

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI**

**UNITED STATES OF AMERICA**

**V.**

**CRIMINAL NO. 3:09CR002-D-A-2**

**BOBBY B. DELAUGHTER**

**MEMORANDUM OPINION AUTHORIZING DELIVERY  
OF MATERIALS TO UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF MISSISSIPPI**

The Court addresses a motion filed by non-parties in the case *sub-judice* by Rodney Case, Kevin Clark, Mike Fulton, Douglas Murphy, and James Ward who are defendants in criminal actions pending in the United States District Court for the Southern District of Mississippi in the cases styled *United States v. Case, et al.*, Criminal Action Nos. 06-CR-210 and 09-CR-006. These cases are pending before Senior United States District Judge William H. Barbour. The criminal defendants in the Southern District case are also counterclaim plaintiffs in civil action, *Eaton Corporation, et al. v. Jeffrey D. Frisby, et al.*, Civil Action No. 251-04-642 CIV, pending before the Honorable W. Swan Yerger in the Circuit court of the First Judicial District of Hinds County, Mississippi (“Eaton v. Fristy”). It appears to this Court that the afore cited cases have no jurisdictional connection with the Northern District of Mississippi. The motion seeks the production of statements and/or testimony of Mr. Ed Peters as well as government investigative and grand jury materials that possibly relate to the cases pending in the Southern District of Mississippi and in the *Eaton v. Frisby* civil case pending in the Circuit Court of Hinds County, Mississippi.

The motion is unusual in that movants are not parties to the case *sub judice* pending in this Court. However, sound legal authority provides for the disclosure of such legal materials in a related judicial matter particularly where these materials are not available from any other source. Federal Rule of Criminal Procedure 6(e); *See Douglas Oil Co. v. Petrol Stops Northwest*, 441 U.S. 211, 221-22, 99 S.Ct. 1667, 1674, 60 L.Ed.2d 156 (1979); *Pittsburgh Plate Glass Co. v. United States*, 360 U.S. 395, 79 S.Ct. 1237, 3 L.Ed.2d 1323 (1959); *Shields v. Twists*, 389 F.3d 142, 147 (5th Cir. 2004); *In re Miami Federal Grand Jury No. 79-8*, 478 F. Supp. 490 (S.D. Fla. 1979); and *Allis-Chalmers Manufacturing Company v. City of Fort Pierce, Florida*, 323 F.2d 233 (5th Cir. 1963).

This Court is of the opinion given all of the circumstances related to this motion that the requested materials should be provided under seal to Honorable William H. Barbour, United States District Judge for the Southern District of Mississippi, the presiding judge in *United States v. Case, et al.*, Criminal Action Nos. 06-CR-210 and 09-CR-006 for *in camera* inspection. Subject materials form the basis for the filing of the government's response to a motion in the case *sub judice* for production of Federal Rule of Evidence No. 404(b) material. (Docket Entry No. 86).

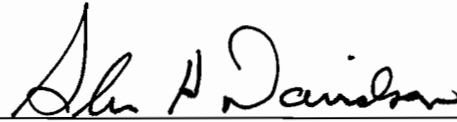
This Court is further of the opinion that the presiding judge in the Southern District case should properly make any determination as to whether a particularized need exists for the materials which outweighs the policy of continued grand jury secrecy in accordance with *Douglas Oil* and *Pittsburgh Plate Glass*, along with other applicable case law. Further the trial judge may well determine that the materials fall within the ambit of exculpatory materials as defined in the United States Supreme Court cases of *Brady v. Maryland*, 373 U.S. 83 (1963) and *Giglio v. United States*, 405 U.S. 150 (1972).

By order dated this same date the requested materials are also being provided to Honorable W. Swan Yerger, Circuit Judge in Hinds County, Mississippi, the presiding judge in the civil case,

Eaton v. Frisby, Civil Action No. 251-04-642 CIV for *in camera* inspection.

This Court will by a separate order under seal furnish the materials that form the basis for the government's response to the defendant's motion for production of Federal Rule of Evidence 404(b) material in the case *sub judice* to Honorable William H. Barbour .

This the 21<sup>st</sup> day of September, 2009.



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Senior United States District Judge