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United States District Court
Southern District of California

UNITED STATES OF AMERICA,

Plaintiff,

VS.

LEROY BROWN (1),

CURTIS JARES (2),

RICKY ROSS (3),

MICHAEL McLAURIN (4),

Defendants.

Case No. 95-0353-H

Date: March 4, 1996

Time: 2:00 p.m.

**GOVERNMENT' S MOTIONS IN
LIMINE TO PRECLUDE
REFERENCE TO THE CENTRAL
INTELLIGENCE AGENCY, AND
FOR RECIPROCAL DISCOVERY**

COMES NOW the United States of America, through its attorney,

Alan D. Bersin, United States Attorney, Southern District of

California, by L.J. O'Neale, Assistant United States Attorney, and

respectfully submits Motions in Limine to preclude any reference to

any purported activities of the Central Intelligence Agency, and

for Reciprocal Discovery.

MOTION TO PRECLUDE REFERENCE

The United States has reason to believe that at least one of the defendants in this case intends to claim at trial that the confidential informant once trafficked in cocaine for or with the United States Central Intelligence Agency. The United States believes that such allegations are not true, and that the threat to make such allegations is solely intended to dissuade the United States from going forward with the prosecution to avoid the making of scandalous (if true) and scurrilous (if false) allegations.

None of the defendants, however, has complied with the Classified Information Procedures Act (CIPA), 18 U.S.C., App. III, a necessary prerequisite to the making of any such claims. Title 18, United States Code, Appendix III, 5, states, in pertinent part:

(a) Notice by defendant . -- If a defendant reasonably expects to disclose or cause the disclosure of classified information in any manner in connection with any trial or pre-trial proceedings involving the criminal prosecution of such defendant, the defendant shall, within the time specified by the court, or, where no time is specified, within thirty, days prior to trial, notify the attorney for the United States and the court in writing. Such notice shall include a brief description of the classified information No defendant shall disclose any information known or believed to be classified in connection with a trial or pretrial proceeding until notice has been given under this subsection and until the United States has been afforded a reasonable opportunity to seek a determination pursuant to the procedures set forth in section 6 of this Act, and until the time for the United States to appeal such determination under

section 7 has expired or any appeal under section 7 by the United States has been decided.

(b) Failure to comply. -- If the defendant fails to comply with the requirements of subsection (a) the court may preclude disclosure of any classified information not made the subject of notification and may prohibit the examination by the defendant of any witness with respect to any such information.

The purpose of the Classified Information Procedures Act is to prevent "greymail," where a defendant presses for release of classified information to force the government to drop a prosecution. *United States v. Rewald*, 889 F. 2d 836, 847 (9th Cir. 1989), modified 902 F. 2d 18 (1990), cert. denied, 498 U.S 819 (1990).

Here, the United States believes that at least one defendant will attempt to assert to the effect that the informant in this case sold cocaine to raise money for the Nicaraguan contras, and that he did so in conjunction with, or for, the Central Intelligence Agency. This matter, if true, would be classified; if false should not be allowed.

The only purpose for asking questions in this regard would be as a clumsy attempt to bullyrag the United States into foregoing prosecution. Since no defendant has complied with the CIPA notice requirements, none can be deemed to proffer the allegations as true.

The Court, then, should preclude any mention of the Central Intelligence Agency or its alleged activities in the course of the trial of this matter. (The Court should note that the informant will admit that he was a large-scale dealer in cocaine, and there is no additional benefit to any defendant to inquire as to the Central Intelligence Agency; the threat to so inquire is simply a

gambit.)

WHEREFORE the United States respectfully prays that the Court issue its Order in Limine prohibiting, any defendant from making any reference in this case to the United States Central Intelligence Agency, or to any alleged activity of that Agency.

MOTION FOR RECIPROCAL DISCOVERY

The United States renews its previous Motion for Reciprocal Discovery, noting that it has received no reciprocal discovery whatever from any defendant. The United States respectfully prays that the Court bar any offer of or reference to any evidence from and by any defendant if that evidence should have been provided as reciprocal discovery.

DATED this 26th day of February, 1996.

Respectfully submitted,

ALAN D. BERSIN

United States Attorney

Southern District of California

L.J. O'NEALE

Assistant United States Attorney