

The Court should consider a discovery motion only if Rule 116.3's process of consultation and the exchange of letters does not lead to a satisfactory resolution. This was the process the Government followed when seeking to negotiate a protective order.

Defendant did not follow this rule here. In particular, Defendant has not previously requested from the government:

- (1) Written statements by Defendant which are not relevant to the prosecution of this case and therefore not encompassed by Rule 16(a)(1)(B), such as certain Twitter postings, postings on his own website, text messages and electronic mail (requested in Item 1);
- (2) Complete video recordings, including extraneous time periods which will not be offered at trial and therefore are not encompassed by Rule 16 (E) (requested in Item 5);
- (3) The name of the student who identified Defendant from the photo array, whose name was appropriately redacted from the public record for purposes of privacy (requested in Item 6); and
- (4) E-mail references and network flow data from Defendant's own computer which he claims to be exculpatory evidence, but actually is not (requested in Item 7).

To expedite discovery, the Government proposes that the Court deny Defendant's motion to compel as unripe, and that the Government be allowed to treat Defendant's motion to compel as the type of discovery letter mandated by Local Rule 116.3, and to respond to the request by letter in accordance with the Rule. We anticipate most, if not all, discovery matters can be worked out with defense counsel through the process mandated by the Local Rules once a protective order is in place.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that these documents are being filed through the ECF system and therefore will be sent electronically to the registered participants as identified on the Notice of Electronic Filing.

/s/ Stephen P. Heymann
Stephen P. Heymann
Assistant U.S. Attorney

Date: October 6, 2011