

**FEDERAL MISDEMEANOR PRACTICE
DISTRICT OF MARYLAND**

**HANDBOOK FOR
CRIMINAL JUSTICE ACT
PANEL ATTORNEYS**

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CRIMINAL JUSTICE ACT APPOINTMENTS

Magistrate Judge William Connelly

CRIMINAL JUSTICE ACT APPOINTMENTS

Magistrate Judge William Connelly

AUTHORITY: 18 U.S.C. § 3006A - Criminal Justice Act - originally passed in 1964

- + Directs each United States District Court to provide representation for any financially eligible person who is charged with a felony or with a Class A misdemeanor, is entitled to counsel under the 6th Amendment, is charged with a violation of probation or supervised release, and in seven other instances.

WHO IS A FINANCIALLY ELIGIBLE PERSON?

- + Persons net financial resources and income are insufficient to enable person to obtain qualified counsel. Consideration is given to (a) the cost of providing the person and his dependents with the necessities of life and (b) the cost of any bail bond if financial conditions of release are imposed.
- + Decision is made by the magistrate judge at the initial appearance.
- + Person must complete, at a minimum, a financial affidavit - CJA Form 23.

HOW IS REPRESENTATION PROVIDED IN MARYLAND?

- + Federal Public Defender Organization
 - + 20 attorneys
 - + District's CJA Plan states that Federal Public Defender to receive 75% of appointments - An AFPD is assigned to each misdemeanor location and may be contacted for consultation and advice. Refer to pages 4-8 in this section for listing of court locations and AFPDs.
- + Criminal Justice Act Panels
 - + 25% of appointments to private attorneys on the Criminal Justice Act Panels (Felony Panel & Misdemeanor Panel)
 - + Placement on Panels is by application
 - + Felony Panel is by approval of the Court's CJA Committee
 - a selective process - 107 attorneys in all. Applications considered once per year by the CJA Committee.

- + Misdemeanor Panel - open to any attorney who is a member of the Bar of the U.S. District Court for the District of Maryland
 - 300 lawyers currently on list

HOW ARE CJA LAWYERS COMPENSATED?

- + \$65 in court/\$45 out of court
- + Misdemeanor Limit - \$1,000 per attorney/per case
- + Felony Limit - \$3,500 per attorney/per case
- + Appeal Limit - \$2,500 per attorney/per case
- + Target Limit - \$750 per target investigation
- + voucher over the limit must be certified as an extended or complex case by the presiding judicial officer and forwarded to the Chief Judge of the Fourth Circuit for his approval. A memorandum in support of the excess compensation claim must be filed with the voucher.
- + Amounts are also available for experts, investigative expenses and costs (transcripts, mileage & postage)

HOW ARE APPOINTMENTS MADE?

- + Computer program in use in Baltimore and in Greenbelt to provide even distribution of appointments. Some discretion in magistrate judge to provide for linguistic and geographical considerations.

PROCEDURE FOLLOWING APPOINTMENT:

- + In Southern Division, defendant told in courtroom of appointment and given in writing attorney's name, address and telephone number. Defendant told to contact attorney after 7 days.
- + Court mails to attorney CJA Voucher & copy of court's file which contains at a minimum a copy of the charging document.

WHAT DOES THE COURT EXPECT FROM THE CJA ATTORNEY?

- + Obtain discovery from the AUSA or SAUSA and understand the elements of the charge.
- + Meet with your client before the court date.
- + Explain the charge or charges to your client, educate your client as to his or her rights and the court's procedures and listen to his or her side of the story.

- + Investigate, prepare, when appropriate negotiate and when appropriate try the case.
- + If you don't know something, ask.
- + Represent your client well.
- + Be professional.
- + Submit your voucher within 45 days of the conclusion of the case so you can get paid.

ABERDEEN PROVING GROUND

Building 2043 Schoolhouse Road
Aberdeen Proving Ground, MD 21005
Phone: 410/278-1568 Fax: 410/278-9298

Paul W. Grimm, Magistrate Judge
Cathy Roberts, Courtroom Deputy
Phone: 410/962-2600 x3243

Paul Marone, Special Assistant U.S. Attorney
Phone: 410/278-1568 Fax: 410/278-9297

Mark R. Wagner, Assistant Federal Public Defender
Kathy Frey Balter, Assistant Federal Public Defender
Phone: 410/962-3962 Fax: 410/962-0872

Court is held two Thursdays a month

ANDREWS AIR FORCE BASE

1535 Command Drive
Andrews Air Force Base, MD 20762
Phone: 301/981-3622 Fax: 301/981-4246 or 981-6638

Charles B. Day, Magistrate Judge
Rita Sigona, Courtroom Deputy
Phone: 301/344-0660 x3257

Capt. Tracy Guillotte, Special Assistant U.S. Attorney
Phone: 301/ 981-7277 Fax: 301/981-4246

Carrie H. Corcoran, Assistant Federal Public Defender
Phone: 410/962-3962 Fax: 410/962-0872

Court is held first and third Monday of each month

FT. GEORGE G. MEADE

Building 4432
Llewelyn Avenue
Ft. Meade, MD 20755-5030
Phone: 301/677-9204 Fax: 301/677-9940

Susan Gauvey, Magistrate Judge
James K. Bredar, Magistrate Judge
Courtroom Deputies: Howard Goldsmith (Bredar) 410/962-2600 x3210
Joyce Smith (Gauvey) 410/962-2600 x3214
Tony Stover 410/962-2600 x3235

Capt. Michelle Wassmuth, Special Assistant U.S. Attorney
Phone: 301/677-9202 Fax: 301/677-9758

Carrie H. Corcoran, Assistant Federal Public Defender
Phone: 410/962-3962 Fax: 410/962-0872

Court is held on Fridays, 2-4 times a month

FT. DETRICK

Training Center
924 Doughton Drive
Ft. Detrick, Maryland 21702

Thomas DiGirolamo, Magistrate Judge
Karen Palmer, Courtroom Deputy
Phone: 310/790-0311

Capt. Jeff Miller, Special Assistant U.S. Attorney
Capt. Chandani Latey, Special Assistant U.S. Attorney
Office of the Command Judge Advocate
715 Porter Street
Ft. Detrick, MD 21702-5000
Phone: 301/619-2221/2643 Fax: 301/619-7250

Susan M. Bauer, Assistant Federal Public Defender
Phone: 301/344-0600 Fax: 301/344-0019

Court is held third Friday of each month

HYATTSVILLE - PARK POLICE

Courtroom 6, Third Floor
4990 Rhode Island Avenue
Hyattsville, MD 20782

William Connelly, Magistrate Judge
Carol Bishop, Courtroom Deputy
Phone: 301/344-0660 x3289 Fax: 301/344-0640

Charles B. Day, Magistrate Judge
Rita Sigona, Courtroom Deputy
Phone: 301/344-0660 x3257 Fax: 301/344-0640

Thomas DiGirolamo, Magistrate Judge
Rita Sigona, Courtroom Deputy
Phone: 301/344-0660 x3257 Fax: 301/344-0640

Hollis R. Weisman, Assistant U.S. Attorney (Monday)
Phone: 301/344-4029 Fax: 301/344-4516
Jane F. Nathan, Assistant U.S. Attorney (Friday)
Phone: 301/344-4034 Fax: 301/344-4516

Susan M. Bauer, Assistant Federal Public Defender
Elizabeth L. Pearl, Assistant Federal Public Defender
Paula Xinis, Assistant Federal Public Defender
Phone: 301/344-0600 Fax: 301/344-0019

Court is held every Monday and Friday

HYATTSVILLE/NIH/NMC/NIST

Courtroom 6, Third Floor
4990 Rhode Island Avenue
Hyattsville, MD 20782

Victor H. Laws, III, Magistrate Judge (Second Wednesday of the month)
Kim Krall, Courtroom Deputy
Phone: 410/749-7990 Fax: 410/749-7509

Thomas DiGirolamo, Magistrate Judge (Fourth Wednesday of the month)
Rita Sigona, Courtroom Deputy
Phone: 301/344-0660 x3257 Fax: 301/344-0640

Hollis R. Weisman, Assistant U.S. Attorney (Second Wednesday)
Phone: 301/344-4029 Fax: 301/344-4516
Jane F. Nathan, Assistant U.S. Attorney (Fourth Wednesday)
Phone: 301/344-4034

Susan M. Bauer, Assistant Federal Public Defender
Daniel W. Stiller, Assistant Federal Public Defender
Phone: 301/344-0600 Fax: 301/344-0019

Court is held second and fourth Wednesday of each month

U.S. NAVAL ACADEMY

Alumni Hall
United States Naval Academy
Annapolis, MD 21402

Jillyn K. Schulze, Magistrate Judge
Pat Fosbrook, Courtroom Deputy
Phone: 301/344-0660 x3272 Fax: 301/344-0640

Lt. Leslie Burnett, Special Assistant U.S. Attorney
Phone: 410/293-1556 Fax: 410/293-0005

Susan M. Bauer, Assistant Federal Public Defender
Phone: 301/344-0600 Fax: 301/344-0019

Court is held 3-4 times a year, on a Monday.

PATUXENT RIVER NAVAL AIR STATION

Cedar Point Road
Patuxent River, MD 20670-1154

Jillyn Schulze, Magistrate Judge
Carol Bishop, Courtroom Deputy
Phone: 301/344-0660 x3289 Fax: 301/344-0640

Lt. Commander Jon Han, Special Assistant U.S. Attorney
Phone: 301/342-1045 Fax: 301/342-1044

Susan M. Bauer, Assistant Federal Public Defender
Phone: 301/344-0600 Fax: 301/344-0019

Court is held every 6 weeks, on a Monday.

CJA VOUCHER PAYMENT PROCEDURES

Donna P. Shearer, CJA Supervising Attorney

CJA VOUCHER PAYMENT PROCEDURES

Donna P. Shearer, CJA Supervising Attorney

I. Instructions for CJA form 20

A. New Payment System

The Administrative Office of the United States Courts has instituted a new payment system. The new system captures payment data by establishing a client notebook and associating all representations attached to that client. Thus, the new system does not depend upon voucher numbers. We will generate a voucher number when the voucher is processed for payment. The case number on the voucher consists of the divisional code (one for Baltimore and eight for Greenbelt), the calendar year, the six digit sequential case file number and the three digit defendant number. Your social security number or EIN number will no longer appear on the face of the voucher. The new payment system is designed to capture additional data regarding CJA payments to meet Congressional concerns regarding increased CJA expenditures. To assist us in the prompt payment of your voucher you will need to provide the required information or your voucher will be returned.

B. Required Information

1. Disposition Codes: Please fill box 21 with the correct disposition code. If you are using an old voucher form, please include the disposition code in box 11. The disposition codes are:

DISMISSED	1	
ACQUITTED BY COURT	2	
ACQUITTED BY JURY	3	
CONVICTED/FINAL PLEA GUILTY	4	
CONVICTED/ FINAL PLEA NOLO	5	
CONVICTED/ COURT TRIAL	8	
CONVICTED/ JURY TRIAL	9	
MISTRIAL	C	
NOT GUILTY/INSANE/COURT TRIAL	E	
GUILTY/ INSANE/COURT TRIAL		F
NOT GUILTY/INSANE/JURY TRIAL	G	
GUILTY/INSANE/JURY TRIAL	H	
*OTHER (PRE-TRIAL DIVERSIONS, TRANSFERS)	X	
SUPERVISORY RELEASE REVOKED	RV	
SUPERVISORY RELEASE RESTORED	RS	

* use other if the defendant fails to appear and a bench warrant is issued or if private counsel enters their appearance.

2. Reporting Status: With your next or first claim for payment indicate in your cover letter how your payments should be reported to the IRS. **Income will be reported under your name and social security number unless you indicate to the contrary.** If you wish your income reported to a law firm, please provide the law firms name and address in box 14. Make sure you provide the law firm's taxpayer identification number either in your cover letter or on the face of the voucher in box 14.

****FAILURE TO PROVIDE THE REQUIRED INFORMATION INCLUDING THE DISPOSITION CODE WILL RESULT IN DELAYS IN PROCESSING YOUR VOUCHER FOR PAYMENT.**

II. Rules For Processing of Voucher Payments

1. Mail your completed voucher within 45 days of the final disposition of the case to:

Donna P. Shearer
CJA Supervising Attorney
Room 8A, USDC
101 West Lombard St.
Baltimore, MD 21201
Phone number: 410-962-7494

2. Statutory maximums:

Felony cases	\$3,500.00
Misdemeanor cases	\$1,000.00
Target representations	\$ 750.00
Probation revocations	\$ 750.00

3. Claims in excess of statutory maximums:

If your claim is in excess of the applicable statutory maximum, the voucher must be filed with a memorandum in support of excess compensation or a CJA form 26. The form can be obtained on the web site. Claims for misdemeanor representation in excess of \$1,000.00 are only approved in extraordinary cases.

4. Requests for investigative or expert assistance:

Contact the CJA Supervising Attorney for further information.

5. Voucher Review:

All vouchers are reviewed by the CJA Supervising Attorney for compliance with the CJA Guidelines, mathematical accuracy and reasonableness of the claim. The Judges of the United

States District Court for the District of Maryland have delegated authority to the CJA Supervising Attorney to approve claims for payment under the statutory maximum.

6. Worksheets:

- must accompany your voucher or your voucher will be returned. Worksheets are available on the web site.
- must provide the date of service, a brief description of the service performed and the time spent performing the service.
- computerized billing sheets used in lieu of the CJA worksheets must be organized by the categories on the CJA form 20 to facilitate the audit for mathematical accuracy.
- panel attorney time must be reported in tenths of hours. For example,

<u>Minutes</u>	<u>Time claimed</u>
1-6	.1
7-12	.2
13-18	.3
19-24	.4
25-30	.5
31-36	.6
37-42	.7
43-48	.8
49-54	.9
55-60	1.0

7. Expenses:

- must be itemized and detailed on the expense worksheet.
- receipts are required for any travel expense, including daily parking fees.
- mileage claims for case related travel by private automobile must be itemized on the expense worksheets and include: the date of travel, destination, number of miles and the amount due.
- mileage is reimbursed at 31cents per mile.
- case related long distance phone calls made in connection with your representation will be reimbursed if receipts are provided.

8. Non-Reimbursable Items:

- Personal items and services for the client such as clothing for court, haircuts, travel or lodging are not reimbursable under the CJA.
- you can not be reimbursed for general office overhead expenses such as secretarial service, rent and telephone services.
- facsimile use is viewed as general office overhead. Only the long distance charges

- associated with the case related facsimile will be reimbursed.
- Witness fees and expenses for service of subpoenas on fact witnesses are not reimbursable but are governed by Rule 17, Fed. R. Crim. P. and 28 U.S.C. §1825.

9. Voucher preparation

Time spent in voucher preparation is not compensable.

10. Research

- You will be reimbursed for reasonable and necessary research time. Each CJA attorney is expected to have a basic knowledge of federal criminal practice and procedure.
- detail must be provided on the worksheets regarding the issue researched to facilitate the reasonableness review of each voucher claim.

11. Payment Period

It usually takes thirty days to certify a voucher for payment. After certification, the check is issued from the Administrative Office of the United States Courts. The check usually arrives five to seven days after the voucher has been certified.

Please contact the CJA Supervising Attorney if you have any questions regarding your representation or compensation under the Criminal Justice Act.

**HANDLING FEDERAL MISDEMEANOR
CASES**

Magistrate Judge William Connelly

HANDLING FEDERAL MISDEMEANOR CASES

WHERE DO MOST MISDEMEANOR CASES ORIGINATE?

Roadways:

- + Clara Barton Parkway
- + Baltimore/Washington Parkway
- + Suitland Parkway

Parks

- + C & O Canal National Park
- + Greenbelt Park
- + Fort Washington Park

Military Installations

- + Bethesda Medical Center
- + Fort Meade
- + Andrews Air Force Base
- + Patuxent Naval Air Station
- + United States Naval Academy
- + Fort Ritchie
- + Aberdeen Proving Ground

Federal Facilities

- + National Institutes of Health
- + National Institute of Standards and Technology
- + Goddard Space Flight Center
- + NERC, BARC, Patuxent Wildlife Refuge, Census Bureau, etc.
- + Post Offices

WHAT TYPES OF OFFENSES?

- | | | |
|-----------------|-----------------|-----------------------|
| + DWI/DUI | + OAR/OAS | + Minor Motor Vehicle |
| + Theft | + Indecent Acts | + Possession of CDS |
| + Mail Offenses | + Assaults | |

HOW ARE OFFENSES CHARGED?

- + United States Code
 - + 21 U.S.C. §844 - Possession of Controlled Substances

- + 18 U.S.C. §641 - Theft of Government Property
- + 18 U.S.C. §113 - Assaults
- + 18 U.S.C. §1701 - Obstruction of the Mails

- + Code of Federal Regulations (CFR) - Park Police cases tried in Hyattsville
 - + 36 C.F.R. §4.23 - Operating Under the Influence of Alcohol or Drugs
 - + 36 C.F.R. §2.35 - Possession of Controlled Substances

- + Assimilation of State Law By Assimilation Statutes - Military Cases
 - + 18 U.S.C. §7 & 13 - Assimilative Crimes Act
 - + 36 C.F.R. §4.2 - Assimilative Crimes Provision for National Parks

WHAT ARE THE PRINCIPAL COURTROOM PROCEEDINGS?

- + Initial Appearance (usually attorney not present/can be waived)
 - Governed by Rule 58 of the Federal Rules of Criminal Procedure
 - Advise of Charges, Maximum Penalty, Insure Defendant
 - Has Copy of Charging Document
 - Advise of Rights
 - Right to Remain Silent
 - 30 Days to Prepare For Trial
 - Counsel/Appoint Counsel
 - District Judge/Magistrate Judge Judge/Jury
 - Set Trial Date

- + Trial

- + Sentencing (PSI)

WHAT ARE THE CONSENT PROCEDURES?

Class A Misdemeanors (1 yr. imprisonment & \$100,000 fine) and Class B Misdemeanors - Non Motor Vehicle (6 months imprisonment & \$5,000 fine) have a right to trial, judgment & sentencing before a U.S. District Judge - Recently Amended: Oct 19, 1996 by the 1996 Federal Courts Improvement Act. Consent may now be oral or written.

WHAT ARE MY CLIENT'S RIGHTS TO A JURY TRIAL?

Must be facing more than 6 months imprisonment on any one charge to trigger right to jury trial. There is no aggregating of punishments to reach the more than 6 month threshold. See, *Lewis v. United States*, ___ U.S. ___, 116 S.Ct. 2163, 135 L.Ed.2d. 590 (1996). As a result client must be charged with a Class A misdemeanor for entitlement to a jury trial. Jury trials maybe held before a District Court or Magistrate Judge.

HOW DO I OBTAIN DISCOVERY?

No open file discovery at Hyattsville. Procedure varies on military installations. Many provide open file discovery or provide discovery package at initial appearance. To obtain discovery file a motion pursuant to Rule 16 of the Federal Rules of Evidence or write a letter to the AUSA asking for discovery.

WHAT ABOUT MOTIONS TO SUPPRESS?

File prior to trial and state reasons with specificity. No boiler plate motions. A one page motion setting forth the grounds for suppression is sufficient. Motions are heard prior to trial as government has a right to appeal adverse rulings. Remember conditional pleas. See Federal Rules of Criminal Procedure 11 and 12. Try to use citations to federal cases.

WHAT ABOUT THE FEDERAL SENTENCING GUIDELINES?

Only applicable to Class A misdemeanors. All other misdemeanors not covered by the Federal Sentencing Guidelines.

For Class A misdemeanors not as difficult as you think. Examples: Possession of Controlled Substances & Theft. Be careful about the 2 point downward departure for acceptance of responsibility. Brief your client about the PSI interview. Attend, if you can.

HERE DO I FILE COURT PAPERS?

For Hyattsville, Andrews AFB, Patuxent River, and Southern Dockets:

Misdemeanor Section
Office of the Clerk of the Court
U.S. District Court
6500 Cherrywood Lane, Suite 240
Greenbelt, Maryland 20770

For Ft. Meade, Ft. Ritchie, Aberdeen, Naval Academy, and Northern Dockets:

Office of the Clerk of the Court
U.S. District Court
101 W. Lombard Street
Baltimore, Maryland 20201

Do not send court papers to where the court holds session.

WHAT BOOKS SHOULD I HAVE TO HANDLE FEDERAL MISDEMEANORS?

West's Federal Criminal Code and Rules (Softbound)
Call 1-800-328-9352
Federal Sentencing Guidelines Manual (West or GPO)
Fourth Circuit Criminal Handbook (Michie)
CFRS may be accessed through Westlaw and Lexis

IS PBJ AVAILABLE FOR DWI/DUI CASES?

Yes, if case is charged as a violation of Md. Transportation Article 21-902.
Normally charged this way on military installations.

No, if charged using the Code of Federal Regulations. CFR has separate penalties and does not assimilate state sentencing procedures. See, *United States v. Brotzman*, 708 F. Supp. 713 (D.Md. 1985) - Judge Smalkin's case. This is the procedure used in all U.S. Park Police cases.

IS PBJ AVAILABLE FOR DRUG OFFENSES?

No. However Federal Court has a similar procedure under 18 U.S.C. 3607.

DO I HAVE TO REQUEST PRESENCE OF CHEMIST OR TEST TECHNICIAN?

No. There is no counterpart to §10-306 of the Courts and Judicial Proceedings Article for admissibility of test results without the presence or testimony of the technician in Federal Court. Counsel either stipulate to the admissibility of the test results or the chemist or test technician will be present to testify.

WHAT SENTENCING OPTIONS ARE AVAILABLE?

- + Fine
- + Probation
 - Counseling/Education for Alcohol/Drug Abuse
 - Urinalysis
 - Community Service
 - Home Detention with Electronic Monitoring with/without work release
 - REACT System
 - Community Corrections Center (Halfway House)
- + Imprisonment
 - Federal Facilities
 - Contract with State Facilities - Short Term

WHAT IS THE CJA LIST?

- + Criminal Justice Act List - Private Attorneys Provided to Needy Defendants at Government Expense
- + Felony Panel (100)
Misdemeanor Panel (Unlimited)
- + Appointments: 75% Federal Public Defender
25% CJA Attorneys
- + \$65/hr. in court; \$45/hr. out of court.
\$1000 misdemeanor limit; \$3500 felony limit;
Above limit - memorandum in support of claim for excess compensation must be filed with voucher. Case must be certified by presiding judicial officer as extended or complex and amount must be approved. Voucher forwarded for approval by Chief Judge of the Fourth Circuit.

WHAT IS POLICY FOR CONTINUANCES?

- + In advance. May fax in.

WHAT APPEAL RIGHTS EXIST?

- + Heard by U.S. District Judge
- + On the record - No de novo appeals
- + Note appeal within 10 days after entry of judgment

TWO FINAL POINTS:

- + Interpreters and Sign Language Interpreters provided at Government Expense - Call in Advance to Arrange.
Contact V. Butler in Baltimore (410-962-2600 ext. 3215)
Contact Valerie Sutton in Greenbelt (301-344-0642)
- + No *real* Motion to Reconsider Sentence Exists

DIRECTIONS TO DISTRICT COURT OF MARYLAND
4990 Rhode Island Avenue, Hyattsville, Maryland

COMING FROM THE BELTWAY - VIA ANNAPOLIS ROAD

From the Beltway (Route 495/95) take Annapolis Road/Route 450 (Exit 20B, Bladensburg). Merge left onto Annapolis Road, travel about 2 miles and turn right onto Riverdale Road. Travel on Riverdale Road (Riverdale Road changes into East West Highway/Route 410 once you cross Kenilworth Avenue) about 4 miles, and turn left onto Baltimore Avenue (Route I South). Travel on Baltimore Avenue (Route I South) for about 1 mile. Baltimore Avenue changes into Rhode Island Avenue at that point, and the courthouse is on the right next to the County Service Building at the corner of 43rd & Rhode Island Avenues. Make a right turn at 43rd, parking is located beneath the courthouse.

COMING FROM WASHINGTON. D.C.

From Washington, D. C., take Rhode Island Avenue, N.E. and cross into Maryland at the intersection of Rhode Island Avenue and Eastern Avenue. Travel on Rhode Island Avenue about 1 1/2 miles, and the courthouse is on the left next to the County Service Building at the corner of 43rd & Rhode Island Avenues. Make a left at 43rd; parking is located beneath the courthouse.

COMING FROM THE GREENBELT COURTHOUSE

Coming from the Greenbelt courthouse parking lot, make a left turn onto Cherrywood Lane. Turn right at the traffic light onto Kenilworth Avenue (Route 201 South). Travel on Kenilworth Avenue for about 4 miles, and turn right on East - West Highway (Route 410 West). Travel on East - West Highway for about 1 mile and turn left onto Baltimore Avenue (Route I South). Travel on Baltimore Avenue (Route I South) for about 1 mile. Baltimore Avenue changes into Rhode Island Avenue at that point, and the courthouse is on the right next to the County Service Building at the corner of 43rd & Rhode Island Avenues. Make a right turn at 43rd, parking is located beneath the courthouse.

COMING FROM THE BELTWAY - MONTGOMERY COUNTY

From the Beltway (Route 495), take New Hampshire Avenue South (Exit 28-B). Travel on New Hampshire Avenue about 2 miles and turn left onto Adelphi Road. Travel on Adelphi Road about 3 1/2 miles, you will cross University Boulevard, pass Northwestern High School on your right, and turn left onto East - West Highway, Route 410 East. Travel on East - West Highway about 2 miles and turn right onto Baltimore Avenue, Route I South. Travel on Baltimore Avenue (Route I South) for about 1 mile. Baltimore Avenue changes into Rhode Island Avenue at that point, and the courthouse is on the right next to the County Service Building at the corner of 43rd & Rhode Island Avenues. Make a right turn at 43rd; parking is located beneath the courthouse.

COMING FROM BELTWAY/HIGHWAY 1

From the Beltway (Route 495) take Baltimore Avenue, Route I South (Exit 25-B). Travel on

Baltimore Avenue (Route I South) about 4 1/2 miles, you will travel through College Park and cross East - West Highway, Route 410. Baltimore Avenue later changes into Rhode Island Avenue, and the courthouse is on the right next to the County Service Building at the corner of 43rd & Rhode Island Avenues. Make a right turn at 43rd, parking is located beneath the courthouse.

VIA METRO RAIL TO RHODE-ISLAND AVENUE - Metro Customer Service Information

Line: 202-637-7000

- Greenline to College Park Station or Rhode Island Station - Take Bus 83 to Rhode Island Avenue
- Greenline to West Hyattsville Station or Prince George's Plaza Station - Take Bus F-8 to Rhode Island Avenue

**UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND**

UNITED STATES OF AMERICA §

v.

_____ **Defendant** _____

§
§ **CASE NO.** _____
§
§
§

CONSENT TO TRIAL BEFORE A UNITED STATES MAGISTRATE JUDGE

I have been advised of the nature of the charge(s) against me and the maximum possible penalties provided by law. I understand my right to obtain legal counsel, and my right to request the court to appoint counsel for me if I am unable to obtain counsel.

I have also been advised of my right to trial, judgment and sentencing before a United States District Judge, and my right to trial by jury, if applicable in this case, before a United States District Judge.

I have further been advised of my right to have at least thirty (30) days to prepare for trial if I consent to trial before a United States Magistrate Judge.

I HEREBY: Waive (give up) my right to trial, judgment and sentencing before a United States District Judge and I consent to trial, judgment and sentencing before a United States Magistrate Judge.

I HEREBY: Waive (give up) my right to trial by jury.

I HEREBY: Waive (give up) my right to have at least thirty (30) days to prepare for trial before a United States Magistrate Judge and elect to proceed to trial before a United States Magistrate Judge as now scheduled.

Dated: _____

Defendant

Attorney for Defendant

Before: _____
UNITED STATES MAGISTRATE JUDGE

Original - Court Yellow - Defendant Pink - AUSA

**JURY TRIAL and SPEEDY TRIAL RIGHTS in
MISDEMEANOR CASES**

*Mark R. Wagner, Assistant Federal Public
Defender*

**FEDERAL MISDEMEANOR PRACTICE
DISTRICT OF MARYLAND
ASSISTANT FEDERAL PUBLIC DEFENDER MARK R. WAGNER**

I. RIGHT TO A JURY TRIAL IN A MISDEMEANOR CASE:

A) Sentence over six months:

- 1) U.S. v. Sherman
- 2) U.S. v. Lewis

II. SPEEDY TRIAL

A) 18 U.S.C. 3161:

- 1) Indictment within 30 days of arrest
- 2) 70 days from date of consent
- 3) Sanction is dismissal with or without prejudice
(Constitutional issues)

B) Election Hearing:

- 1) Information problem
- 2) Status Conference
- 3) Problem of delays/limited court days

**FEDERAL MISDEMEANOR PRACTICE and
SENTENCING GUIDELINES ISSUES**

**Susan M. Bauer, Assistant Federal Public
Defender**

DISTRICT OF MARYLAND
ASSISTANT FEDERAL PUBLIC DEFENDER SUSAN M. BAUER

- I. Jurisdiction of Magistrate Judge -- Fed. R. Crim. P. 58, 18 U.S.C. § 3401
 - A. Federal misdemeanors and other petty offenses -- one year maximum term of imprisonment (18 U.S.C. §§ 3559, 3581)
 - B. Assimilative Crimes Act (18 U.S.C. § 13), federal regulation assimilating state law (36 C.F.R. § 4.2)
 - 1. may assert jurisdiction over Maryland statutory or common law misdemeanors punishable by greater than one year if court limits sentence to one year (United States v. Kelly, 989 F.2d 162 (4th Cir.), cert. denied, 510 U.S. 854 (1993))
 - 2. may incorporate substantive provisions of Maryland law without incorporating state law penalty provisions (United States v. Brotzman, 708 F. Supp. 713 (D. Md. 1989))
 - C. Consent
 - 1. defendant must consent, orally or in writing, for Class A misdemeanors and class B misdemeanors, other than motor vehicle offenses (18 U.S.C. § 3401(b))
 - 2. no consent requirement for class B misdemeanors charging a motor vehicle offense, class C misdemeanors, or infractions (Id.)
- II. Pre-trial Release/Detention
 - A. Bail Reform Act (18 U.S.C. § 3142 et. seq.)
 - B. Preliminary Hearing (Fed. R. Crim. P. 58(b)(2)(G))
- III. Charging Document (Fed. R. Crim. P. 58(b)(1))
 - A. Class A misdemeanors -- indictment, information, or complaint
 - B. Petty offense -- may proceed on citation or violation notice
- IV. Pre-trial Diversion (18 U.S.C. § 3154(10))

V. Applicability of United States Sentencing Guidelines

- A. Class A misdemeanors (18 U.S.C. §§ 3559(a)(6), 3581(b)(6))
 - 1. apply applicable guideline (U.S.S.G., Appendix A)
 - 2. apply most analogous guideline (U.S.S.G., § 2X5.1)
 - 3. apply sentencing factors set forth in 18 U.S.C. § 3553
- B. Petty offenses (18 U.S.C. §§ 19, 3559(a)(7)-(9), 3581(b)(7)-(9))
 - 1. guidelines do not apply (U.S.S.G. § 1B1.9)
 - 2. supervised release not authorized by statute or guidelines (18 U.S.C. § 3583(b)(3); U.S.S.G. § 5D1.2)

VI. Presentence Report -- Fed. R. Crim. P. 32(b)

- A. attend with client -- Fed. R. Crim. P. 32(b)(2)
- B. follow deadlines for objections 32(b)(6)

VII. Authorized Sentences

- A. PBJ -- only for Maryland offenses that are assimilated, not C.F.R. offenses -- United States v. Brotzman, 708 F. Supp. 713 (D. Md. 1989)
- B. 18 U.S.C. § 3607 -- special probation and expungement procedures for first time drug offenders
- C. Probation -- 18 U.S.C. §§ 3561-3566; U.S.S.G. §§ 5B1.1-1.4
 - 1. is considered a sentence
 - 2. exposure on violation is the original guideline range (18 U.S.C. § 3565(a)(2); U.S.S.G. Ch. 7, Part A(2)(a))
- D. Home detention (18 U.S.C. §§ 3563(b)(19), 3583(d); § U.S.S.G. § 5F1.2)
 - 1. as a condition of probation or supervised release
 - 2. may only be imposed as an alternative to incarceration
- E. Community Confinement (18 U.S.C. §§ 3563(b)(11), 3583(d); U.S.S.G. § 5F1.1)
 - 1. as a condition of probation or supervised release

- 2. BOP designation with judicial recommendation
- F. Imprisonment (18 U.S.C. §§ 3581-3586; U.S.S.G. § 5C1.1)
 - 1. voluntary surrender (18 U.S.C. § 3143)
 - 2. multiple sentences (18 U.S.C. § 3584; U.S.S.G. § 5G1.3)
 - 3. calculation of credit (18 U.S.C. § 3585)
- G. Supervised release (18 U.S.C. § 3583; U.S.S.G. § 5D1.1)
- VIII. Restitution (18 U.S.C. §§ 3663, 3663A, 3664; U.S.S.G. § 5E1.1)
- IX. Fine (18 U.S.C. §§ 3571, 3572; U.S.S.G. § 5E1.2)
- X. Special Assessment
 - A. Class A misdemeanor -- \$ 25 (18 U.S.C. § 3013(a)(1)(iii))
 - B. Class B misdemeanor -- \$ 10 (18 U.S.C. § 3013(a)(1)(ii))
 - C. Class C misdemeanor or infraction -- \$ 5 (18 U.S.C. § 3013(a)(1)(I))
 - D. Does not apply to PBJ dispositions or other dispositions not resulting in “conviction” (18 U.S.C. § 3013(a))
- XI. Particular Offenses
 - A. Theft -- misdemeanor classification increased to \$1000 (18 U.S.C. §§ 641, 661)
 - B. DUI/DWI -- federal implied consent law v. Maryland implied consent law (United States v. Sauls, 981 F. Supp. 909 (D. Md. 1997))
- XII. Juveniles
 - A. Certification of Attorney General required for non-petty offenses (18 U.S.C. § 5032)
 - B. Magistrate judge may not impose sentence of imprisonment (18 U.S.C. § 3401(g))

APPEAL FROM MAGISTRATE'S DECISION

*Kathryn Frey Balter, Assistant Federal Public
Defender*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

UNITED STATES OF AMERICA

*

v.

*

Criminal No. XXX-XX-XXXX

JOHN DOE

*

NOTICE OF APPEAL

Notice is hereby given that on this _____ day of January 1998, the defendant, John Doe, hereby appeals to the United states District Court for the District of Maryland from the Judgment and Conviction Order entered in this case on January 16, 1998.

Respectfully submitted,

James Wyda
Federal Public Defender
for the District of Maryland

Kathryn Frey Balter, Esquire
Assistant Federal Public Defender
Tower II, Suite 1100
100 S. Charles Street
Baltimore, Maryland 21201
410/962-3962

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

UNITED STATES OF AMERICA

*

v.

*

PJM-97-0000

JOHN DOE

*

APPEAL OF DECISION OF MAGISTRATE JUDGE

The Defendant, John Doe, by and through his attorneys, James Wyda, Federal Public Defender for the District of Maryland, and Daniel W. Stiller, Assistant Federal Public Defender, hereby appeals his conviction for driving while suspended in violation of Md. Transp. Code Ann. § 16-303(i) as assimilated by 36 C.F.R. § 4.2.

BACKGROUND

The Defendant, John Doe, was charged in a four-count criminal complaint with the following offenses, all of which were assimilated by 36 C.F.R. § 4.2: (1) reckless driving in violation of Md. Transp. Code Ann. § 21-901.1(a); (2) failing to stop at the scene of an accident involving bodily injury in violation of Md. Transp. Code Ann. § 20-102; (3) driving a motor vehicle while his privileges to drive were suspended in the state of Maryland for failure to appear in court or pay fines in violation of Md. Transp. Code Ann. § 16-303(h); and (4) driving a motor vehicle while his privileges to drive were suspended in another state, to wit, Virginia, for failure to appear in court or pay fines in violation of Md. Transp. Code Ann. § 16-303(i).

A two-day trial commenced on the above charges on October 28, 1997.¹ Mr. Doe was acquitted of Count I after the Government's case-in-chief. Exhibit A. at 96. He was convicted of Counts II, III, and IV. Exhibit B at 58. The trial court sentenced Mr. Doe to three months in the custody of the Bureau of Prisons on Count II and three months in the custody in the Bureau of Prisons on Count III, to run consecutively to Count II. *Id.* at 71. With respect to Count IV, the trial court ordered that Mr. Doe be placed on probation for a period of eighteen months, to begin at the completion of the sentence of incarceration. *Id.* This appeal followed.

Mr. Doe appeals his conviction on Count IV -- driving while his privileges to drive were suspended in the state of Virginia for failing to pay a fine. In attempting to prove the essential element that Mr. Doe's driver's license had been suspended by the state of Virginia, the Government sought to introduce a computer-generated report purporting to be a copy of Mr. Doe's driving record.² Exhibit A at 83. The document contained neither a signature nor a seal. Instead, the face of the document set forth a computer-generated certification to the document's "accuracy." The computer-generated certification was endorsed by the similarly computer-generated name of Richard D. Holcomb, Commissioner.

At the time the Government moved for the document's admission into evidence, Mr. Doe objected on the basis that the Government had not properly authenticated the document. *Id.* at 84. The trial court deferred ruling on the document's admissibility. *Id.* at 85. When the Government concluded its case-in-chief, Mr. Doe moved for judgment of acquittal pursuant to Rule 29, renewing

¹ A transcript of the proceedings on October 27, 1997 is attached as Exhibit A. A transcript of the proceedings on October 28, 1997 is attached as Exhibit B.

² This document was marked for identification and admitted at trial as Exhibit 4. A copy of this document is appended hereto as Exhibit C.

his arguments regarding the inadmissibility of the document then marked only for purposes of identification as Exhibit 4. The trial court again deferred ruling on Mr. Doe's Rule 29 motion. *Id.* at 100.

At the conclusion of his case, Mr. Doe renewed his motions for judgment of acquittal. Exhibit B at 30. The following exchange took place with regard to Count IV:

THE COURT: I have kept under advisement, the admission of Government's Exhibit 4. And, I must admit, this is a troubling issue that I have had some difficulty with, simply because the Commonwealth of Virginia has changed the method by which they produce driving records.

And while it may comply with State standards in Virginia, when the change was made, I do not believe that they took into account the authentication requirements that are --

MS. WEISMAN: Your Honor, could we be heard as to that issue?

THE COURT: That you can be heard upon. Yes.

Id. at 30-31. The Government then proceeded to respond to the Defendant's authenticity objection by arguing that the document could be admitted as authentic pursuant to the Rule 803(24), the residual hearsay exception. *Id.* at 31-32.

Defense counsel explained the flaw in the Government's reasoning -- namely that the authentication requirements of the Federal Rules of Evidence cannot be met by proffering that the evidence is non-hearsay. *Id.* at 33-34.³ Notwithstanding this reasoning, the Court ruled that the document was admissible under 803(24), although it still expressed doubts about whether the authenticity requirements had been met, stating that:

³ Of course, Rule 803(24) is not even the correct non-hearsay basis for admission of Exhibit 4. Exhibit 4 is admissible under Fed. R. Evid. 803(6) as a business record. There is no need to resort to Rule 803(24) in order for Exhibit 4 to be admitted as non-hearsay.

My hesitation has always been that it doesn't purport to comply with the seal requirement, because while I think I have got a signature of Richard D. Holcomb, I don't have a seal. And that has been my reluctance all along. However, Congress has given me the other exceptions [under Rule 803(24)], and I think this is one of the few cases where perhaps it may be appropriate to use it.

Id. at 35-36. Thus, it is clear that both the trial court and the Government believed that Rule 803(24) could serve not only as an alternative basis for admitting non-hearsay, but also as an alternative basis for the authentication of documentary evidence. As demonstrated below, both the authenticity requirements and the hearsay requirements of the Federal Rules of Evidence must be met; they are not interchangeable.

Since the trial court erroneously admitted Exhibit 4 -- the only evidence relied upon to convict Mr. Doe of Count IV -- this Court should vacate Count IV and the sentence imposed thereunder.

ARGUMENT

MR. DOE'S CONVICTION FOR DRIVING ON SUSPENDED PRIVILEGES IN THE STATE OF VIRGINIA MUST BE VACATED BECAUSE THE ONLY EVIDENCE OFFERED IN SUPPORT OF THIS CHARGE DID NOT COMPORT WITH THE AUTHENTICATION REQUIREMENTS OF THE FEDERAL RULES OF EVIDENCE.

The proponent of documentary evidence bears the burden of establishing the document's authenticity. Fed. R. Evid. 901(a). Generally, the burden is satisfied by the production of a witness who testifies from personal knowledge that the document is what it purports to be. Fed. R. Evid. 901(b)(1). The drafters of the Federal Rules of Evidence streamlined the authentication procedure by providing for "self-authentication" of certain documents. Fed. R. Evid. 902. Specifically, the signed certification, submitted under seal, of an authorized custodian of a document substitutes for the custodian's testimony. *Id.*

The requirement that a document is self-authenticating only where properly attested to, signed, and sealed is both express and important. First, it is express in that the provisions of Rule 902 provide that documents are self-authenticating only where they are certified by signature and under seal. *See also* 28 U.S.C. § 1739. Second, the requirement is important once the theory for self-authentication is considered. As noted above, the certified signature under seal substitutes for the custodian's live testimony. In essence, the certified signature under seal represents the custodian's testimony that he or she has reviewed the document and has personal knowledge that it is what it purports to be.

In these regards, the computer-generated "certification" provided by the Virginia Department of Motor Vehicles fails to satisfy, either technically or substantively, the rules pertaining to self-authentication. Technically, the fact that the document lacks a certified signature under seal mandates exclusion of the evidence. *Compare United States v. Dockins*, 986 F.2d 888 (5th Cir. 1993)(accepting parties' agreement that police records certified only by rubber stamp are not self-authenticating); *and Nolin v. Douglas County*, 903 F.2d 1546 (11th Cir. 1990)(finding no self-authentication where county employee handbook certified by personnel director's signature but not under seal); *with Hughes v. United States*, 953 F.2d 531 (9th Cir. 1991)(concluding that tax documents were admissible as self-authenticating "because they were certified under seal"); *and United States v. Trotter*, 538 F.2d 217 (8th Cir. 1976)(treating as self-authenticating a certificate of vehicle registration attested to and certified by the Commissioner of the Bureau of Motor Vehicles of the State of Indiana and certified by the Governor of Indiana where each certification contained the seals of the signors' respective offices). Substantively, the computer-generated "certification" fails to establish that any person with personal knowledge of the document's contents ever laid eyes on the pertinent document. Thus, the computer-generated "certification" does not provide the

equivalent guarantees of authenticity that would be provided by the live testimony of the records custodian.

In the instant case, the Government sought to prove the offense of driving while suspended in the state of Virginia with a document that failed to comply with the authenticity requirements set forth in the Federal Rules of Evidence. The Government argued that the authenticity problem could be cured by resorting to the residual hearsay exception. The trial court accepted this argument and admitted the document under this provision. As demonstrated above, the admission of this document was error. Accordingly, Mr. Doe's conviction for driving while suspended in the state of Virginia must be reversed.

Respectfully Submitted,

JAMES WYDA
FEDERAL PUBLIC DEFENDER

DANIEL W. STILLER
Assistant Federal Public Defender
6411 Ivy Lane, Suite 710
Greenbelt, Maryland 20770
301/344-0600

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was hand-delivered this 13th day of February, 1998, to the AUSA Hollis Weisman, Assistant U.S. Attorney, 6500 Cherrywood Lane, Greenbelt, Maryland 20770.

DANIEL W. STILLER
Assistant Federal Public Defender

**APPLICABLE FEDERAL REGULATIONS
FOR MISDEMEANOR CASES**

*Hollis R. Weisman, Assistant United States
Attorney*

U.S. Department of Justice

*United States Attorney
District of Maryland
Southern Division*

*Lynne A. Battaglia,
United States Attorney*

*4516
Hollis R. Weisman
Assistant United States Attorney*

*United States Courthouse
6500 Cherrywood Lane 301-344-4029
Greenbelt, Maryland 20770 FAX 301-344-*

June 16, 1999

The magistrate judge in Hyattsville handles offenses that occur on federal reservations in Montgomery County, Prince George's County, Charles County, Calvert County, and sometimes in Anne Arundel County when the federal reservation spans more than one county jurisdiction. St. Mary's County cases are handled by an itinerant magistrate judge at the Patuxent River Naval Air Station in Lexington Park.

The magistrate judge in Hyattsville also has jurisdiction over crimes that occur anywhere in the southern division, if the crime is a violation of a specific federal law.

For ordinary common-law type crimes, some federal reservations have no particular federal criminal laws applicable to them. In that case, the criminal charges are made under the Assimilative Crimes Act. (18 U.S.C. § 13). Other federal reservations are covered by federal regulations in the Code of Federal Regulations. Each section of the C.F.R. has a preliminary section setting out those areas it applies to and the maximum penalties. Although fines are sometimes set in the C.F.R., the maximum fines are generally superseded by 18 U.S.C. §3571.

The federal reservations whose cases most commonly appear in magistrate judge's court in Hyattsville, and the laws that are most commonly used are as follows:

BALTIMORE- WASHINGTON PARKWAY, SUITLAND PARKWAY, CLARA BARTON PARKWAY. These are three federal highways, all under the jurisdiction of the National Park Service and patrolled by the U.S. Park Police. Traffic and criminal violations can be found in 36 C.F.R. Parts I through 4.

GREENBELT PARK, C&O CANAL NATIONAL HISTORICAL PARK, OXON HILL CHILDREN'S FARM, FORT FOOTE PARK. These are federal parks, all under the jurisdiction of the National Park Service. They are patrolled by the U.S. Park Police and by National Park Service rangers. Traffic and criminal violations can be found in 36 C.F.R. Parts I through 4.

NATIONAL INSTITUTES OF HEALTH. This reservations is patrolled by the NIH police. Some criminal and traffic offenses are listed in 45 C.F.R. part 3. Other offenses fall under assimilative law or federal statutes.

NATIONAL NAVAL MEDICAL CENTER: Generally known as Bethesda Naval Hospital, this reservation is patrolled by the Department of Defense Police, who are civilian police officers, and by military police officers. Investigations are performed by the Naval Criminal Investigative Service. No C.F.R. regulations apply to this area.

NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY. This area in Gaithersburg is patrolled by NIST police. 15 C.F.R. §265 deals with some misdemeanor and traffic offenses.

PATUXENT WILDLIFE REFUGE. This area is also part of the Department of Interior. It is covered by 36 C.F.R. Part 50.

SUITLAND FEDERAL CENTER: This includes the Smithsonian Institution Annex, naval offenses and the Census Bureau. It is patrolled by the Federal Protective Service and military police. No C.F.R. regulations apply specifically to this reservation.

BELTSVILLE AGRICULTURAL RESEARCH CENTER: This area is patrolled by Department of Agriculture police and the U.S. Park Police. When the park police become involved, 36 C.F.R. Parts I - 4 will apply. Otherwise, only federal and assimilative law applies.

GODDARD SPA CE FLIGHT CENTER: This NASA facility in Greenbelt is patrolled by NASA security officers and the U.S. Park Police. When the park police become involved, 36 C.F.R. Parts I - 4 will apply. Otherwise, only federal and assimilative law applies.

OVERVIEW of the U.S. PROBATION OFFICE

*Cedric Easter, Deputy Chief U.S. Probation
Officer*

**UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
PROBATION OFFICE**

DAVID E. JOHNSON
CHIEF U.S. PROBATION OFFICER
SUITE 400
210 W. PRATT STREET
BALTIMORE 21201

U.S. COURTHOUSE
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GREENBELT 20770-1248

PLEASE REPLY TO:
BALTIMORE OFFICE
TEL: 410/962-4741

INFORMATION REGARDING THE FEDERAL PROBATION OFFICE

The Federal Courts were established under Article III of the United States Constitution that was ratified in September, 1787.

John Augustus, Boston, Massachusetts -1841-, is known as the American pioneer of probation. Mr. Augustus was interested in the court process and attended court sessions on a regular basis. During one particular session, Augustus saw a bedraggled man appear for sentencing on a common drunk charge. His heart suddenly went out to the unfortunate man. He asked the court to release the man to his care rather than sentencing the man to the House of Corrections. The man later returned to court and his case was dismissed because of Mr. Augustus' intervention.

The United States Congress signed the Federal Probation Act into law in 1925, and in 1927 the first salaried United States Probation Officer was hired.

Mission: (Probation and Pretrial)

As the component of the federal judiciary responsible for community corrections, the Federal Probation and Pretrial Services System is fundamentally committed to providing protection to the public and assisting in the fair administration of justice.

Cases that come before the Federal Courts are those that are investigated by the:

1. FBI (Federal Bureau of Investigation)
2. ATF (Alcohol, Tobacco and Firearms)
3. DEA (Drug Enforcement Administration)
4. INS (Immigration and Naturalization Service)
5. IRS (Internal Revenue Service)
6. Secret Service
7. Customs Service
8. Marshal Service
9. U.S. Postal Service

and there are many other less well known Federal law enforcement agencies (ie; Park Police, NIS, State Department, Metropolitan Washington Airport Authority, etc).

Our office has two main functions: Presentence Investigation/Reports and Supervision of **Federal Offenders**.

PRESENTENCE REPORTS:

After a person has been to court and convicted, the judge may order a presentence investigation and report. Presentence reports must contain:

- a) information about the history and characteristics of the defendant, including prior criminal records, if any, financial condition and any circumstances affecting the defendant's behavior which may be helpful in imposing a sentence or in subsequent correctional treatment of the defendant;
- b) Congress passed the Sentencing Reform Act of 1984, which requires each offense and defendant be classified under certain categories as established by this act and the Sentencing Commission. You may have heard the expression "Federal Sentencing Guidelines" and this is to what I am referring. Essentially, the guidelines were purposed to give equity in sentencing. For example, someone in California with like circumstances will receive a similar sentence as someone in Texas or Virginia;
- c) verified information containing an assessment of the financial, social, psychological, and medical impact upon, and cost to, any individual against whom the offense has been committed;
- d) unless the court orders otherwise, information concerning the nature and extent of nonprison programs and resources available to the defendant; and
- e) any information the court directs us to obtain.

This report is used by the court in determining appropriate sentences, by the probation officer for supervision purposes and the prisons system for treatment and placement information.

SUPERVISION OF FEDERAL OFFENDERS:

Our supervision mission is to execute the sentence the court hands down, control risk to the community and promote law abiding behavior. There are 3 main types of supervision:

1. Probation - which is a sentence and is a form of punishment. If an offender is placed on probation, they are required to follow certain conditions. If they fail to do so, they are returned to court for further sanction (punishment).
2. Supervised Release - the Sentencing Reform Act of 1984 abolished parole and instituted a separate sentence of post-release supervision, supervised release. Supervised releasees are required to follow certain conditions, however, if they fail to do so, they would be returned to court.

3. Parole - although parole was abolished by the Sentencing Reform Act of 1984, there are still cases under parole supervision. The way this works is a defendant receives a sentence of 10 years to life imprisonment, but due to good behavior is released after 5 years. The defendant could remain on parole supervision for the remainder of his life, or a sentence of 1 to 4 years and he is released after 6 months. He could also remain on parole supervision for another 3 years and 6 months. However, after the parole officer believes the defendant has made a successful transition back into the community and no longer requires supervision, the officer can request termination of supervision.

Overview

What is Electronic Monitoring

Electronic Monitoring is a tool used to monitor clients' compliance to home arrest. The *clients* wear a *Transmitter* on their ankle that sends information to a *Field Monitoring Device* (FMD)-a receiver installed in their residence. The FMD is plugged into a standard 110-volt electrical outlet and into the client's telephone line. These devices monitor the client on a 24-hour basis. In addition, the FMD reports when the client (wearing the Transmitter) leaves, enters or tampers with the equipment. The FMD calls the monitoring-center's *host computer system* randomly every few hours to report its status.

Overview of the BI 9000 Home Escort Series Products

The BI 9000 Home Escort Series comprises of four products:

BI 90 10 Transmitter (referred to as **Transmitter**)
BI 9000 Field Monitoring Device (referred to as FMD)
BI 9020 Drive-BI Monitor (referred to as **Drive-BI**)*
BI Activator (referred to as **Activator**)*

**These are optional accessories for the BI 9000 Home Escort Series FMD and Transmitter products.*

Transmitter Description

The Transmitter is a waterproof, battery-operated, radio-frequency transmitter that attaches around the client's ankle. The Transmitter sends out a signal that is received by the FMD. The signal identifies the Transmitter identification number, its tamper condition, and battery status.

The BI 9000 FMD and BI 90 10 Transmitters are paired through their identification numbers. The Transmitter is designed to be continuously worn by the client for the duration of the home arrest sentence. The client's movements are not hampered in any way. The client can bathe, swim, exercise and perform

FMD Description

The Field Monitoring Device or FMD is the link between the Transmitter and the monitoring center. The FMD continually monitors the presence or absence of the Transmitter worn by the client. It receives only the RF signals which are emitted by the Transmitter that has been programmed to match the FMD. The FMD sends information to the monitoring-center's host computer system via the client's telephone line. In the event of a power failure, an internal battery operates the FMD. The unit is sealed and has no external switches accessible to the client.

The BI 9000 Field Monitoring Device

The BI 9000 FMD maximizes superheterodyne receiver technology, ensuring increased reception sensitivity. This performance enhancement helps to eliminate transmission dead spots which can occur in some client residences.

The sleek, contoured case with hidden internal antennas provides greater security with easier handling, storage and installation. Accurate tamper reporting delivers unparalleled telephone, power and unit tamper protection and reliability.

The BI 9000 FMD also features an enhanced battery system and reduced power consumption. You get the added security of extended 12 hour battery life in the event of an electrical power failure. The battery can also be left in a discharged state without incurring any damage.

For clients reluctant to surrender their phone line, the B1 9000 FMD features a progressive annoyance tone, both on-line and over a speaker, that effectively prompts surrender, enabling complete event reporting to the host computer.

The BI 9010 Transmitter

The BI 9010 Transmitter is designed and engineered to deliver multi-level tamper protection that virtually eliminates undetected removal. Any tamper or removal attempts outside of the FMD range are recorded (date and time) and stored for up to 72 hours. As soon as the transmitter is back within FMD range the tamper is reported to the host computer.

The slim, lightweight design is more comfortable and less annoying to the wearer, decreasing the incidence of tampers caused by client fiddling. The 3.8 ounce weight includes the durable security strap with reference number and cut-line sizing features for faster, trouble-free installation.

The one year, field-replaceable battery reduces maintenance while enhancing security. In addition, the low battery warning eliminates potential security and maintenance problems associated with unannounced battery rundown.

Every BI 9010 Transmitter has a unique ID number that is easily matched to any BI 9000 FMD via the host computer. So more than ever, spare transmitters can be inventoried for added versatility while saving you time and money.

The dual-antenna transmitter design further supports and enhances the FMD's superheterodyne receiver to help eliminate transmission nulls or dead spots.

HOME CONFINEMENT PROGRAM DAILY ACTIVITY FORM

PARTICIPANT: NUMBER:
FOR WEEK OF:

MONDAY

TUESDAY

WEDNESDAY

THURSDAY

FRIDAY

SATURDAY

SUNDAY

APPROVED LEAVE

(PARTICIPANT)

FAX NO: (410)962-1778 USPO:

(DATE)

**UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
PROBATION OFFICE**

DAVID E. JOHNSON
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6500 CHERRYWOOD LANE
GREENBELT 20770-1248

April 29, 1999

PLEASE REPLY TO:
BALTIMORE OFFICE
TEL: 410/962-4741

Costs of Electronic Monitoring and REACT

FISCAL YEAR 1999

	Electronic Monitoring	REACT	Both
Daily	\$4.55	\$3.20	\$7.75
Weekly	\$31.85	\$22.40	
\$54.25			
Bi-Weekly	\$63.70	\$44.80	
\$108.50			
Monthly	\$136.50	\$96.00	
\$232.50 (30-day month)			
OR			
Monthly	\$141.05	\$99.20	
\$240.25 (31day month)			

**UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
PROBATION OFFICE**

DAVID E. JOHNSON
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GREENBELT 20770-1248

October 10, 1996

PLEASE REPLY TO:
BALTIMORE OFFICE
TEL: 410/962-4741

MEMORANDUM

To: All U.S. District Judges and U.S. Magistrate Judges
District of Maryland

From: David E. Johnson
Chief U.S. Probation Officer

Re: Remote Electronic Alcohol Compliance Test (REACT) BI 9200

The Electronic Monitoring (EM) Team for the District of Maryland is in the pilot stage of testing a new alcohol detection device - REACT - at the request of the Federal Corrections and Supervision Division and BI, Inc. of Boulder, Colorado, our contract agency. This apparatus will be used for an indefinite period of time on a pilot basis to test individuals on electronic monitoring who have a history of (or suspected) alcohol-related problems. It will be used in conjunction with electronic monitoring on cases with a special condition requiring alcohol treatment with testing to determine if the person has refrained from the use of alcohol **and/or** an alcohol abstinence condition. The main function of REACT is to deter persons from drinking by the certainty of being tested on a daily basis. Through the use of REACT, the probation officer will be able to detect any instances of drinking, and monitor an individual's drinking pattern.

According to BI's Officer's Reference Manual -

REACT is an alcohol breath analyzer that allows remote electronic breath alcohol testing of persons who are under supervision and for whom alcohol consumption is prohibited. Test results are automatically returned via telephone to a monitoring center. The REACT device uses voice verification, fuel cell technology, and BI's security technology to ensure that the offender is identified and accurately tested, and that the unit's integrity is intact.

Results of the tests will be transmitted to the EM specialists who will provide any positive results to the supervision officer.

All referrals for electronic monitoring will be routinely screened by Supervising U.S. Probation Officer Bernard F. Meagher, the supervisor of the EM Team, to see if they are appropriate for placement on REACT as well. Those cases which have an electronic monitoring requirement and a special condition requiring treatment Avith testing and/or an alcohol abstinence condition will be ear-marked for REACT.

The cost of REACT is \$3.75 per day. As part of this pilot testing, the cost will be absorbed by the government - unless the court imposes a condition stipulating that the offender is to pay. Persons deemed suitable for REACT will initially be placed on it for 30 days. If any positives are received by the individual on the REACT device, 30 **additional** days will be required from the date of the positive up a total of **60** days. A **positive** will be considered any reading **above .010** BrAC (Breath Alcohol Content) which is directly proportional to the alcohol concentration in the blood, BAC (Blood Alcohol Content).

Extensions beyond 60 days will be considered at the request of the supervision officer. However, it will be necessary for the supervision officer to request the court to make a modification of the conditions of supervision to include a special condition requiring additional days on the REACT at the **participant's** expense.

Results of the REACT tests will be faxed to the EM specialists on a daily basis. Any positive or failed test results will be passed along to the supervision officer for appropriate action and response. This response may be a report to the court (if a zero-tolerance stipulation is in effect), a referral for counseling and treatment, a request for a violation hearing, etc. As mentioned above, an additional 30 days on the REACT will be added for each positive - up to a maximum of 60 days - at the government's expense.

The information obtained through REACT may not be used in a violation hearing, at this time, unless the person admits to the positive(s). By its nature REACT is a remote, unsupervised test. Although the technology is quite sophisticated and has been tested elsewhere, BI, Inc. has told us they will not be able to support any challenges to the test results with expert testimony. One of the reasons is that there is no contract with BI for the use of the equipment - we are using it on an experimental/pilot basis. The results of the testing may be used by the supervision officers to monitor and detect the extent of an individual's drinking, and to help discern the type of treatment modality which may be most effective in dealing with the individual's misuse of alcohol. Alternative methods of testing may also be employed (e.g., urinalysis) whose results would be admissible in court.

It is respectfully recommended that the court not impose a specific condition requiring REACT at the time a person is placed on supervision unless the court feels the offender should pay the cost of the testing or a longer period of testing is in order. The screening process used by our office will help us to determine which electronic monitoring cases would be appropriate for the use of the device. Those EM cases with alcohol testing and/or alcohol abstinence conditions will be tested by REACT for 30 to 60 days at the government's expense. The supervision officer may recommend an extension of this time period, at the offender's expense, in certain cases.

I have delegated the responsibility to implement REACT in our district to Supervising U.S. Probation Officer Meagher. If you would like to see a demonstration of REACT or have any questions concerning this new alcohol detection device, please feel free to call Mr. Meagher in Baltimore at (4 10) 962-4683.

Thank you for your attention to this information and for your support of the electronic monitoring program in the District of Maryland.

DEJ/BFM

The most advanced alcohol compliance testing is now a "remote" opportunity. There are over 3.7 million alcohol-related arrests in America every year.

This grim reality has created an inescapable link between community corrections, alcohol monitoring and an offender's programmatic success. As the marketplace leader in electronic home arrest monitoring, BI Incorporated has responded with yet another technologically-advanced link in the electronic offender monitoring chain -the BI 9200 REACT- remote alcohol testing system.

BI 9200 REACT enables you to reliably administer automatic and unsupervised remote, at-home breath tests to: measure compliance with an alcohol abstinence condition of probation or parole, provide a potential early warning of a failure to abstain from alcohol consumption provide an aid to an individual trying to recover from alcohol abuse.

Technology has made remote alcohol testing a *dependable reality*. By combining comprehensive experience in electronic home arrest monitoring with new technology, BI Incorporated has developed the finest, remote alcohol testing system available today. BI 9200 REACT is fully, supported by the BI Home Escort System 600 and as part of BI Monitoring Corporation services.

Four critical areas were targeted during product development:

Integration of advanced fuel cell technology The reliability of remote, in-home alcohol testing has often been compromised by the use of a stannic oxide semiconductor - a standard, non-specific, nonselective sensor that responds to a variety of gasses. Instead, BI 9200 REACT incorporates an advanced, electronic fuel cell technology that responds only to alcohol gasses in the blood. Fuel cell technology dramatically reduces the incidence of false positives and the time and money spent in response.

Compact size - BI 9200 REACT consists of two lightweight, ergonomically-designed electronic enclosures - a hand-held device and a compact, electronic interface adapter unit. connected by a detachable coiled cable. It's easily handled by a single individual during transport, installation and set-up, and during the actual testing process.

Simplified use -By simplifying both agency set-up and offender use, BI 9200 REACT increases the predisposition to compliance, reliability and accuracy. BI 9200 REACT features a summons alert and flashing display to notify the subject that a breath test is pending. Coordinated visual and verbal prompts then guide the subject through the complete testing process.

BI 9200 REACT units require recalibration just twice a year and can be done a number of different ways: by officers using calibration kits available from a variety of sources, including BI by a calibration laboratory in your area, by BI Incorporated. Because you are not forced to send equipment back for recalibration or to recalibrate as often as with stannic oxide semiconductors, you'll realize both reduced down time and costs.

BI 9200 REACT is ideal in conjunction with electronic home arrest monitoring programs and

operates with both the BI 9000 and HEM 6000 Field Monitoring Devices.

Increased levels of security - Advanced security features are designed into the system to ensure that only the enrolled subject actually executes the breath test. In addition, these features will trigger an alarm if the subject attempts to avoid or compromise a scheduled test.

TRIPLE TAMPER PROTECTION - Redundant detection mechanisms set the BI 9200 REACT apart from any other testing unit available. A set of three proximity sensors detect and monitor the presence of the face mask to the subject's face at the proper time. Additional tamper detectors generate a tamper if the unit is opened, if cables are disconnected, if the power is turned off. or in case of telephone line failure.

VOICE VERIFICATION - This is a fully automated process that does not require human attention during testing. Voice templates of the subject are pre-recorded during a supervised training and enrollment session. During testing, subject voice samples are spoken with the unit against the face, then immediately compared to the templates so an officer can respond before any potential problems arise. Operational costs are also reduced because operators and phone connections are not required for voice verification.

AUTOMATIC BATTERY BACKUP - The battery back-up makes it impossible for the subject to avoid a test by disconnecting the power and claiming a power outage. It also eliminates the need to execute manual tests in the event of a legitimate power failure.

We've incorporated two-part breath testing in a single process. First is a random, "covert" - breath test taken during voice verification, making it very difficult for the subject to defeat the testing process. Second is the primary "deep lung" test that analyzes air from the bottom lung area, providing a very accurate correlation with blood alcohol levels. BI 9200 RFACT makes no judgements regarding the outcome of the breath tests, reporting only the blood alcohol level and other relevant data.

Consider the alternatives. It's clear that corrections agencies have a growing responsibility to monitor and enforce alcohol compliance as a component of community corrections programs. Both public and judicial opinion aggressively support alcohol compliance programs as a part of the corrections continuum. BI 9200 REACT is the perfect tool to help you meet this growing demand to monitor and enforce alcohol compliance. Personal testing is expensive and time consuming. And alternative alcohol testing systems simply do not deliver the degree of technological advancement, security, reliability and ease-of-use available from BI 9200 REACT. BI 9200 REACT enables your corrections department to integrate dependable and responsive alcohol compliance testing with less cost.

APPENDIX

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION**

UNITED STATES OF AMERICA

*

v.

* **Magistrate Judge No. 98-0000**

JOHN DOE

*

* * * * *

**MOTION FOR DISCOVERY PURSUANT TO RULE 16(a)
OF THE FEDERAL RULES OF CRIMINAL PROCEDURE
AND RULE 404(b) OF THE FEDERAL RULES OF EVIDENCE**

Defendant, JOHN DOE, by and through his attorneys, James Wyda, Federal Public Defender for the District of Maryland, and Susan M. Bauer, Assistant Federal Public Defender, moves this Honorable Court to order the attorney for the Government to permit the Defendant to inspect, copy or photograph or to furnish copies of the following:

1. Any written or recorded statement of Defendant, or copies thereof within the possession, custody or control of the Government, the existence of which is known or by the exercise of due diligence may become known, to the attorney for the Government, as required under Rule 16(a)(1)(A) of the Federal Rules of Criminal Procedure.

2. The substance of any oral statement which the government intends to offer in evidence at trial made by Defendant, whether before or after arrest and in response to interrogation by any person known to the Defendant to be a Government agent, as required by Rule 16(a)(1)(A) of the Federal Rules of Criminal Procedure.

3. A copy of Defendant's prior criminal record, if any, within the possession, custody or control of the Government, the existence of which is known, to the attorney for the Government, as required by Rule 16(a)(1)(B) of the Federal Rules of Criminal Procedure.

4. All books, papers, documents, photographs, tangible objects, or copies or portions thereof, which are within the possession, custody or control of the Government and which are material to the preparation of Defendant's defense or intended for use by the Government as evidence at trial or were obtained or belong to Defendant, as required by Rule 16(a)(1)(C) of the Federal Rules of Criminal Procedure.

5. Results and reports of physical or mental examinations and of scientific tests and experiments, or copies thereof, which are within the possession custody or control of the Government, or the existence of which are known, or by the exercise of due diligence may become known, to the attorney for the Government, and which are material to the preparation of Defendant's defense herein or are intended for use by the Government as evidence in its case-in-chief at trial as required by Rule 16(a)(1)(D) of the Federal Rules of Criminal Procedure.

6. Any evidence of other crimes, wrongs, or acts the government intends to introduce at the trial of this matter in accordance with Federal Rule of Evidence 404(b).

WHEREFORE, the Defendant requests as follows:

1. That the Court enter an order requiring the Government to provide discovery in accordance with this motion; and

2. For such other and further relief as this Court may deem just and proper.

Respectfully submitted,

JAMES WYDA
Federal Public Defender

SUSAN M. BAUER (#04045)
Assistant Federal Public Defender
6411 Ivy Lane, Suite 710
Greenbelt, Maryland 20770-1405
(301) 344-0600

**MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF MOTION FOR DISCOVERY**

Rule 16, Federal Rules of Criminal Procedure.

SUSAN M. BAUER
Assistant Federal Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this _____ day of November, 1998, a copy of the foregoing motion was delivered to the Office of the United States Attorney, Suite 4100, U.S. Courthouse, 6500 Cherrywood Lane, Greenbelt, Maryland 20770.

SUSAN M. BAUER
Assistant Federal Public Defender

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

UNITED STATES OF AMERICA

*

v.

* **Magistrate Judge No. 98-0000**

JOHN DOE

*

MOTION FOR PRODUCTION OF FAVORABLE EVIDENCE

The Defendant, JOHN DOE, by and through his attorneys, James Wyda, Federal Public Defender for the District of Maryland, and Susan M. Bauer, Assistant Federal Public Defender, hereby moves this Honorable Court to furnish defense counsel copies of the following evidence in the possession, custody or control of the Government or its attorney, or known to the Government or its attorney, or which by the exercise of due diligence may become known to them, which is favorable to the Defendant and which is material to either the issue of guilt or the issue of punishment, including the following:

1. Any information in the Government's possession that might be used to impeach the credibility of key Government witnesses. See, Giglio v. United States, 405 U.S. 150, 154-55 (1972); United States v. Herberman, 583 F.2d 222, 229 (5th Cir. 1978).
2. Any evidence of a witness' failure to identify the Defendant, either by way of a witness statement or the failure to identify the Defendant at a pre-trial confrontation by way of lineup, photographic identification, or show-up. See, Jones v. Jago, 575 F.2d 1164, 1168-69 (6th Cir. 1978).

3. The existence, substance and manner of execution of any promises, agreements, understandings and arrangements, either verbal or written, between the Government and any prosecution witnesses, or his or her attorneys, or representatives, wherein the Government has agreed, either expressly or implicitly, not to prosecute the witness for any crime or crimes; not to prosecute a third party for any crime or crimes; to provide a formal grant of statutory immunity; or to provide an informal assurance that the witness will not be prosecuted in connection with any testimony given by him or her; to recommend leniency in sentencing for any crime or crimes for which he or she is convicted; to recommend a particular sentence for any crime or crimes for which he or she is convicted; to cause the change of identity of such witness; or to provide any other favorable treatment or consideration to the witness, or his or her friends or relatives.

4. All evidence arguably demonstrating that the conduct of the Defendant was done without criminal intent or any evidence tending to show that the Defendant did not act knowingly.

5. All negative evidence and information in the possession of the United States Government which shows that the Defendant was not involved in or connected with or had no part in activities or statements made by any co-defendants, or of co-conspirators who have not been named as defendants.

6. Any information pertaining to the credibility, bias or motive of a Government witness, including:

- A. Criminal records of prospective Government witnesses;
- B. Any and all records and information revealing prior misconduct or bad acts attributed to a prospective Government witness;
- C. Any evidence of bias on the part of a prospective Government witness which might be admissible under Rules 404(b), 607 or 608(a) or (b) of the Federal Rules of

Evidence;

D. A complete disclosure as to any mental examinations of any prospective Government witness whether psychiatric or psychological, including any tests conducted during said examinations; and

E. All reports, accounts, lists of questions and answers, results and interpretations of polygraph tests given to individuals and to prospective Government witnesses who have given or might have information about the same events and transactions referred to in the Indictment.

WHEREFORE, the Defendant requests as follows:

1. That the Court enter an order requiring the Government to provide discovery in accordance with this motion;
2. And for such other and further relief as to the Court may seem just and proper.

Respectfully submitted,

JAMES WYDA
Federal Public Defender

SUSAN M. BAUER (#04045)
Assistant Federal Public Defender
6411 Ivy Lane, Suite 710
Greenbelt, Maryland 20770-1405
(301) 344-0600

MEMORANDUM OF POINTS AND AUTHORITIES

Brady v. Maryland, 373 U.S. 83 (1963).

Giles v. Maryland, 386 U.S. 66 (1967).

SUSAN M. BAUER
Assistant Federal Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this _____ day of November, 1998, a copy of the foregoing motion was delivered to the Office of the United States Attorney, Suite 400, U.S. Courthouse, 6500 Cherrywood Lane, Greenbelt, Maryland 20770.

SUSAN M. BAUER
Assistant Federal Public Defender

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA *

v.

*

Criminal No.

Defendant

*

REQUEST FOR 404(b) DISCLOSURE

The Defendant, _____, by and through his attorneys, James Wyda, Federal Public Defender for the District of Maryland, and Susan M. Bauer, Assistant Federal Public Defender, hereby requests disclosure of any evidence of other crimes, wrongs, or acts the government intends to introduce at the trial of this matter pursuant to Federal Rule of Evidence 404(b).

Respectfully submitted,

JAMES WYDA
Federal Public Defender

SUSAN M. BAUER (#04045)
Assistant Federal Public Defender
6411 Ivy Lane Suite 710
Greenbelt, Maryland 20770
(301) 344-0600

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this _____ day of October, 1998, a copy of the foregoing was mailed to Paul Marone, Special Assistant U.S. Attorney, Building 310, Wing 10, Aberdeen Proving Ground, Maryland 21005.

SUSAN M. BAUER
Assistant Federal Public Defender

**OFFICE OF THE FEDERAL PUBLIC DEFENDER
DISTRICT OF MARYLAND
SOUTHERN DIVISION
6411 IVY LANE, SUITE 710
GREENBELT, MARYLAND 20770
TEL: (301) 344-0600
FAX: (301) 344-0019**

JAMES WYDA
FEDERAL PUBLIC DEFENDER

SUSAN M. BAUER
ASSISTANT FEDERAL PUBLIC DEFENDER

January 28, 2000

Jane F. Nathan, Esquire
Assistant United States Attorney
6500 Cherrywood Lane
Greenbelt, Maryland 20770

Re: United States v. _____
Docket No.

Dear Ms. Nathan:

On behalf of _____, I hereby request discovery in the above-referenced case.

Pursuant to Federal Rules of Criminal Procedure 12(d)(2) and 16(a) and Federal Rule of Evidence 404(b), I request the following:

1. Any written or recorded statement made by the defendant, or copies thereof, within the possession, custody or control of the government, the existence of which is known or by the exercise of due diligence may become known, to the attorney for the government, including the recorded testimony of the defendant before a grand jury which relates to the offense charged, as required under Rule 16(a)(1)(A) of the Federal Rules of Criminal Procedure.

2. The substance of any oral statement made by the defendant, whether before or after arrest and in response to interrogation by any person known to the defendant to be a government agent, and whether or not the government intends to offer it in evidence at trial, as required by Rule 16(a)(1)(A) of the Federal Rules of Criminal Procedure.

3. A copy of the defendant's prior criminal record, if any, within the possession, custody or control of the government, the existence of which is known, or by exercise of due diligence may become known, to the attorney for the government, as required by Rule 16(a)(1)(B) of the Federal Rules of Criminal Procedure.

4. All books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the

government and which are material to the preparation of the defendant's defense or are intended for use by the government as evidence at trial or were obtained or belong to the defendant, as required by Rule 16(a)(1)(C) of the Federal Rules of Criminal Procedure.

5. Results and reports of physical or mental examinations and of scientific tests or experiments, or copies thereof, which are within the possession, custody or control of the government, the existence of which are known, or by the exercise of due diligence may become known, to the attorney for the government, and which are material to the preparation of the defendant's defense herein or are intended for use by the government as evidence in its case in chief at trial as required by Rule 16(a)(1)(D) of the Federal Rules of Criminal Procedure.

6. A written summary of testimony the government intends to use under Rules 702, 703, or 705 of the Federal Rules of Evidence during its case in chief at trial, including a description of the witnesses' opinions, the bases and the reasons therefor, and the witnesses' qualifications, as required by Rule 16(a)(1)(E) of the Federal Rules of Criminal Procedure.

7. Notice and evidence of any other crimes, wrongs, or acts the government intends to introduce at trial in this matter in accordance with Federal Rule of Evidence 404(b).

Pursuant to the United States Constitution and relevant case law interpreting its provisions, including Brady v. Maryland, 373 U.S. 83 (1963) and Giles v. Maryland, 386 U.S. 66 (1967), I also request production of evidence within the possession, custody or control of the government or its attorney, the existence of which is known or which by the exercise of due diligence may become known to the government or its attorney, which is favorable to the defendant and which is material to either the issue of guilt or the issue of punishment, including the following:

1. Any information in the government's possession that might be used to impeach the credibility of key government witnesses. See Giglio v. United States, 405 U.S. 150, 154-55 (1972); United States v. Herberman, 583 F.2d 222, 229 (5th Cir. 1978).

2. Any evidence of a witness' failure to identify the defendant, either by way of a witness statement or the failure to identify the defendant at a pre-trial confrontation by way of lineup, photographic identification, or show-up. See Jones v. Jago, 575 F.2d 1164, 1168-69 (6th Cir. 1978).

3. The existence, substance and manner of execution of any promises, agreements, understandings and arrangements, either verbal or written, between the government and any prosecution witness, or his or her attorneys, or representatives, wherein the government has agreed, either explicitly or implicitly, not to prosecute the witness for any crime or crimes, not to prosecute a third party for any crime or crimes, to provide a formal grant of statutory immunity or to provide an informal assurance that the witness will not be prosecuted in connection with any testimony given by him or her, to recommend leniency in sentencing for any crime or crimes for which he or she is convicted, to recommend a particular sentence for any crime or crimes for which he or she is convicted, to cause the change of identity of such witness, or to provide any other favorable treatment or consideration to the witness, or his or her friends or relatives.

4. All evidence arguably demonstrating that the conduct of the defendant was done without criminal intent or any evidence tending to show that the defendant did not act knowingly.

5. All negative evidence and information in the possession of the government which shows that the defendant was not involved in or connected with, or had no part in activities or statements made by any co-defendants, or co-conspirators who have not been named as defendants.

6. Any information pertaining to the credibility, bias or motive of a government witness, including:

- (a) Criminal records of prospective government witnesses;
- (b) Any and all records and information revealing prior misconduct or bad acts attributed to a prospective government witness;
- (c) Any evidence of bias on the part of a prospective government witness which might be admissible under Rules 404(b), 607 or 608(a) or (b) of the Federal Rules of Evidence;
- (d) A complete disclosure as to any mental examinations of any prospective government witness, whether psychiatric or psychological, including any tests conducted during said examinations; and
- (e) All reports, accounts, lists of questions and answers, results and interpretations of polygraph tests given to individuals and to prospective government witnesses who have given or might have information about the same events and transactions referred to in the indictment or other charging document.

Pursuant to Federal Rule of Criminal Procedure 26.2 and 18 U.S.C. § 3500, I also request that you produce, at the earliest possible date, any statements of prospective government witnesses that are in the government's possession and that relate to the subject matter concerning which the witness will testify.

I do not intend to file a formal discovery motion with the Court unless you advise me that you are unable or unwilling to comply with any aspect of this request.

Thank you for your assistance in this matter.

Sincerely,

SUSAN M. BAUER
Assistant Federal Public Defender

This form provides information to support counsel's claim that the representation given was in an extended or complex case, and that the excess payment is necessary to provide fair compensation. Paragraph 2.22 B(3) of the *Guidelines for the Administration of the Criminal Justice Act, Volume VII, Guide to Judiciary Policies and Procedures*, defines the terms "extended" and "complex," and suggests criteria for determining "fair compensation." This form serves as counsel's memorandum required by paragraph 2.22 C(2) of those *Guidelines*, and does **not** replace any other documentation required to support the payment request. The space to respond to each section below will expand to fit the answer. **Use the cursor to move between boxes.**

Attorney:

Case Name:

Docket Number:

Defendant Number:

Voucher Number:

1 Period of appointment (dates): _____ to _____

Total number of in-court hours: ____; Specifying:
 Pre-trial hearings ____ Trial ____
 Sentencing hearings ____ All other in-court ____
 Total number of out-of-court hours: ____

2 Offenses charged:

Number of counts charged: ____ Number of co-defendants: ____

Other pending cases (docket numbers) of defendant during representation:

If applicable, sentencing guideline range found by the court for sentencing:

Was a mandatory minimum found or at issue at sentencing?
 Yes ___ No ___

3 Describe discovery materials (nature and volume) and/or discovery practices which are a noteworthy factor in the number of hours claimed:

4 List and describe motions, legal memoranda, jury instructions, and sentencing documents, or legal research not resulting in such, which are a noteworthy factor in the number of hours claimed and which were drafted originally for this case (do not include standardized motions, etc., unless content was modified significantly):

5 Summarize investigation and case preparation (e.g., number and accessibility of witnesses interviewed, record collection, document organization) which are a noteworthy factor in the number of hours claimed:

6 Explain, if noteworthy, impact on the number of hours claimed of investigative, expert, or other services used (CJA 21 voucher):

7 Check whether any of the following client factors are a noteworthy factor in the number of hours claimed and explain each: Communication with client/family ___ Language difference ___
Accessibility of client ___ Other ___

8 Explain any expense (Item 19 of the CJA 20 voucher) greater than \$500:

9 Explain any other noteworthy circumstances regarding the case and the representation provided to support this compensation request:

Include, if applicable: (A) Negotiations with U.S. Attorney's office or law enforcement agency; (B) Complexity or novelty of legal issues and factual complexity; (C) Responsibilities involved measured by the magnitude and importance of the case; (D) Manner in which duties were performed and knowledge, skill, efficiency, professionalism, and judgment required of and used by counsel; (E) Nature of counsel's practice and hardship or injury resulting from the representation; and (F) Any extraordinary pressure of time or other factors under which services were rendered.

Signature of Appointed Attorney:

Date: