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==, 2005

==, AUSA
Office of the United States Attorney
555 Fourth Street, N.W.
Washington, D.C. 20001

Re: *United States v.*
Criminal Case Number: F-

Dear ==:

In a previous letter concerning the above-cited case, I have requested that the government provide Rule 16 discovery, *Brady* and *Jencks* materials. By this letter I renew those requests and additionally make specific requests for materials related to the government's intention, as I understand it, to elicit eyewitness identification testimony at the trial of this matter.

A great deal of scientific research by psychologists in the area of eyewitness identification has yielded a number of findings as to factors that correlate positively and negatively with accurate eyewitness identification. The following requests for information are based on this research and therefore are "material in the preparation of the defendant's defense" pursuant to Rule 16 and potentially defense-favorable evidence that must be turned over as *Brady*. And it is worth mentioning that you as the government's attorney in this case have the obligation to search in and/or inquire of all the sources of your evidence to determine if information and evidence favorable to the defense exists.

Accordingly, I request that you provide as soon as possible information related to the following areas concerning any witnesses the government intends to call for the purpose of providing eyewitness identification in this matter.

- Condition of Eyewitness at time of viewing subject of identification
 - Any problems with sight? Needs corrective lens? History of vision problems?
 - Any problems with mental functioning? Memory? Attention? Mental disorders?
 - Age of the eyewitness?
 - Under the influence of alcohol or any drug at the time of the incident?
 - Any limitations in verbal ability and ability to describe?
 - Is witness of a different race or ethnic group from subject identified?
 - Is witness of a different gender from subject identified?
 - Was witness stressed or aroused at time of viewing? If so, from what causes and to what extent?
 - Was the witness familiar with the subject from contact or interaction before the incident? If there is information about the history of contact between eyewitness and subject, what is the source of that information and has it been corroborated?

- Opportunity to view subject of identification
 - What was the length of time eyewitness was able to view subject of identification?
 - If there is information as to the length of viewing time, what is the source of that information – the eyewitness, another witness, or another source?
 - During duration of eyewitness viewing subject, were there any visual obstructions between witness and subject?
 - What were the lighting conditions at the time of the incident?
 - During period of viewing, did any events or circumstances distract witness?
 - Specifically, did the incident involve any weapons or violent acts?

- Post-incident Circumstances
 - What was the length of time between the incident and the witness' first identification of subject?
 - How many identifications were made? At what times and under what circumstances were these identifications made?
 - Were there attempts at identification that did not result in positive identifications? If so, how many and under what circumstances?
 - After the incident, did the eyewitness have any association with other witnesses to the incident?
 - At any time after the incident, did the witness indicate any level of confidence or lack of confidence in his/her ability to make an identification?
 - What description, if any, was given by the eyewitness of the subject? Facial characteristics? Clothing? Height and weight? Age? Race or ethnicity? Gender? Distinctive characteristics?

- What questions were asked of the eyewitness to prompt a description of the subject?
 - What information did police or others give to the eyewitness concerning the incident or any suspect *before* the eyewitness made an identification?
 - What comments did the police or others make or information did police or others give to the eyewitness concerning the incident or any suspect *after* the eyewitness made an identification?
- Identification Procedures
- If the eyewitness initially identified a subject during a show-up procedure, please provide all details of how police conducted the show-up, including but not limited to:
 - Where was the eyewitness when the subject was presented?
 - Was more than one subject presented? Simultaneously or sequentially?
 - What were the viewing conditions, including distance from the subject and any obstructions between eyewitness and subject?
 - Were any other witnesses present during or immediately before or after the procedure?
 - What, if anything, was said to the eyewitness before the subject was presented?
 - What, if anything, was said to the eyewitness *after* the subject was presented?
 - Did the eyewitness comment on any other subject involved in the show-up?
 - Did the eyewitness identify any other subject involved?
 - What, if anything, did the eyewitness say before the identification procedure? After the identification procedure or at any time during contact with police or prosecutors concerning this case?
 - Was the subject in handcuffs when presented to the eyewitness?
 - Was any police officer conducting the procedure familiar with the case?
 - If the eyewitness initially identified the subject when presented with a photographic array, please provide all details of how police conducted the photographic array procedure, including but not limited to:
 - How many photos in the array?
 - How were these photos selected?
 - How many arrays did the eyewitness view?
 - Were these photos presented to the eyewitness sequentially or simultaneously?
 - Was the police official who created the array familiar with the case?

- Was any police officer involved in the identification procedure familiar with the case?
 - Were any other witnesses present during or immediately before or after the procedure?
 - What instructions were given to the eyewitness before the array was presented?
 - What, if anything, was said to the eyewitness after the array was presented?
 - Did the eyewitness comment on any of the other photos in the array?
 - Did the eyewitness identify any other subject from the photo array or arrays?
 - What, if anything, did the eyewitness say before the identification procedure? After the identification procedure or at any time during contact with police or prosecutors concerning this case?
- If the eyewitness initially identified the subject when presented with an actual line-up, please provide all details of how police conducted the line-up procedure, including but not limited to:
 - How many individuals in the line-up?
 - How were these individuals selected?
 - Were these individuals selected by an officer familiar with the case or not familiar with the case?
 - Was any police officer involved in the identification procedure familiar with the case?
 - Was an attempt made to select individuals for the line-up whose physical characteristics matched descriptions given of the suspect by eyewitnesses?
 - How many line-ups did the eyewitness view?
 - Were any other witnesses present during or immediately before or after the procedure?
 - What instructions were given to the eyewitness before the line-up was conducted?
 - What, if anything, was said to the eyewitness after the line-up was conducted?
 - Did the eyewitness comment on any of the individuals in the line-up?
 - Did the eyewitness identify any other individual from the line-up or line-ups?
 - What, if anything, did the eyewitness say before the identification procedure? After the identification procedure or at any time during

- contact with police or prosecutors concerning this case?
- Was any document given to the eyewitness either before or after the procedure to be read or to be marked on? If so, be sure to provide these documents.

Your prompt response to these *Brady* requests is much appreciated.

Larry Kupers
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