

CLIFFORD HUNT 3425
333 Queen Street, Suite 612
Honolulu, Hawaii 96813
Ph. 808.545.4050; Fax: 808.544.0007
Email: NOTGUILTY007@gmail.com

ATTORNEY FOR DEFENDANT
MICHAEL B. SHAPIRO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,)	Cr. No. 10-00384 DAE
)	
Plaintiff,)	NOTICE OF REQUEST FOR
vs.)	DISCOVERY AND REQUEST
)	FOR NOTICE OF FRE RULE
MICHAEL B. SHAPIRO,	(11))	404(b) EVIDENCE BY
)	MICHAEL B. SHAPIRO and
Defendant.)	CERTIFICATE OF SERVICE
)	
)	
_____)	

NOTICE OF REQUEST FOR DISCOVERY AND REQUEST FOR NOTICE
OF FRE RULE 404(b) EVIDENCE BY MICHAEL B. SHAPIRO

TO: MICHAEL K. KAWAHARA
Assistant U.S. Attorney
300 Ala Moana Boulevard, Rm. 6100
P.O. Box 50183
Honolulu, Hawaii 96850

Pursuant to Fed.R.Crim.P. 16 and 26.2 and 18 U.S.C. §§ 3500, and CrimLR 16.1, DEFENDANT MICHAEL B. SHAPIRO (hereinafter “defendant”) requests the following discovery:

1. **Defendant's Statements** Pursuant to Fed. R. Crim. P. 16 (a)(1)(A), defendant is entitled to disclosure of all copies of any written or recorded statements made by the defendant; the substance of any statements made by the defendant that the government intends to offer in evidence at trial; any response by the defendant to interrogation; the substance of any oral statements that the government intends to introduce at trial, and any written summaries or substantially verbatim recitals of the defendant's oral statements contained in the handwritten notes of any government agent; any response to any *Miranda* warnings that may have been given to the defendant, See: U.S. v. Harris, 543 F.2d 1247, 1247 - 1248 (9th Cir. 1976) (Notes taken by FBI agents in interviews either with prospective government witnesses or with the accused, constitute potentially discoverable materials that must be preserved); U.S. v. Robinson, 546 F.2d 309, 312 (9th Cir. 1976) (Routine disposal of potentially producible materials by the FBI amounts to a usurpation of the judicial function of determining what evidence must be produced in a criminal case,

therefore, such original or rough interview notes must be preserved.) U.S. v. McElroy, 697 F.2d 459 (2d Cir. 1982); and any other statements by the defendant that are discoverable under Fed. R. Crim. P. 16(a)(1)(A).

2. **Arrest Reports, Notes and Dispatch Tapes** Defendant requests that all arrest reports, notes and dispatch or any other tapes that relate to the circumstances surrounding her arrest or any questioning, be turned over. This request includes, but is not limited to, any rough notes, records, reports, transcripts or other documents in which statements of the defendant or any other discoverable material is contained. This is all discoverable under Fed. R. Crim. P. 16(a)(1)(A) and Brady v. Maryland, 373 U.S. 83 (1963). See also Loux v. U.S., 389 F.2d 911 (9th Cir. 1968); U.S. v. Johnson, 525 F.2d 999 (2d Cir. 1975); U.S. v. Lewis, 511 F.2d 798 (D.C. Cir. 1975); U.S. v. Pilnick, 267 F. Supp. 791 (S.D. N.Y.1967). Arrest reports, investigator's notes, memos from arresting officers, dispatch tapes, sworn statements, and prosecution reports about the defendant are available under Fed. R. Crim. P. 16(a)(1)(B) and (C), Fed.R. Crim. P. 26.2 and 12(i). Preservation of rough notes is specifically requested, whether or not the government deems them discoverable at this time. U.S. v. Harris, 543 F.2d 1247, 1247 -1248 (9th Cir. 1976) and U.S. v. Robinson, 546 F.2d

309, 312 (9th Cir. 1976).

3. **Reports of Scientific Tests or Examinations** Pursuant to Fed. R. Crim. P. 16(a)(1)(D), defendant requests the reports of all tests and examinations conducted upon the evidence in this case, including but not limited to any fingerprint analysis, that is 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, which are material to the preparation of the defense or which are intended for use by the government as evidence-in-chief at trial;

4. **The Defendant's Prior Record** Pursuant to Fed. R. Crim. P. 16(a)(1)(B), defendant requests that the government provide a copy of the defendant's prior criminal record, if any, as within possession, custody or control of the government;

5. **Brady Material and FBI I-Drives or Temporary Records**
Storage Drives: Defendant requests all documents, statements, agents' reports, and other tangible evidence favorable to the defendant on either the issue of guilt, the credibility of the government's case and/or witnesses, or punishment of defendant. Kyles v. Whitley, 514 U.S. 419 (1995). The U.S. Attorney's office is also requested to order a review of the local or

other relevant FBI field office's I-drive, and/or any other temporary records storage drive for potential *Brady* material. Impeachment as well as exculpatory evidence falls within *Brady's* definition of evidence favorable to the accused. *U.S. v. Bagley*, 473 U.S. 667 (1985); *U.S. v. Agurs*, 427 U.S. 97 (1976);

6. **Evidence Seized** Evidence seized because of any search, either warrantless or with a warrant, is discoverable under Fed. R. Crim. P. 16(a)(1)(C) and is now requested;

7. **Request for Preservation of Evidence** Defendant requests that all videotapes, dispatch tapes, or any other physical evidence that may be destroyed, lost, or otherwise put out of the possession, custody, or care of the government and which relate to the arrest or the events leading to the arrest in this case be preserved. The defense also requests the preservation of the local or other relevant FBI field office's I-drive files and any other temporary records storage drive that contains files or folders relating to this case;

8. **Tangible Objects** Pursuant to Fed. R. Crim. P. 16(a)(2)(C), defendant requests inspection and copying, as well as testing, if necessary, of all other documents and tangible objects, including alleged contraband,

photographs, books, papers, documents, buildings, automobiles, or places, or copies, depictions, or portions thereof which are material to the defense or intended for use in the government's case-in-chief, or were obtained for or belong to the defendant;

9. **Information Regarding Informants and Cooperating**

Witnesses Defendant requests that the government provide all relevant information concerning any informants or cooperating witnesses involved in this case. At a minimum, the government is obligated to disclose the identification and location of any informants or cooperating witnesses, as well as the identity and location of any other percipient witnesses unknown to the defendant. *Roviaro v. U.S.*, 353 U.S. 53 (1957);

10. **Evidence of Bias or Motive to Lie** Defendant requests any evidence that any prospective government witness is biased or prejudiced against the defendant, or has a motive to falsify or distort his or her testimony. *Pennsylvania v. Ritchie*, 480 U.S. 39 (1987); *U.S. v. Strifler*, 851 F.2d 1197 (9th Cir. 1988);

11. **Impeachment Evidence** Defendant requests any evidence that any prospective government witness has engaged in any criminal act, whether or not resulting in a conviction, and whether any witness has made

a statement favorable to the defendant. See Fed. R. Evid. 608, 609 and 613. Such evidence is discoverable under Brady, 373 U.S. at 83. See U.S. v. Strifler, 851 F.2d 1197 (9th Cir. 1988) (witness' prior record), Thomas v. U.S., 343 F.2d 49 (9th Cir. 1965) (evidence that detracts from a witness' credibility);

12. **Evidence of Criminal Investigation of Any Government**

Witness The defendant requests any evidence that any prospective witness is under investigation by federal, state or local authorities for any criminal conduct. U.S. v. Chitty, 760 F.2d 425 (2d Cir. 1985);

13. **Evidence Affecting Perception, Recollection, Ability to**

Communicate, or Truth Telling Defendant requests any evidence, including any medical or psychiatric report or evaluation, tending to show that any prospective witness' ability to perceive, remember, communicate, or tell the truth is impaired; and any evidence that a witness has ever used narcotics or other controlled substance, or has ever been an alcoholic. U.S. v. Strifler, 851 F.2d 1197 (9th Cir. 1988); Chavis v. North Carolina, 637 F.2d 213, 224 (4th Cir. 1980);

14. **Names of Witnesses Favorable to the Defendant** Defendant

requests the name of any witness who has made an arguably favorable

statement concerning the defendant. Jackson v. Wainwright, 390 F.2d 288 (5th Cir. 1968); Chavis v. North Carolina, 637 F.2d 213, 223 (4th Cir. 1980); Jones v. Jago, 575 F.2d 1164, 1168 (6th Cir.1978); Hudson v. Blackburn, 601 F.2d 785 (5th Cir. 1979);

15. **Statements Relevant to the Defense** Defendant requests disclosure of any statement that may be "relevant to any possible defense or contention" that he might assert. U.S. v. Bailleaux, 685 F.2d 1105 (9th Cir. 1982). This includes in particular any statements by percipient witnesses;

16. **Jencks Act Material** Defendant requests all material to which defendant is entitled pursuant to the *Jencks*, 18 U.S.C. §3500, and Fed. R. Crim. P. 26.2. The defendant specifically requests pretrial production of these statements so that the court may avoid unnecessary recesses and delays for defense counsel to properly use any *Jencks* statements and prepare for cross-examination;

17. **Giglio Information** Pursuant to Giglio v. U.S., 405 U.S. 150 (1972), the defendant requests all statements and/or promises, express or implied, made to any government witnesses, in exchange for their testimony in this case, and all other information that could arguably be used

for the impeachment of any government witnesses;

18. **Government Examination of Law Enforcement Personnel**

Files Defendant requests that the government examine the personnel files and any other files within its custody, care or control, or which could be obtained by the government, for all testifying witnesses, including testifying officers and agents who may have been controlling or contacting the confidential informant in this case. Defendant requests that these files be reviewed by the government attorney for evidence of perjury and/or dishonesty, and any other material relevant to impeachment, or any information that is exculpatory, pursuant to its duty under *U.S. v. Henthom*, 931 F.2d 29 (9th Cir. 1991). See *U.S. v. Jennings*, 960 F.2d 1488, 1492 (9th Cir. 1992).

19. **Disclosure of Experts Information** Pursuant to Fed. R. Crim.

P. 16(a)(1)(E), defendant requests that the government disclose a written summary of testimony the government intends to use under FRE 702, 703 or 705. The summaries must describe the witnesses' opinions, the bases and the reasons therefor and the witnesses' qualifications.

20. **FRE 404(b) evidence** Pursuant to Federal Rules of Evidence

Rule 404(b), defendant requests reasonable notice of the any evidence of

other crimes, wrongs, or acts of defendant or any other person that the government intends to introduce into evidence at trial.

21. **Co-defendant(s) criminal history and conviction information, and FRE Rules 404(b), 405, 608 and 609 evidence concerning co-defendant(s)** Pursuant to Federal Rules of Evidence Rules 404(b), 405, 608 and 609, defendant requests that the government disclose any information, records or files concerning prior criminal history and convictions (FRE 609), other crimes, wrongs or acts (FRE 404(b)), specific instances of conduct and reputation information regarding character for truthfulness or untruthfulness (FRE 405 and 608) of any co-defendants that the government intends to call as a witness at trial or expects to use such information to cross-examine any co-defendants that may otherwise testify at trial.

DATED: Honolulu, Hawaii, August 31, 2010

/s/ Clifford Hunt
CLIFFORD HUNT
Attorney for Defendant
MICHAEL B. SHAPIRO

CERTIFICATE OF SERVICE

I hereby certify that, on the dates and by the methods of service noted below, a true and correct copy of the foregoing was served on the following at their last known addresses:

Served Electronically through CM/ECF:

Michael K. Kawahara Mike.Kawahara@usdoj.gov August 31, 2010

DATED: Honolulu, Hawaii, August 31, 2010.

/s/ Clifford Hunt