



U. S. Department of Justice

United States Attorney  
Central District of California

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October 1, 2010

VIA FEDERAL EXPRESS

Jason M. Frank  
Eagan O'Malley & Avenatti LLP  
450 Newport Center Drive  
2nd Floor  
Newport Beach, California 92660

RECEIVED  
EOA LLP

OCT 04 2010

Re: In re Pellicano Cases

Dear Mr. Frank:

The United States Attorney's Office ("this Office") has reviewed the request for disclosure of FBI 302s submitted in connection with the above-captioned matter ("the request"). Implementing the regulations found in 28 C.F.R. § 16.21 et seq. (the "Touhy regulations"), the Chief Assistant United States Attorney has concluded that the relevancy statements set forth in the request, standing alone, are insufficiently specific to require production. With respect to those requested 302s that were previously produced in the underlying federal criminal matter, however, the Chief Assistant United States Attorney has determined that the minimal relevancy statements in the request, when combined with this Office's prior determination in the criminal discovery context that the 302s are arguably relevant to allegations of wiretapping and unlawful accessing of confidential information, provide a sufficient basis for production under the Touhy regulations.

With regard to any other 302s listed in the request, the furnished relevancy statements are insufficient to allow this Office to make a determination as to whether any responsive documents in its possession would have any relevance to any pending civil matter.<sup>1</sup> We note that the Touhy regulations are

<sup>1</sup> Moreover, to the extent that the District Court issued orders that certain 302s were not subject to criminal discovery, such 302s are not being produced herewith.

not a general discovery mechanism, but require a showing of the relevance of Department of Justice information to the particular proceeding. That showing is not satisfied by boilerplate statements unsupported by any demonstration of the particular witness' relevance to any particular civil action.

Please be advised that we cannot be compelled to testify or provide information as to matters about which we have been prohibited from testifying or providing information. Having received directions not to testify or provide information, any court order purporting to compel such testimony or the provision of information would be unenforceable and we would be immune from any sanctions for refusing to provide such testimony or information. See In re Recalcitrant Witness Richard Boeh, 25 F.3d 761, 766 (9th Cir. 1994).

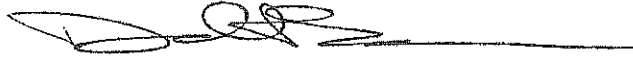
For your assistance, enclosed please find an index, prepared by a paralegal in this Office, of the 302s that are produced herewith in response to the request. Please be advised that we have not independently verified each of the entries in this index and can therefore make no representations as their accuracy. The index represents the paralegal's best efforts to accurately identify the produced 302s, and this government work product is provided to you solely as a convenience.

Please be advised that requested 302s of Jane Does are not being produced because the privacy concerns for these alleged rape victims outweigh any minimal showing of relevance. Please also be advised that, at the request of counsel for Brad Grey, the FBI 302s of Grey's interviews dated July 17, 2003 and January 14, 2004 have been withheld from the enclosed materials to allow Grey to make a motion claiming that those 302s are protected from disclosure by Federal Rule of Criminal Procedure 6. They will be provided to you in a supplemental disclosure should Grey's motion prove unsuccessful, or should he fail to file such a motion within a reasonable time.

You are authorized to disseminate the enclosed materials to counsel for any civil litigant in the matters within the request's definition of "Civil Cases" or "Civil Actions" (Attachment A, page 1) who has signed and agreed to be bound by the protective order regarding criminal discovery issued by United States District Judge Dale S. Fischer on April 3, 2006, in United States v. Anthony Pellicano, et al., No. CR 05-1046-DSF.

If you have any questions about this issue, please contact Assistant United States Attorney Dorothy C. Kim, this Office's Touhy coordinator, at (213) 894-3779.

Very truly yours,

A handwritten signature in black ink, appearing to read 'D. Saunders', is written over a horizontal line.

DANIEL A. SAUNDERS  
KEVIN M. LALLY  
Assistant United States Attorneys

cc: AUSA Dorothy C. Kim