

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA \*  
  
Plaintiff \* CRIM. NO. 00-000  
  
vs. \*  
  
DEFENDANT \*  
  
Defendant \*  
  
\* \* \* \* \*

**MOTION FOR AN OPPORTUNITY TO INTERVIEW**  
**GOVERNMENT INFORMANTS**

TO THE HONORABLE COURT:

COMES NOW co-defendant, represented by the Federal Public Defender, and respectfully STATES and PRAYS:

1. On September 11, 2000, the Government informally notified defendants of the existence of a confidential source of information, it's intent to call the same as a witness at Trial, and that this person has received compensation or financial reward from the United States in recognition of it's assistance in this investigation.

2. The defendant herein requests that the United States be Ordered to disclose the identity and whereabouts of confidential informant utilized by the government in this case, and to allow the defendants to interview any such confidential informant.

3. From the evidence provided up to date it is reasonable to believe that this individual will be essential government witnesses regarding some or all of the charges contained in this indictment.

4. The defendant submits that the opportunity to interview informers used by the government in this case is crucial to the preparation of an effective defense and to the fair administration of the

cause against them. Through an interview, the defendants' counsel would be able to uncover the true motives of the government's informer and may be able to extract evidence that may exculpate the defendants.

### **Memorandum In Support of Request**

5. In *Rosario v. United States*, 353 U.S. 53 (1957) the United States Supreme Court held that where the identity of the informant is known, the privilege of non-disclosure no longer exists. Where the contents of the informant's communications are relevant and helpful to the defense of the accused, or are essential to a fair determination of a cause, the true identity of the informant must be made known to the defendant and the informant must be made available for interview. If the Government withholds this information, the trial Court may dismiss the case. See *U.S. v. Opager*, 589 F.2d 799 (5th Cir., 1979).

6. The defendants' rights to production and interview of the informants or unindicted co-defendants is clear. Public policy favoring protection of the identity of a confidential informer forbids only non-essential disclosure. *United States v. Ayala*, 643 F.2d (244) (5th Cir., 1981); *United States v. Toombs*, 479 F.2d 88 (5th Cir., 1974).

7. In the present case, disclosure of the true identity of the informants or unindicted co-defendants must be compelled because such identity is essential to the preparation of the defense. In order for these disclosures to be effective, they must be made promptly so that the defendants can properly utilize the information and prepare their defenses. The defendants require the aid of the Court because these witnesses cannot be located by ordinary means. The right is fundamental to our system of justice and indeed it is a component of a competent criminal defense, and thus, is

prescribed by constitutional notions of due process and the Sixth Amendment right to prepare a defense. Where the defendant's liberty is at stake, "such interviews are specially crucial". *U.S. v. Opager*, supra, at 804.

8. If the defendants, through counsel, are able to talk to witnesses in advance of trial, the defendants will be better prepared to challenge those witnesses' statements at trial and may be able to rebut their testimony. *U.S. v. Opager*, supra. Moreover, the defendants may be able to evaluate the firmness of the witnesses' testimonies and thereby plan defense strategies, *Gregory v. U.S.*, 369 F.2d 185, 188 (D.C.) Cir.,1966), *cert. denied*, 396 U.S. 396 U.S. 864 (1969), may be in better position to decide whether or not to enter a guilty plea, *United States v. Pascual*, 606 F.2d 561 (5th Cir., 1979), or may discover a witness who will testify on the defendant's behalf. This disclosure will also shed light on the prosecution's case and enable the defendants to demonstrate the truth at trial, that they are not guilty of the charged offenses.

9. Our courts have consistently underscored the defendant's right to an opportunity equal to that of the government to interview prospective witnesses or people having knowledge of the case. *U.S. v. Opager*, supra; *United States v. Brown*, 555 F.2d 407, 425 (5th Cir., 1977). The right applies no less to a witness in protective custody. *United States v. Murray*, 494 F.2d 178 (9th Cir.), *cert. denied*, 419 U.S. 854 and 419 U.S. 942 (1973). This right is so fundamental that it cannot be rendered meaningless by action of the prosecutors or other law enforcement officials who may advise prospective witnesses that they should not discuss their testimony with anyone but the government or their own attorneys. *United States v. Clemones*, 577 F.2d 1247 (5th Cir. 1978). This body of case

law is rooted in the Constitution and its obstruction amounts to a denial of due process and effective assistance of counsel. *Coppolino v. Helpern*, 266 F. Supp. 930, 935 (S.D.N.Y., 1967).

11. The Fifth Circuit has stated:

"The importance to a litigant of interviewing potential witnesses is undeniable. In particular, in criminal cases, where a defendant's very liberty is at stake, such interviews are specially crucial. Thus, it is that one of the first things responsible counsel does in preparing a case is to seek to interview those witnesses involved in the litigation." *United States v. Opager*, supra., at 804.

The nature of the right has been defined by the courts as follows:

"Witnesses are the special property of neither party and in the absence of compelling reasons, the district court should facilitate access to them before trial whenever it is requested." *United States v. Vole*, 435 F.2d 774, 778 (7th Cir., 1970).

12. Further, "both sides have an equal right, and should have an equal opportunity to interview them". *Gregory v. United States*, 369 F.2d 185 (D.C. Cir., 1966), cert. denied, 396 U.S. 865 (1969).

13. The prosecutor, therefore, may not advise a witness whether or not to speak to defense counsel, *Id*; *Coppolino v. Helpern*, supra, and if the opportunity is to be truly equal, the prosecutor should not be permitted to make any suggestion, direct or indirect, to the witness regarding the possibility of an interview with defense counsel.

14. In this case, the defendants have an absolute right to the information sought. Accordingly, they respectfully request that this Honorable Court enter an order compelling the government to disclose the true identity of all confidential informants and to make said informants and witnesses available to the defendants for interviews at least three weeks before trial.

15. Defendants specifically request that they be granted the opportunity to interview, among others, informants and/or government witnesses.

WHEREFORE: The defendant respectfully request this Honorable Court that defendants be given the opportunity to interview all informants utilized by the government in this investigation no later than three weeks before the date scheduled for trial.

I HEREBY CERTIFY: That a copy of the foregoing Motion was served to counsel for the Government U.S. Attorney Guillermo Gil (attn. **Asst. U.S. Attorney Timothy Vázquez**), Federico Degetau Federal Building, Room 452, Hato Rey, Puerto Rico 00918.

In San Juan, Puerto Rico, this September 13, 2000.

Joseph C. Laws, Jr.  
Federal Public Defender

---

Assistant Federal Public Defender  
USDC-PR  
259 F. D. Roosevelt  
Hato Rey, P.R. 00918  
TEL. (787) 281-4922  
FAX. (787) 281-4899