



U.S. Department of Justice

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May 27, 2003

Arcangelo Tuminelli, Esquire  
105 North Calvert Street  
Baltimore, Maryland 21202

*WALTER POINDERTER*

Re: United States v. Dean Smith  
Criminal No. WDO-03-0213

Dear Mr. Tuminelli:

I write to set forth the conditions on which the Government is willing to make discovery in this case. Under Rule 16 of the Federal Rules of Criminal Procedure, discovery is to be given "upon request", and I understand that you do request discovery. Therefore, I also request discovery pursuant to Rule 16(b).

The Government will provide discovery pursuant to and as defined in Rule 16 within one week of receipt of the signed discovery agreement.

Jencks material as defined in 18 U.S.C. § 3500, along with related Giglio material such as witness' plea agreements, criminal convictions and prior inconsistent statements, will be provided no later than one week prior to the first day of trial. Brady material which is not included in the Rule 16, Jencks and Giglio material referred to above will be provided if and when discovered. Jencks material is defined for purposes of this agreement in accordance with the specific provisions of 18 U.S.C. § 3500. Jencks material is given on agreement that reciprocal Rule 26.2 material will be provided by you at the same time I provide Jencks material.

The government agrees that at the same time that it provides Rule 16 material, it will provide notice of the existence of alleged other crimes, wrongs or acts committed by your client pursuant to Rule 404(b) of the Federal Rules of Evidence, along with copies of all physical and documentary evidence believed by the government to fall within the ambit of Rule 404(b) which the government intends to introduce at trial in its case-in-chief. The government acknowledges its continuing duty to disclose Rule 404(b) evidence as it is recognized as such after the time period in which the government has provided Rule 16 material.

The government reserves the right to provide later notice of Rule 404(b) material if the government believes that disclosure of such information will pose a security risk to any witness. As to any such witness, the government will disclose all Jencks material and all Rule 404(b) evidence at the same time.

Should counsel file any routine motion with the Court which seeks discovery pursuant to Rule 16 or Brady, then this discovery agreement will be void, and the Government is not bound by any of the provisions herein. Specifically, Jencks and Giglio material may not be provided until the first day of trial if the defendant should file such a motion.

Should counsel file any motion with the Court which seeks material under the Jencks Act, then this agreement is void and Jencks and Giglio material may not be provided until the first day of trial.

The Government may be providing, as a courtesy, material which is not discoverable under Rule 16, Jencks, Giglio or Brady. The fact that certain non-discoverable materials are provided in no way obligates the Government to provide all non-discoverable materials, and the fact that certain non-discoverable materials are provided should never be taken as a representation as to the existence or non-existence of any other non-discoverable materials.

Please note that it is the policy of this Office that the government will not stipulate to a three level reduction in offense level pursuant to §3E1.1 of the United States Sentencing Guidelines unless the defendant has entered into a signed written plea agreement with the government on or before the date set for the filing of pretrial motions.

Please indicate your consent to this discovery agreement by signing and returning to me a copy of this letter. I urge you to call or write me with any questions that arise, as we may be able to resolve any questions without the filing of motions and responses with the Court.

Very truly yours,

Thomas M. DiBiagio  
United States Attorney

By:   
Jonathan P. Luna  
Assistant United States Attorney

AGREED:

  
Counsel for Defendant