

SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA  
Criminal Division – Misdemeanor Branch

UNITED STATES

\*

v.

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2021 CMD 000187

EARL A. GLOSSER

\*

Judge Yvonne Williams  
Status Hearing: June 10, 2021

**NOTICE OF DISCOVERY**

Comes now the Defendant, through counsel, and files the attached discovery letter pursuant to *Rosser v. U.S.*, 381 A.2d 598 (D.C. 1977).

Respectfully Submitted,

/s/ Joseph W. Fay

Joseph W. Fay  
D.C. Bar No.: 1002993  
JOSEPH W. FAY ESQ., PLLC  
777 6<sup>th</sup> St. NW, Suite 410  
Washington DC 20001  
202-557-1306  
202-216-0298 (f)  
Joseph.W.Fay@gmail.com

**CERTIFICATE OF SERVICE**

I hereby certify that on January 8, 2021, a copy of the foregoing was served upon the United States Attorney via the case file express file and serve function.

/s/ Joseph W. Fay

Joseph W. Fay

**Joseph W. Fay, Esq. PLLC**  
**777 6<sup>th</sup> St. NW, Suite 410**  
**Washington DC 20017**  
**202-589-1300**  
**Joseph.W.Fay@gmail.com**

January 8, 2021

United States Michael Sherwin  
U.S. Attorney's Office for the District of Columbia  
555 Fourth Street NW  
Washington, DC 20530

Re: Discovery Request: United States v. Earl A. Glosser  
Case Number 2021 CMD 000187

Dear Mr. Sherwin,

I am directing this request to you because I am not sure who the assigned AUSA is yet. I am making this request at the first opportunity. I am representing the Defendant through the CJA panel.

The purpose of this letter is to confirm what I have requested and what we have received in discovery. Authority for my requests is cited below.

Though I have retrieved the information and Gerstein from DC Superior Court case search, I have not received any discovery.

Pursuant to Rule 16 of the Superior Court Rules of Criminal Procedure, I am requesting the following:

(A) That you determine if you or any member of the team prosecuting the Defendant has in your possession, custody control or knowledge written, oral, or recorded statements of any kind made by the Defendant which you intend to offer into evidence or use for impeachment at the trial of the Defendant. This request encompasses statements made before or after arrest. If so, I request that you provide me with the substance of the oral statements, if any; and to inspect, copy, and photograph the written or recorded statements.

(B) That you determine if the Defendant has a prior criminal or traffic record and that you provide me with copy of it.

(C) That you permit me on behalf of the Defendant to inspect, copy, and photograph any books, papers, video, documents, photographs, tangible objects, buildings or places or copies or control of the government<sup>1</sup> which are material to preparation of the defense of the Defendant and are intended to be used by the government in its case in chief or were taken from or belong to the Defendant. If you intend to use any of the above which is not within the possession, custody or control of the government, I request that you provide me with the name and address of the individual or entity where they are located.

(D) That you determine if you or any members of the team prosecuting the Defendant have in your possession reports of mental or physical examinations or results of scientific tests or experiments other than those referenced above. If you do, I request that you permit me on behalf of the Defendant to inspect and copy or photograph any results or reports of physical or mental examinations, and of scientific tests or experiments now in your custody or control. If you know of the location of the above which is not in your custody, I request that you provide me the name and address of the entity that now possesses the above information.

(E) That you provide me the substance of any expert testimony you intend to introduce including the name of the expert; their CV or expert qualifications; the opinions you intend to elicit from them; and the basis for those opinions.

No such evidence has been provided to date.

If you intend to seek a protective order pursuant to Super. Ct. R. Crim. P. 16(d), I request you inform me of the “clearly defined and serious injury” to the United States you seek to prevent in advance of making a request for the order in open court. See generally: *U.S. v. Johnson*, 314 F.Supp.3d 248 (D. D.C., 2018) citing *U.S. v. Wecht*, 484 F.3d 194 (3d Cir. 2007). Given the frequency of the government’s requests for protective orders, you should consider this my attempt to satisfy the requirements of Super. Ct. R. Crim. P. 16-I.

If you intend to introduce evidence of laboratory tests, Defendant demands the presence of every technician, analyst, chemist and other persons who performed tests and were in the chain of custody at trial pursuant to *Thomas v. United States*, 914 A.2d 1 (2006); *Melendez-Diaz v. Massachusetts*, 129 S. Ct. 2527 (2009); and D.C. Code § 48-905.06.

Because possession of Jencks material as defined in Title 18, United States Code, Section 3500, by any governmental agency puts you in vicarious possession of it and thereby subject to production, I request that you cause a search of the files of all agencies involved in the investigation of this case to determine what if any Jencks material exists. See: United States v.

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<sup>1</sup> This should include the members of the Metropolitan Police Department, The United States Park Patrol, or any other agency which has investigated this incident. United States v. Rippy, 196 U.S. App. D.C. 243, 606 F2d 1150 (1979). United States v. McCray, 142 U.S App. D.C. 132, 439 F2d 642, aff'd after remand, 145 US. App. D.C. 259 448 F2d 1182 and Sanders v. United States, 114 U.S. App. D.C. 345, 316 F2d. 346 (1963); summaries of statements prepared by clerks in accordance with Williams v. United States, 119 U.S. App. D.C. 177, 338 F2d. 286 (1964); rough notes of police officers and investigators in accordance with United States v. Bundy, 153 U.S. App. D.C. 191, 472 F2d 1266 (1967); and police forms, reports, and radio runs in accordance with Montgomery v. United States, 384 A2d 655 (D.C. 1968), and Clancey v. United States, 365 U.S. 312 (1961).

Rippy, 196 U.S. App. D.C. 243, 606 F2d 1150 (1979). United States v. McCray, 142 U.S App. D.C. 132, 439 F2d 642, aff'd after remand 145 US. App. D.C. 259 448 F2d 1182 (1971).

In the spirit of the American Bar Association Standards Relating To Discovery And Procedure Before Trial; United States v. Sabastion, 497 F2d 1270 (2d Cir. 1970); and the admonishments contained in United States v. Hinton, to facilitate an orderly and smooth flowing trial, to avoid unnecessary delays once the jury is empanelled, and to avoid inconvenience to the court; I request that you provide me on behalf of the Defendant any statements of witnesses whom you intend to call at trial which relates to their testimony on direct examination. I request that you do so at least 21 days before trial. This would be in accord with Jencks v. United States, 353 U.S. 657 (1957); 18 U.S.C. 3500; and Duncan v. United States, 126 U.S. App. D.C. 371, at 379 F2d 148 (1967). See also In Re S.W.B., 321 A2d. 546 (1976).

Please be advised that we expect the Jencks material to include notes taken by you or any other prosecutor while interviewing government witnesses in accordance with Goldberg v. United States, 425 U.S. 94 (1976). Middleton v. United States,

Pursuant to Lewis v. United States, 408 A2d 33 (D.C. 1979); United States v. Bagley, 473 U.S. 667 (1985); Giglio v. United States, 405 U.S. 150 (1972); and Merriweather v. United States, 466 A2d 853 (D.C. 1983), I request that you provide me, at least 21 days before trial with the following:

The prior criminal record of all witnesses the United States plans to call at trial,<sup>2</sup> and

The substance of any promises, privileges, amounts or preferential treatment given by the government to any of the witnesses it plans to call at trial.

I have yet to receive any such information.

I request that you provide me with any evidence which you plan to offer against the Defendant pursuant to Drew v. United States, 118 U.S. App. D.C. 11, 331 F2d 85 (1964) and Rule 404 (b) of the Federal Rules of Evidence. I further request that you do so as soon as possible and no later than 10 days before trial so that we can investigate the evidence you plan to present, research it and provide the court with authority on our position concerning whether it is admissible at trial.

I will object to any such evidence you do not provide me at least ten days before trial.

On behalf of the Defendant, I make a general demand for all exculpatory material discoverable pursuant to Brady v. Maryland, 383 U.S. 83 (1963); United States v. Bagley, 473 U.S. 667 (1985); and Kyles v. Whitley, 115 S.Ct. 155, 131 L.Ed2d 490 (1995);

I request that I be provided with the following specific Brady material:

Any evidence that tends to contradict the testimony the government anticipates will be given by any of its witnesses including but not limited to:

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<sup>2</sup> This should include juvenile records in accordance with Lewis v. United States, 393 A2d 109, at 118 (D.C. 1978) and Davis v. Alaska, 415 U.S. 308 (1974).

- a. Any witness who has falsely testified that he or she saw the crime. Mills v. Scully, 653 F.Supp. 855 (S.D.N.Y.);
- b. Any discrepancies between statements made to you or the police and those made to the grand jury or in trial. United States v. Minsky, 963 F.2d 870 (6th Cir. 1992); See Also Ex Parte Adams, 768 S.W.2d 281 (Tex. Crim App. 1989 (en banc) );
- c. Any prior false allegations of criminal conduct by any of the government witnesses. Giles v. Maryland, 386 U.S. 66 (1967); Brooks v. United States, 396 A2d 200 (D.C. 1978);
- d. The names, addresses, and telephone numbers of all persons who failed to identify the Defendant from a line up or photo array, Mangram v. United States, 418 A2d 1071 (D.C. 1980);
- e. The names, addresses, and telephone numbers of all persons who identified someone other than the Defendant, United States v. Bolden, 169 U.S. App. D.C. 60, 514 F2d 1301 (1975); United States v. Ash, 413 U.S. 300, at 318-319 (1973); Jean v. Rice, 945 F.2d 82 (4th Cir. 1991); McDowell v. Dixon, 858 F.2d 945 (4th Cir. 1988); People v. Simmons, 36 N.Y.2d 126, 325 N.E. 2d 139 (1975); Crutcher v. State, 481 S.W. 2d 113 (Tex. Crim. App. 1972);
- f. The names, addresses, and telephone numbers of all persons who stated the Defendant did not perform the conduct charged, United States Ex Rel Meers v. Wilkins, 396 F2d 135 (2d Cir. 1964);
- g. The name address and telephone number of any expert you know of who will give the opinion that any substance seized is contraband. People v. Johnson, 38 Cal. App. 3d 228, 113 Cal. Rptr. 303 (1974); Ex Parte Lewis, 587 S.W. 2d 697 (Tex. Crim. App. 1979);
- h. Any information indicating that there is more than one suspect to this offense. Cheney v. Brown, 740 F.2d. 1334 (10th cir. 1984);
- i. The names, addresses, and telephone numbers of all persons who hesitated or expressed reluctance in their recitation of what the Defendant is charged with doing, Jackson v. Wainwright, 390 F.2d 288 (5th Cir. 1968). United States v. Sheehan, 442 F.Supp 1003 (D.Mass. 1977); People v. Wright, 480 N.Y.S.2d 259 (Sup. Ct. 1989);
- j. The photographs used in any photographic array;
- k. Any facts or allegations concerning criminal or other misconduct of any witness not reflected in his or her criminal record including material

information found in his or her probation file, personnel file, pending administrative investigations, or any pending criminal charge or investigation against the witness or any business entity with which he or she is connected. United States v. Stifler, 851 F.2d 1197 (9th Cir. 1988), *cert denied* 489 U.S. 1032 (1989);

- l. Any information showing that testimony is motivated in any degree by a personal animosity or feelings of revenge toward the Defendant. State v. Brown, 552 S.W.2d 383 (Tenn. 1977);
- m. Any material relating to a witness' mental or physical history that tends to impair or reflect adversely on his reliability as a witness, including but not limited to any information that would tend to affect the witness' motive to testify or ability to perceive, recall, or understand events;
- n. Any information concerning any Government Witness' failure (especially repeated failure) of a lie detector test. Carter v. Rafferty, 826 F.2d 1299 (3d Cir. 1987), *cert denied*, 484 U.S. 1011 (1988);
- o. Any evidence any government witness has sought a financial inducement to testify or a promise of leniency in the witness' own criminal dealings. Bagley v. Lumpkin, 798 F.2d 1297 (9th Cir. 1986), *cert denied*, 434 U.S. 939 (1977); Moynahan v. Amnson, 419 F.Supp. 1139 (D.Conn. 1976) *aff'd* 559 F.2d 1204 (2d Cir. 1977; Hughes v. Bowers, 711 F.Supp. 1574 (N.D. Ga. 1989), *aff'd* 896 F.2d 559 (11th Cir. 1990);
- p. Any written or oral statement and/or confession made by the Defendant which is unknown to defense counsel. Government of Virgin Islands v. Martinez, 780 F.2d 302 (3d Cir. 1985); and
- q. Any information about any eyewitness for which the prosecution has a name and/or address which the government does not intend to call. United States v. Cadet, 727 F.2d 1453 (9th Cir. 1984);

To date I have received no Brady, Giglio, or Whitley material.

In the event that you take the position that the Defendant is not entitled to any of the above requested material, I request that you preserve it in accordance with United States v. Perry, 153 U.S. App. D.C. 89, 471 F.2d. 1057 (1972); United States v. Bryant, *supra*; Johnson v. United States, 336 A2d. 545, (D.C. 1981); and Montgomery v. United States, 384 A2d 6155 (D.C. 1978) for an *in camera* inspection in accordance with United States v. Jackson, 430 A2d. 1380 (D.C. 1981).

This is a matter that could be disposed of before trial. Feel free to email or call be to discuss this.

In order to avoid confusion over what has and what has not been provided pursuant to this request, I have attempted to reduce this to writing in accordance with Rosser v. United

States, 381 A2d 598 (D.C. 1977); and Mangram v. United States, 418 A2d. 1071, at n. 12 (D.C. 1980).

Please advise me within five days if your understanding is different from what is contained in this writing. Thank-you in advance for your cooperation. I look forward to working with you on this matter.

Sincerely,  
**/s/ Joseph W. Fay**  
Joseph W. Fay, Esq.