draft bills with such provisions as those persons request.

The Government took a contrary position at trial: that when Mr. Crosby drafted a provision at the request of Mr. McGregor (or his attorneys or lobbyists), this amounted to “sneaking” a provision into the bill. (E.g., Rebuttal closing argument, Transcript of August 5, Doc. 1826, p. 130). The Government contended that when Mr. Crosby did that, he was wrongly “working for” Mr. McGregor. (*Id.*)

The Government made this contention in its closing, relying specifically on J-127, playing it for the jury (*Id.*, p. 129), and asking the jury to believe that in that recorded conversation, Mr. Crosby was doing something other than what he was supposed to be doing as an LRS analyst. The Government’s pitch was that Mr. Crosby was not supposed to be so responsive to Mr. McGregor, in that call as a prime example; to the Government, this call, J-127, was an example of Mr. Crosby “working for” Mr. McGregor and “sneaking” things into bills on his behalf. “[T]hat conversation right there,” said the Government about J-127, “is all you need to know to know who Ray Crosby was working for.” (*Id.*, p. 130 lines 13-14).

J-127 was the very same call that the Government had discussed with Mr. Basset in the pretrial interview. The Government learned at that time – but did not disclose – that this conversation was “proper” if (as should have been undisputed) Mr. McGregor was authorized by Senator Bedford to work with Mr. Crosby on the bill. The fact that LRS Director Basset viewed the conversation as “proper” would have been enormously helpful, and indeed should have been dispositive, in refuting any contention that Mr. Crosby was wrongly “working for” Mr. McGregor and wrongly “sneaking” provisions into the bill on his behalf. A recognition of J-127 as “proper” would have strongly made

the point that Mr. McGregor was making: that an LRS analyst is *supposed* to be responsive to the requests and interests of the “authorized” person. The proper thing for the LRS analyst to do, is precisely what Mr. Crosby was doing in this conversation. This knowledge should have led the Government to concede the point: that Mr. Crosby’s responsiveness in J-127 was par for the course for his job description, rather than being evidence of wrongdoing. At the very least, had the Government told the defense LRS Director Basset would have deemed the conversation proper, it would have been useful to the defense. It would also, we respectfully submit, have been useful for the Court to know the point during Rule 29 argument, at which a major point of contention was whether we were correct in saying that an LRS analyst is *supposed* to write provisions the way an authorized person requests.

4. The Government also made strong use in its closing argument of another specific contention about J-127. This was the portion of the call where Mr. McGregor asked Mr. Crosby not to tell Senator Bedford that they had spoken.

As disclosed on January 12, LRS Director Basset told the Government before the first trial that he “did not believe there was anything improper in McGregor instructing Crosby to start making changes to the bill without telling Bedford that McGregor and Crosby had spoken.” Yet this was not disclosed to the defense before trial. And in closing argument, the Government hit this hard, in a way that is directly contrary to Mr. Basset’s recognition that it was not an improper way for an LRS analyst to do his job:

Now, I expect defense counsel to stand up and say, well, there was nothing improper about McGregor talking to Crosby, because McGregor was somebody who was authorized to talk to Crosby. Here's the problem with

that. There is a call between McGregor and Crosby where Crosby is told by McGregor to not discuss the fact that McGregor has called Crosby with Bedford, the sponsor of the bill.

Now, under what circumstances could you imagine that the agent is able to act on behalf of the principal and tell someone outside of the agency not to tell the principal? And in this instance, Mr. McGregor is the agent. Bedford is the principal. And McGregor is telling Crosby, don't tell the guy who's sponsoring the bill that you and I had this conversation.

Transcript of August 3, Doc. 1832, p. 158 line 14 to p. 159 line 1.

The point came up also in Rule 29 argument -- and here, it was Mr. Cohen, the very person who had gotten the information from Mr. Basset, who told the Court that it was "egregious" for Mr. Crosby and Mr. McGregor to act in this way.

MR. COHEN: ... For example, when possible, he would draft bills in a way that were favorable to Mr. McGregor. He would try to -- he would draft bills in a way that was favorable to Mr. McGregor. He would take direction from Mr. McGregor with respect to how bills were drafted. And in fact, that behavior was egregious enough that Mr. McGregor would tell Mr. Crosby not to report back to Mr. Bedford how they decided certain -- how Mr. Bedford's bill was being drafted.

THE COURT: The statements don't tell Bedford?

MR. COHEN: Correct. Your Honor, that's call J one twenty-seven.

Transcript of July 27, Doc. 1688, p. 204 lines 6-16. The point was important enough to the Court, that the Court then brought it up with Mr. Crosby's counsel. *Id.*, p. 207 lines 12-14. It certainly would have shed a different light on the case if, instead of telling the Court that this conversation was "egregious" in these respects, the Government had told the Court that it was proper behavior for an LRS analyst according to the Director of LRS itself. In any event, it certainly would have been material information to provide to the defense.

The Government has the twin duties to (a) provide material exculpatory information to the defense; and (b) not make arguments that it knows (via withheld information) to be incorrect.

By conducting itself in this way, the Government's team violated two constitutional duties: (a) the *Brady* duty to provide material exculpatory information, and (b) the Due Process duty of prosecutors not to make arguments for inferences that they know to be false.

As to *Brady*, there can surely be no doubt that this information was material and exculpatory. The Government should have known this before the first trial began. But it is certainly obvious that the Government should have known this by the end of opening statements – because by that time, the Government knew that the issue of LRS “authorization” was central to the defense of both Mr. McGregor and Mr. Crosby. The Government knew that both Mr. McGregor and Mr. Crosby were relying on the contention that Mr. McGregor and his professionals were orally authorized by Senator Bedford to work with Mr. Crosby on the bill, and that as such Mr. Crosby was supposed to help them achieve their goals in the drafting of the bill. The Government also knew that its trial plan included an attempt to convince the jury that Mr. Crosby and Mr. McGregor acted wrongly – “egregious[ly],” as the Government put it in Rule 29 argument – in not telling Senator Bedford certain details. It is plain that the information from Mr. Basset and Ms. Hanby would have been helpful to the defense, on all of these points.

As to the second point, the law is clear that it is especially wrong for prosecutors, having withheld information, to make arguments that they *know* (based on the withheld information) to be wrong. *See, e.g., United States v. Udechukwu*, 11 F.3d 1101 (1st Cir. 1993):

Here we find a kind of double-acting prosecutorial error: a failure to communicate salient information, which, under *Brady v. Maryland*, 373 U.S. 83, 10 L. Ed. 2d 215, 83 S. Ct. 1194 (1963), and *Giglio v. United States*, 405 U.S. 150, 31 L. Ed. 2d 104, 92 S. Ct. 763 (1972), should be disclosed to the defense, and a deliberate insinuation that the truth is to the contrary. As we pointed out in *United States v. Smith*, 982 F.2d 681, 683 (1st Cir. 1993), "it [is] not improper to urge the jury to evaluate the plausibility of the justification defense in light of the other evidence (and the lack thereof)," but "it is plainly improper for a prosecutor to imply reliance on knowledge or evidence not available to the jury." It is all the more improper to imply reliance on a fact that the prosecutor knows to be untrue, or to question the existence of someone who is known by the prosecution to exist.

Id. at 1106. *See also United States v. Blueford*, 312 F.3d 962, 968 (9th Cir. 2002) ("it is decidedly improper for the government to propound inferences that it knows to be false, or has very strong reason to doubt"); *Davis v. Zant*, 36 F.3d 1538, 1548 & n.15 (11th Cir. 1994) (improper for prosecutor to make knowing misstatements of fact in closing argument).

The Court should compel the Government to provide further information, and should hold an evidentiary hearing, followed by appropriate relief.

The foregoing has shown that the Government withheld information that plainly should have been disclosed, and that the Government made arguments and other presentation that were contrary to the facts as known to Government counsel. What is not perfectly clear at this point is how deep and widespread the wrongdoing was –

including whether Government counsel beyond Mr. Cohen actually knew of the information in question, and on whose part the wrongdoing amounted to an intentional decision. Depending on the answers to those questions, relief up to and including dismissal of Counts 15 and 16 may be appropriate. *See Government of the Virgin Islands v. Fahie*, 419 F.3d 249, 254-55 (3rd Cir. 2005) (while retrial is ordinarily the remedy for a *Brady* violation, in a particularly egregious case of intentional violation, barring a retrial may be appropriate).

Respectfully submitted,

/s/ Joe Espy, III
Joe Espy, III (ASB-6591-S82J)
One of the Attorneys for Milton E. McGregor

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CERTIFICATE OF SERVICE

I hereby certify that on January 19, 2012, I filed the foregoing with the Clerk of the Court using the CM/ECF filing system, and that a copy of same will be served on the below listed counsel of record via such system:

Justin V. Shur
Eric Olshan
Barak Cohen
Brenda K. Morris
Emily Rae Woods
John L. Smith
Edward T. Kang
M. Kendall Day
Marquest Meeks

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EXHIBIT A



U.S. Department of Justice

Criminal Division

Public Integrity Section
1400 New York Avenue, NW
Suite 12100
Washington, D.C. 20005

Telephone (202) 353-2248
Facsimile (202) 514-3003

January 12, 2012

By E-mail

Counsel to all defendants

Re: United States v. McGregor, et al.

Dear Counsel:

This is to inform you that, during the government's preparation for the initial trial of this matter, Jerry Bassett advised in sum and substance that:

- Ray Crosby told Bassett that Milton McGregor was authorized to interact with Crosby on behalf of Senator Roger Bedford with respect to Senate Bill 380
- Bassett believed that Bedford authorized McGregor to interact with Crosby on behalf of Bedford with respect to Senate Bill 380
- Bassett believed that the telephone conversation between Crosby and McGregor [Call No. 01173] was proper if McGregor had been authorized as a legislative proxy who could interact with Crosby
- Bassett did not believe there was anything improper in McGregor instructing Crosby to start making changes to the bill without telling Bedford that McGregor and Crosby had spoken

In addition, during the same time period, Helen Hanby advised:

- The procedure by which legislators authorized proxies to interact with LRS analysts could be informal and unwritten
- Hanby expected any LRS employees receiving income from outside the LRS to disclose the outside income to the LRS.
- Hanby was aware of instances in which outside income had not been disclosed, but those instances involved things such as holiday work (for example, making extra money through gift wrapping)

Sincerely,

/s/ Justin V. Shur

Justin V. Shur
Deputy Chief
Public Integrity Section
(202) 353-8845

EXHIBIT B

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January 12, 2012

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Re: US v. McGregor, et al.
In the United States District Court for the Middle District of Alabama
Case No. 2:10cr00186-MHT-WC

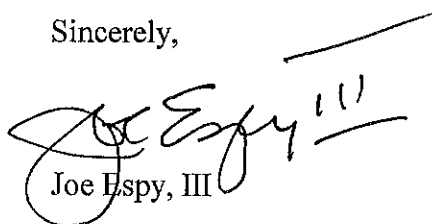
Dear Justin:

As you can imagine, we were shocked to receive your email today regarding information in the possession of the government prior to the June 2011 trial. In connection with that information, please provide the following:

1. Those persons present when such information was provided;
2. The dates such information was provided; and
3. Any notes, documents or other information related to the matters set forth in your letter.

Please provide the above immediately.

Sincerely,



Joe Espy, III

JEIII/clh
cc via email:

Counsel for all Defendants
and other Government Counsel

EXHIBIT C

From: Shur, Justin <Justin.Shur@usdoj.gov>
Sent: Thursday, January 12, 2012 4:30 PM
To: Joe Espy
Cc: Day, M. Kendall; Cohen, Barak; Morris, Brenda; Kang, Edward; Olshan, Eric; Woods, Rae; bbaxley@baxleydillard.com; dmcknight@baxleydillard.com; parkman@parkmanlawfirm.com; jcduffy@aol.com; jdillard@baxleydillard.com; adams@parkmanlawfirm.com; ronwwise@aol.com; sws@rmclaw.com; sgjamesandassoc@aol.com; tgoggans@tgoggans.com; whm@rmclaw.com; wnc@rmclaw.com; Penhale@copelandfranco.com; Bill Espy; SEGALL@copelandfranco.com; Tartt@copelandfranco.com; Martin@copelandfranco.com; fgray@glsmgn.com; rwhitney@inveritasinfo.com; sam@heldman.net; Holliday@copelandfranco.com; wem@glsmgn.com; sheldman@gmail.com; Meeks, Marquest; Ben Espy
Subject: RE: US v. McGregor, et al

This is in response to your below-referenced letter. The individuals present when such information was provided include Barak Cohen, Joe Herman, and the witness. There were no agent notes generated. The description of the witness' statements – as relayed in my letter – came from attorney notes generated after trial prep sessions with those witnesses. While we are unable to pinpoint specific dates, those trial prep sessions occurred approximately two to four weeks prior to trial.

EXHIBIT D

From: Joe Espy
Sent: Thursday, January 12, 2012 4:51 PM
To: 'Shur, Justin'
Cc: Day, M. Kendall; Cohen, Barak; Morris, Brenda; Kang, Edward; Olshan, Eric; Woods, Rae; bbaxley@baxleydillard.com; dmcknight@baxleydillard.com; parkman@parkmanlawfirm.com; jcduffey@aol.com; jdillard@baxleydillard.com; adams@parkmanlawfirm.com; ronwwise@aol.com; sws@rmclaw.com; sgjamesandassoc@aol.com; tgoggans@tgoggans.com; whm@rmclaw.com; wnc@rmclaw.com; Penhale@copelandfranco.com; Bill Espy; SEGALL@copelandfranco.com; Tartt@copelandfranco.com; Martin@copelandfranco.com; fgray@glsmgn.com; rwhitney@inveritasinfo.com; sam@heldman.net; Holliday@copelandfranco.com; wem@glsmgn.com; sheldman@gmail.com; Meeks, Marquest; Ben Espy
Subject: US v. McGregor, et al

Justin,

Acknowledge and appreciate your response to my letter of today. I want to make certain that we are clear on what you are representing to defense counsel. Are you representing to defense counsel that Barak Cohen and Joe Herman did not provide the information contained in your letter of today to any other attorneys for the Government in the case or any of the FBI agents including, but not limited to Baker and McEachern? As you are aware, Barak Cohen was in the Courtroom and participated in the trial. I am sure you can understand why we need this information. I need to know if any other Government attorney or any other Government agent was in possession of the information which you provided today in your January 12th letter. Again, I would appreciate your immediate response.

Joe.

Joe Espy, III
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EXHIBIT E

From: Shur, Justin <Justin.Shur@usdoj.gov>
Sent: Thursday, January 12, 2012 5:12 PM
To: Joe Espy
Cc: Day, M. Kendall; Cohen, Barak; Morris, Brenda; Kang, Edward; Olshan, Eric; Woods, Rae; bbaxley@baxleydillard.com; dmcknight@baxleydillard.com; parkman@parkmanlawfirm.com; jcduffey@aol.com; jdillard@baxleydillard.com; adams@parkmanlawfirm.com; ronwwise@aol.com; sws@rmclaw.com; sgjamesandassoc@aol.com; tgoggans@tgoggans.com; whm@rmclaw.com; wnc@rmclaw.com; Penhale@copelandfranco.com; Bill Espy; SEGALL@copelandfranco.com; Tartt@copelandfranco.com; Martin@copelandfranco.com; fgray@glsmgn.com; rwhitney@inveritasinfo.com; sam@heldman.net; Holliday@copelandfranco.com; wem@glsmgn.com; sheldman@gmail.com; Meeks, Marquest; Ben Espy
Subject: RE: US v. McGregor, et al

Joe - I believe my response to your letter is sufficient. The government satisfied its discovery obligations prior to the first trial. Nonetheless, this additional disclosure was made out of an abundance of caution.

From: Joe Espy [mailto:JEspy@mewlegal.com]
Sent: Thursday, January 12, 2012 5:51 PM
To: Shur, Justin
Cc: Day, M. Kendall; Cohen, Barak; Morris, Brenda; Kang, Edward; Olshan, Eric; Woods, Rae; bbaxley@baxleydillard.com; dmcknight@baxleydillard.com; parkman@parkmanlawfirm.com; jcduffey@aol.com; jdillard@baxleydillard.com; adams@parkmanlawfirm.com; ronwwise@aol.com; sws@rmclaw.com; sgjamesandassoc@aol.com; tgoggans@tgoggans.com; whm@rmclaw.com; wnc@rmclaw.com; Penhale@copelandfranco.com; Bill Espy; SEGALL@copelandfranco.com; Tartt@copelandfranco.com; Martin@copelandfranco.com; fgray@glsmgn.com; rwhitney@inveritasinfo.com; sam@heldman.net; Holliday@copelandfranco.com; wem@glsmgn.com; sheldman@gmail.com; Meeks, Marquest; Ben Espy
Subject: US v. McGregor, et al

Justin,

Acknowledge and appreciate your response to my letter of today. I want to make certain that we are clear on what you are representing to defense counsel. Are you representing to defense counsel that Barak Cohen and Joe Herman did not provide the information contained in your letter of today to any other attorneys for the Government in the case or any of the FBI agents including, but not limited to Baker and McEachern? As you are aware, Barak Cohen was in the Courtroom and participated in the trial. I am sure you can understand why we need this information. I need to know if any other Government attorney or any other Government agent was in possession of the information which you provided today in your January 12th letter. Again, I would appreciate your immediate response.

Joe.

Joe Espy, III
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