

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA)	<u>IN CAMERA UNDER SEAL</u>
)	
v.)	Criminal No. 1:07CR209
)	
WILLIAM J. JEFFERSON,)	Hon. T.S. Ellis, III
)	
Defendant.)	Trial: June 9, 2009 at 10:00 a.m.

**GOVERNMENT'S EX PARTE IN CAMERA SUBMISSION
REGARDING A COOPERATING WITNESS**

The United States, by and through the undersigned counsel, files this *in camera* submission to the Court *ex parte* for the Court to evaluate whether a cooperating witness's sexual relations during the pro-active phase of the investigation with an FBI agent who participated in such investigation should be disclosed to the defense in the above-referenced matter.

At approximately 7:45 p.m. on Friday, June 5, 2009, the undersigned were informed by FBI Special Agent Timothy Thibault, one of the case agents of the investigation of William Jefferson, that cooperating witness Lori Mody had just reported to him for the first time that she had sexual relations with now-former FBI agent John Guandolo during the time that Mr. Guandolo served in an undercover capacity as her driver during the pro-active phase of this investigation. Ms. Mody participated in the pro-active phase of the investigation by secretly recording various conversations from March 2005 to early August 2005 at the direction of the FBI. Ms. Mody explained to Special Agent Thibault that she and Mr. Guandolo were mildly intimate (but did not have sex) in New Orleans when Ms. Mody traveled there in April 2005 to attend an event hosted by Defendant Jefferson and to record communications she had with him. Ms. Mody further reported that after the

New Orleans trip she rebuffed 2-3 advances by Mr. Guandolo, including one in which she characterized Mr. Guandolo as inappropriately aggressive, but that she later had consensual sexual intercourse with Mr. Guandolo on two occasions in approximately May 2005. Ms. Mody also related that Mr. Guandolo solicited her to make donations to anti-terrorism organizations, including a \$75,000 to one organization, and that Ms. Mody declined to make any donations. A copy of FBI FD-1023 is attached as Exhibit A.

Since being informed of Ms. Mody's statements regarding former agent Guandolo, the undersigned have learned that Mr. Guandolo resigned from the FBI on or about December 1, 2008. The undersigned are still investigating the circumstances surrounding Mr. Guandolo's resignation.¹ Upon learning of Ms. Mody's statements, the undersigned instructed the FBI to interview Mr. Guandolo about Ms. Mody's statements. In the early morning hours of Saturday, June 6, 2009, FBI agents interviewed Mr. Guandolo, who confirmed that Ms. Mody's statements about their sexual relations were true. Mr. Guandolo could not provide precise dates as to when the sexual relationship began and ended. Mr. Guandolo estimated that the sexual relationship lasted a couple of months and he indicated that the level of sexual conduct progressed as time passed. He further admitted that he asked Ms. Mody to financially assist a private entity that works on counter-terrorism issues, and that Ms. Mody declined to do so. A copy of the FBI FD-302 is attached as Exhibit B.

¹ At this time, the undersigned understand that Mr. Guandolo was the subject of an Office of Professional Responsibility ("OPR") inquiry resulting from a document prepared by Mr. Guandolo, which was found and provided to his superiors, that detailed his affairs with female FBI agents. The undersigned learned this morning that this document also indicated that Mr. Guandolo had had an intimate relationship with a confidential source that he thought could damage an investigation, though the document did not identify the confidential source by name. Mr. Guandolo resigned before he was interviewed by OPR. At this juncture, the undersigned do not know what steps, if any, were taken by the FBI to learn the identify of the confidential source referenced in the document before this past Saturday.

Even before this revelation, the government had no intention of calling Mr. Guandolo to testify at the upcoming trial, as Mr. Guandolo played a very limited role in the case. The case agents of the investigation, Special Agent Thibault and then-Special Agent Edward Cooper, directed Ms. Mody in connection with her contacts with Defendant Jefferson and others and debriefed her after her meetings or contact with Defendant Jefferson, Brett Pfeffer, Vernon Jackson, and Defendant Jefferson's congressional staff. During the pro-active phase of the investigation, Mr. Guandolo merely posed as Ms. Mody's driver and security provider. In that undercover capacity, he traveled with her to New Orleans in April 2005 and drove Ms. Mody to various meetings during the late Spring and Summer of 2005. In this limited role, Mr. Guandolo had no substantive discussions with Defendant Jefferson.

At this juncture and for a variety of reasons, the government also does not intend to call Ms. Mody at trial. The government will seek the introduction of the recordings, transcripts, and documents from the different meetings with the defendant through Special Agent Thibault, who was Ms. Mody's controlling agent. *See, e.g., United States v. Branch*, 970 F.2d 1368, 1372 (4th Cir. 1992); *United States v. Howard-Arias*, 679 F.2d 363, 366 (4th Cir. 1982); *United States v. Turpin*, 65 F.3d 1207, 1213 (4th Cir. 1995).

Given that the government does not intend to call these two witnesses and that Mr. Guandolo was a peripheral participant in the investigation, Ms. Mody's and Mr. Guandolo's personal sexual histories appear to be irrelevant and inadmissible at the trial of this matter. *See, e.g., United States v. Saadey*, 393 F.3d 669, 680 (6th Cir. 2005) (holding that investigating agent's sexual relationship with the wife of a government witness, during which the agent expressed personal animus towards the defendant, was irrelevant and therefore inadmissible because the agent did not testify at trial).

Indeed, even in cases where a government cooperator or law enforcement agent does testify at trial, courts have prohibited defendants from cross-examining such witnesses regarding their sexual histories. *See, e.g., United States v. Bertram*, 805 F.2d 1524, 1530 (11th Cir. 1986) (holding that district court properly excluded evidence of testifying cooperating witness's sexual relationship with law enforcement agents during defendant's cross-examination of her, because the evidence "was not probative of bias or prejudice and did not invoke deceit, untruthfulness, or falsification bearing upon the propensity of the witness to testify truthfully or falsely"); *United States v. Carter*, 966 F. Supp. 336, 352-53 (E.D. Pa. 1997), *aff'd*, 156 F.3d 493 (3d Cir. 1998) (holding that cross-examination of government agent regarding his sexual relations with defendant's co-conspirator was irrelevant to credibility of testimony in which he authenticated audio tapes and "would have had a tendency to inflame the jury resulting in significant prejudice"); *Duran v. Pepe*, 899 F. Supp. 839, 845 (D. Mass. 1995) (rejecting defendant's argument that he should have been permitted to question testifying police officer about officer's sexual relationship with government informant in order to demonstrate that they "had a strong incentive to lie about what actually occurred" because the relationship "was a peripheral matter at best" and "had little bearing on the facts most relevant to the determination of [the defendant's] guilt"); *see also United States v. Buchanan*, 891 F.2d 1436, 1444-45 (10th Cir. 1989) (holding that government's failure to disclose relationship between agent and government witness did not violate *Brady*).

Said differently, this information does not appear to be material exculpatory evidence, and thus, its disclosure would not appear to be warranted. *See, e.g., United States v. Rosen*, 240 F.R.D. 204, 209 (E.D. Va. 2007) (noting that "materiality" as defined by the Supreme Court in *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny, means evidence or testimony that is "exculpatory

and not ‘corroborative or cumulative of other evidence.’”); *Kyles v. Whitley*, 514 U.S. 419, 434 (1995) (evidence is material under *Brady* if there is a “reasonable probability” that its disclosure would have caused a different result, *i.e.*, when suppression of the evidence undermines confidence in the trial’s outcome). Accordingly, if these intimate personal details of Ms. Mody and Mr. Guandolo’s adult consensual conduct are, in fact, neither exculpatory nor admissible at trial, then the government is reluctant to unnecessarily subject Ms. Mody to the possibility of public humiliation and scorn through disclosure of this information to the defense. Ms. Mody is not a sworn law enforcement officer, but a citizen who agreed to voluntarily participate in this investigation at the request of the FBI. Moreover, Ms. Mody has expressed great concern over the public disclosure of this information, and the government is concerned [REDACTED]

[REDACTED] That said, the government is ready, willing, and able to make such a disclosure to counsel for the defense if this Court holds that *Brady*, *Giglio*, and their progeny require disclosure.

Because of the extremely personal nature of this information and its apparent immateriality to the issues in this case competing with the government’s sensitivities to its discovery obligations, the undersigned believe that the most prudent course of action is to make this *in camera* submission in an abundance of caution, pursuant to the teachings of the Fourth Circuit. *See, e.g., United States v. Trevino*, 89 F.3d 187, 189-90 (4th Cir. 1996) (endorsing *in camera* procedure in deciding whether “the evidence would be both material and favorable”); *United States v. Holmes*, 722 F.2d 37, 41 (4th Cir. 1983) (“[I]t would be the prosecutor’s obligation to submit any material to the district court *in camera* if he had any doubts about whether it might be exculpatory.”). Therefore, the government makes this submission and will await further direction from this Court.

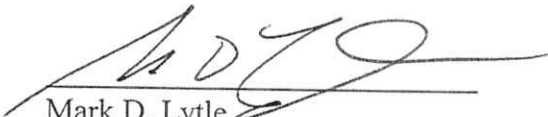
CONCLUSION

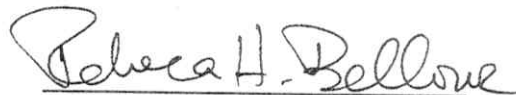
WHEREFORE, the government respectfully requests that the Court consider whether the information provided herein must be disclosed to the defense under *Brady*, *Giglio*, or their progeny.

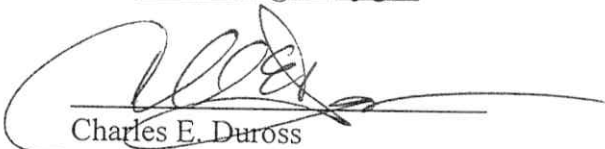
Respectfully submitted,

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HEADER

Source ID: **S-00009768**

Date: **06/07/2009**

Case Agent Name: **Thibault, Timothy R.**

Field Office/Division: **Washington**

Squad: **CR XV**

Date of Contact: **06/05/2009**

Others Present SA Elizabeth McCormick
(excluding CHS):

Type of Contact: **In Person**

Country: **UNITED STATES**

City: **Vienna**

State: **Virginia**

Date of Report: **06/06/2009**

Substantive Case File Number: **58C-WF-231361**

☐ Check If Grand Jury restrictions apply

Source Reporting: CHS indicated he/she wished to report an issue to the FBI so that there would be no surprises during the trial of Congressman William Jefferson that would adversely impact the progress of the trial.

CHS was extremely reluctant to talk about this information at his/her residence while his/her family members were in the house. CHS requested an opportunity to write the information down instead of verbalizing it because of the pain it was causing him/her. CHS also indicated it would be his/her preference not to relate this information, at this time, to the FBI, even at another location. Instead, CHS requested the opportunity to gather his/her thoughts, write them down, and provide the information to the FBI later this weekend. CHS was encouraged by SAs Thibault and McCormick to provide the relevant information to the FBI in whatever form he/she felt comfortable, but that it was important that she relate the information immediately.

CHS eventually agreed to answer five questions crafted by SAs Thibault and McCormick and written on a piece of paper. The five questions were:

- 1) Did J.D. (Former SA John Guandolo) act unprofessionally at any time?
- 2) Was there an intimate relationship at anytime? (This question was later rephrased to "Did you have sex with J.D. (Former SA Guandolo)?"
3. Approximately how many times?
4. What were the circumstances?
- 5) When did this relationship start and end?

CHS wrote his/her responses to the questions on the same paper, and this paper will be placed in a 1A envelope and made a part of the case file.

By way of summary, CHS provided the following information:

In late April 2005, while operating as a CHS for the FBI in New Orleans, LA, Guandolo and CHS engaged in "mild intimacy." CHS advised that on about 2 -3 other occasions, usually following operational meetings, Guandolo made inappropriate sexual advances toward CHS, which CHS rebuffed. These took place in a car, CHS's townhouse, or CHS's parent's house.

CHS advised that one advance by Guandolo was overly aggressive, but she was able to stop it. Sometime thereafter, CHS and Guandolo engaged in consensual sex on one or two occasions before CHS decided to terminate this activity. CHS indicated this activity occurred between late April 2005 and the end of May 2005.


Guandolo and CHS met about 3 times after the operational phase (after 08/03/2005). Guandolo made an advance at Clyde's Restaurant, which CHS refused. This was the last sexual advance made by Guandolo.

In or about January 2006, Guandolo introduced CHS to Greg Ratbon at a TGIF Restaurant to discuss Security issues.

The last meeting between Guandolo and CHS was at CHS's residence. Guandolo provided information to CHS about five anti-terrorism organizations, and suggested CHS should consider making donations to these organizations. One organization was affiliated with a person named Emerson who had authored a book. Guandolo recommended CHS contribute \$75,000 to one of these organizations. CHS did not make any financial contributions to these organizations or directly to Guandolo.

Guandolo requested CHS refrain from disclosing all of this information to SA Timothy Thibault, the lead case agent on the VISION QUEST case.

Signed by:

 Click here to sign this section

FD-1023 Revised (04/15/2009)

FEDERAL BUREAU OF INVESTIGATION

- 1 -

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 06/07/2009

Former Special Agent JOHN GUANDOLO ("GUANDOLO") was contacted at his residence regarding allegations that he engaged in an inappropriate relationship with a cooperating witness.

GUANDOLO was advised that the cooperating witness in the JEFFERSON investigation has alleged that GUANDOLO, during the time he was acting in an undercover capacity as the cooperating witness' bodyguard/driver, engaged in a sexual relationship with the cooperating witness.

GUANDOLO admitted that the cooperating witness' allegations were true. GUANDOLO could not provide precise dates as to when the sexual relationship began and ended. GUANDOLO estimated that the sexual relationship lasted a couple of months and he indicated that the level of sexual conduct progressed as time passed.

GUANDOLO also admitted that he asked the cooperating witness to financially assist a private entity that works on counter-terrorism issues. GUANDOLO advised that the cooperating witness declined to provide any financial assistance to the entity.

GUANDOLO expressed deep remorse for his actions and expressed a hope that his personal failings would not have an effect on the substantive criminal case. GUANDOLO advised that his life was now an open book and that he would be willing to answer any questions relating to this matter.

Investigation on 6/6/09 at Fairfax, VA

File # 58C-WF-231361 SUB 302
by SA Charles E. Price, II:cep
SA Mark Richard Stanley *msk*

Date dictated 6/7/09

GOVERNMENT
EXHIBIT

B