

**[EXEMPLAR]**  
**JOINT PRETRIAL STATEMENT**

**December 2002**

*United States v. John Doe*  
**Criminal Action No. 02-5555**

Jane Jones, Esq.  
Assistant U.S. Attorney  
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Washington, DC 20001  
202-514-5555

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Washington, DC 21104  
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## **JOINT STATEMENT OF THE CASE**

This is a criminal case. John Doe is the defendant in this case. Mr. Doe is a detective with the Metropolitan Police Department who was assigned to the Fiftieth Police District, at 5555 J Street, N.W. He is charged in this case with one count of Bribery. The government alleges that he accepted or agreed to accept money in return for being influenced in obtaining and disclosing information from a law enforcement computer system. The defendant contends that he is innocent of these charges. This event is alleged to have occurred in November 1999.

**PROPOSED VOIR DIRE QUESTIONS – PARTIES IN AGREEMENT**

1. Having heard the brief summary of the allegations, do you believe you know anything about the facts and circumstances of this case?
2. Defendant John Doe has been assigned to the Fiftieth Police District, located at 5555 J Street, N.W. Do you know John Doe?
3. Some of the events in this case occurred in or near the Tasty Coffeeshop at 5555 Connecticut Avenue, N.W. Have you ever visited this coffeeshop?
4. Do you live or work near this coffeeshop or near the Fiftieth District? If so, would it affect your ability to be fair and impartial in this case?
5. The Assistant United States Attorney assigned to prosecute this case is Jane Jones. Do you know Ms. Jones? The attorney representing the defendant is Fred Smith. Do you know Mr. Smith?
6. Do you know any other member of the jury panel – for example from work, school, socially, prior jury service or one's neighborhood? If so, which juror(s) do you know and how do you know each other?
7. The parties will now introduce the individuals that it expects will testify in this trial or will be prominently mentioned. Do you know any of the individuals listed by the government or the defense?
8. A number of the proposed witnesses are law enforcement officers in the Metropolitan Police Department or the Federal Bureau of Investigation. Would you be more or less likely to believe the testimony of an officer merely because the witness is a law enforcement officer?
9. Are you now employed or were you previously employed by a law enforcement agency? If so, does your employment experience cause you to sympathize with the defendant because he is a law enforcement officer?

10. Have you or a close friend or relative studied law or had any legal training? If so, what areas of law have you or they studied? Would it affect your ability to follow the court's instructions as to the law to be applied?
13. Has any member of the jury panel ever served on a grand jury or a trial jury? When and in what court? If so, is there anything about that jury service that would make it difficult for you to be a fair and impartial juror in this case?
14. In the course of this case, you will hear testimony from a paid informant for the FBI. Will the fact that a witness worked as a paid informant for law enforcement cause you to reject his testimony simply because the witness was a paid informant?
15. Have you or a family member or a close friend ever been a witness to, a victim of, or charged with a crime?
16. When jury selection is completed today, we will begin the trial. Trial may last as long as six or seven business days. Are there urgent or extremely important matters to attend to in the next seven business days such that you could be faced with a hardship if you were selected for the jury in this case?
17. Do you have any strongly held beliefs that would prevent you from being a fair and impartial juror in this case or that would make it difficult for you to sit in judgment of the defendant?
18. Do you have any reservations concerning the criminal justice system that would prevent you from rendering a fair and impartial verdict in this case?
19. Do you have any hearing problems, illnesses, or other medical conditions that would make it difficult for you to sit as a juror in this case?
20. Do you know of any other reason why you cannot sit as a juror in this case and render a fair and impartial verdict based solely upon the evidence and the law as you shall hear it?

## **PROPOSED VOIR DIRE QUESTIONS – PARTIES IN DISPUTE**

### Defendant's Proposal

The defendant requests an additional 5 *voir dire* questions (see following pages).

They focus on jurors' experiences with law enforcement and computers.

- Government's Objection: The government makes a general objection to all of the following questions. The government also makes a specific objection to the entrapment-defense question (5) because the entrapment defense may not be permitted and because the question oversimplifies the elements of the entrapment defense.

**PROPOSED VOIR DIRE QUESTIONS – PARTIES IN DISPUTE**

1. What are your general feelings toward police officers? In general, what is your opinion of the police in the District of Columbia?
2. Would you hold the defendant to a higher standard than a regular citizen because he is a police officer? If the court were to instruct you that you must hold the defendant to the same standard as anyone else, no higher and no lower, would you be able to follow that instruction?
3. Do you log on to a computer, either for work or for any other reason? Do you log on to or access a network of information or a data base on a computer? If so, under what circumstances?
4. Have you ever tape-recorded a conversation with another person? Do any of you have jobs where your employer can tape or monitor your phone conversations, such as telephone customer service?
5. A defense in this case may be entrapment. Entrapment means that the government encouraged, persuaded, or unfairly influenced a person to do an act which they would not have done absent the government entrapment. Do you believe that entrapment is a valid defense? If the court gives an entrapment-defense instruction, will you be able to follow it?

## **JURY INSTRUCTIONS – PARTIES IN AGREEMENT**

The parties jointly request the following instructions. All are from the Red Book unless otherwise noted.

### **Preliminary Instructions**

1.16 Cautionary Instruction on Publicity

### **Instruction During Trial**

2.9 Foreign Language Testimony [from Ninth Circuit Manual of Model Jury Instructions – Criminal (West Group 2000)]

### **Final Instructions**

1.07 Question Not Evidence

1.08 Expert Testimony

1.10A Evaluation of Prior Inconsistent Statement of Witness, Alternative A [if applicable]

1.11 Evaluation of Prior Consistent Statement of Witness [if applicable]

1.12 Impeachment by Proof of Conviction of a Crime - Witness

1.14 Impeachment of Defendant - Statements [if applicable]

2.26 Police Officer's Testimony [as modified]

2.27 Failure of Defendant to Testify [if applicable]

2.28 Defendant as Witness [if applicable]

2.29 False or Inconsistent Statement by Defendant [if applicable]

2.51A Other Crimes Evidence [to be filled in based on evidence admitted]

3.02 Proof of State of Mind

4.83A Bribery [as modified]

4.00A Lesser Included Offense – General Instruction [as modified]

## **Instruction 1.16**

### **Cautionary Instruction on Publicity**

During the time you serve on this jury, there may be reports in the newspaper or on radio or television concerning this case, and you may be tempted to read, listen to, or watch them. You must not listen to or read such reports, and you must decide this case solely on the evidence presented in this courtroom. You must consider only evidence which meets certain standards in reaching your verdict. For example, a witness may testify about events he himself has seen or heard, but he generally may not testify about matters which others have told him about. Also, witnesses must be sworn to tell the truth and must be subject to cross examination. News reports about this case are not subject to any of these standards, and if you read, listen to or watch these reports, you may be exposed to misleading or inaccurate information which unduly favors one side of the case, and to which the other side is unable to respond. Therefore, you must completely disregard any press, television or radio reports which you may read, see or hear. Such reports are not evidence and you should not be influenced in any manner whatever by such publicity.

In fairness to both sides, it is essential that you comply with this instruction.

**Instruction 2.9**

**[from Ninth Circuit Manual of Model Jury Instructions]**

**Foreign Language Testimony**

You are about to hear testimony of a witness who will be testifying in Spanish. This witness will testify through the official court reporter. Although some of you may know Spanish, it is important that all jurors consider the same evidence. Therefore, you must accept the English translation of the witness' testimony. You must disregard any different meaning.

## **Instruction 1.07**

### **Question Not Evidence**

Sometimes a lawyer's question suggests that something is a fact. Whether or not something is a fact depends on the witness's answer – not the lawyer's question. A lawyer's question is not evidence.

**Instruction 1.08**  
**Expert Testimony**

Ordinarily, the rules of evidence do not permit witnesses to testify as to opinions or conclusions. But there is an exception to this rule for expert witnesses. Experts are allowed to give opinions or conclusions because they have become expert in some art, science, profession or calling. They may give their opinions or conclusions, and reasons for their opinions.

In this case, the court has permitted Dr. Allen Driscoll to testify as an expert concerning videotaping procedures. You are not bound by an expert's opinion. If you find that the opinion is not based on sufficient education or experience, that the reasons supporting the opinion are not sound, or that the opinion is outweighed by other evidence, you may completely or partially disregard the opinion. In other words, give the opinion the weight you think it deserves after you consider it along with all the other evidence.

**[IF APPLICABLE]**

**Instruction 1.10A**

**Evaluation of Prior Inconsistent Statement of a Witness**

You have heard evidence that Barbara Costello made a statement on an earlier occasion and that this statement may be inconsistent with her testimony here at trial. This earlier statement was brought to your attention to help you in evaluating the witness' believability here in court. In other words, if on an earlier occasion the witness made a statement that is inconsistent with her testimony in court, you may consider the inconsistency in judging the credibility of the witness at trial. You may not consider this earlier statement as proof that what was said in the earlier statement was true.

It is for you to decide whether a witness made a statement on an earlier occasion and whether it was in fact inconsistent with the witness' in-court testimony here.

**[IF APPLICABLE]**

**Instruction 1.11**

**Evaluation of Prior Consistent Statement of a Witness**

You have heard evidence that Jose Rivera made a statement on an earlier occasion and that this statement may be consistent with his testimony here at trial. This earlier statement was brought to your attention both to help you in evaluating the believability of the witness and as evidence in this case. In other words, if you find that the earlier statement is consistent with the witness' present testimony in court, you may consider this consistency both in judging the credibility of the witness here at trial and as proof that what was said in the earlier statement was true.

It is for you to decide whether a witness made a statement on an earlier occasion and whether it was in fact consistent with the witness' in-court testimony here.

## **Instruction 1.12**

### **Impeachment by Proof of Conviction of a Crime – Witness**

You have heard evidence that a witness has been convicted of a crime. A witness' prior criminal conviction is admitted into evidence solely for your consideration in evaluating her credibility as a witness. As a result, you may consider this prior conviction only in evaluating the credibility of that witness' testimony in this case.

**[IF APPLICABLE]**

**Instruction 1.14**

**Impeachment of Defendant – Statements**

You have heard evidence that the defendant made a statement on an earlier occasion and that this statement may be inconsistent with his testimony here at trial. The defendant's alleged statement is admitted into evidence solely for your consideration in evaluating his truthfulness as a witness. The testimony of a defendant may be discredited or impeached by showing that he has previously made statements which are not consistent with his present testimony. The defendant's prior statement is admitted into evidence solely for you to consider when evaluating the defendant's truthfulness on the witness stand. You may not consider the alleged statement as establishing the truth of any fact contained in it. You may consider it only in evaluating the credibility of his present testimony.

## **Modified Instruction 2.26**

### **Law Enforcement Officer's Testimony**

A law enforcement officer's testimony should be considered by you just as any other evidence in the case. In evaluating the officer's credibility you should use the same guidelines which you apply to the testimony of any witness. In no event should you give either greater or lesser weight to the testimony of any witness merely because she is a police officer.

**[IF APPLICABLE]**

**Instruction 2.27**

**Failure of Defendant to Testify**

Every defendant in a criminal case has an absolute right not to testify. You must not draw any inference of guilt against the defendant because he did not testify.

**[IF APPLICABLE]**

**Instruction 2.28**

**Defendant as Witness**

The defendant has a right to become a witness in his own behalf. His testimony should not be disbelieved merely because he is the defendant. In weighing his testimony, however, you may consider the fact that the defendant has a vital interest in the outcome of this trial. As with the testimony of any other witness, you should give the defendant's testimony such weight as in your judgment it is fairly entitled to receive.

**[IF APPLICABLE]**

**Instruction 2.29**

**False or Inconsistent Statement by Defendant**

False or inconsistent statements that a defendant makes in explanation or defense, after a crime has been committed, do not create a presumption of guilt. You may consider evidence of such false or inconsistent statements, however, as tending to prove the defendant's consciousness of guilt. You are not required to do so. You should consider and weigh evidence of the defendant's false or inconsistent statements with all the other evidence in the case and give it the weight which you believe it is fairly entitled to receive.

**[TO BE FILLED IN BASED ON EVIDENCE ADMITTED]**

**Instruction 2.51A**

**Evidence of Crimes Admitted to Show Motive, Identity, Common Scheme**

You have heard evidence that the defendant was [describe other crimes evidence]. It is up to you to decide whether to accept that evidence.

If you find that the defendant [describe the other crimes conduct], consider that evidence only for the limited purpose of deciding whether

[the defendant had a motive to commit the offense charged in the indictment]

[the circumstances of the other crimes and charged offense are so similar that it is likely that the person who [describe the other crimes conduct] also committed the charged offense]

[that evidence shows that the defendant had a specific plan to commit a series of crimes which are connected to each other].

If you conclude that

[the defendant had such a motive]

[the [other crimes conduct]

is so similar to the charged offense]

[the defendant had such a plan]

you may consider the existence of that

[motive]

[plan]

[similarity]

in helping you decide whether the government has proved beyond a reasonable doubt

[that the defendant is the person who committed the offense[s]  
charged in the information]

[Describe contested issue].

You may not consider this evidence for any other purpose. The defendant has not been charged with any offense relating to [describe the other crimes conduct], and you may not consider this evidence to conclude that the defendant has a bad character, or that the defendant has a criminal personality. The law does not allow you to convict a defendant simply because you believe he may have done bad things not specifically charged as crimes in this case. The defendant is on trial for the crimes charged, and you may use the evidence of acts not charged only for the limited purpose of helping you decide whether

[the defendant is the person who committed the offense[s] charged in  
the indictment].

[Describe contested issue].

## **Instruction 3.02**

### **Proof of State of Mind**

Someone's intent ordinarily cannot be proved directly, because there is no way of directly looking into the workings of the human mind. But you may infer the defendant's intent from the surrounding circumstances. You may consider any statement made or acts done or omitted by the defendant, and all other facts and circumstances received in evidence which indicate the defendant's intent.

You may infer, but are not required to infer, that a person intends the natural and probable consequences of acts knowingly done or omitted. It is entirely up to you, however, to decide what facts to find from the evidence received during this trial. You should consider all the circumstances in evidence that you think are relevant in determining whether the government has proved beyond a reasonable doubt that the defendant acted with the necessary state of mind.

**Modified Instruction 4.83A**  
**Bribery by a Public Servant**

The essential elements of the offense of bribery, each of which the government must prove beyond a reasonable doubt, are:

1. That the defendant was a public servant;
2. That, as a public servant, the defendant corruptly accepted or agreed to accept anything of value, directly or indirectly; and
3. That he did so in return for an agreement or understanding that an official act of his would be influenced by the gift.

An act is done with corrupt intent under the bribery statute if it is done voluntarily and deliberately and with the intent to engage in a specific "quid pro quo," or exchange of a thing of value for the doing of an official act or the violating of an official duty.

A "public servant" is any officer of the District of Columbia government.

An "official act" is any conduct that involves an exercise of discretion by a public servant.

An "official duty" is any required conduct that does not involve an exercise of discretion by a public servant.

"Anything of value" includes things possessing intrinsic value, and also bank notes, other forms of paper money, commercial paper, and other writings that represent value.

## **Modified Instruction 4.00A**

### **Lesser Included Offense – General Instruction**

I have just instructed you on Bribery. I am now going to instruct you on the lesser included offense of Receipt of an Illegal Gratuity. Receipt of an Illegal Gratuity is a lesser included offense to the count of Bribery. After I give you the elements of Receipt of an Illegal Gratuity, I will tell you in what order you should consider the offenses.

The elements of Receipt of an Illegal Gratuity, each of which the government must prove beyond a reasonable doubt, are: (1) that the defendant knowingly and personally, either directly or indirectly, received or accepted or agreed to receive or accept something of value not provided for by law; (2) that at that time the defendant was a public official by virtue of his being a police officer employed by the Metropolitan Police Department; and (3) that the defendant did so for or because of any official act performed or to be performed by the defendant.

You should consider first whether the defendant is guilty of Bribery. If you find the defendant guilty, do not go on to the other charge. If you find the defendant not guilty, go on to consider Receipt of Illegal Gratuity.

**JURY INSTRUCTIONS – PARTIES IN DISPUTE**

The parties disagree on the following instructions.

1. Preparation of Witnesses [government's request]
2. Entrapment [defendant's request]

## **Government's Proposed Instruction**

**[from *United States v. Torres*, 809 F.2d 429, 439-440 (7th Cir. 1987)]**

### **Preparation of Witnesses**

You have heard testimony about witnesses meeting with attorneys and/or investigators before they testified. You are instructed that it is perfectly proper for a lawyer or investigator to interview a witness in preparation for trial, and an attorney who does not question, rehearse and prepare his witnesses before trial is not properly prepared for trial.

- Defendant's Objection: The defendant objects to this instruction on the grounds that it is (1) irrelevant, and (2) provides a license to manufacture testimony.

**Defendant's Proposed Instruction**  
**[Modified Red Book Instruction 5.05]**

**Entrapment**

The defendant asserts that he was entrapped by the government to commit the crime of bribery. The defendant may not be convicted of this crime if he was entrapped by the government to do the acts charged. A person is entrapped if law enforcement officials, either directly or through an agent such as an informant, induced or persuaded a person to commit a crime which he would not otherwise have committed. However, a person is not entrapped when he is ready and willing to violate the law and law enforcement officials or their agents merely afforded opportunities for him to do so.

Inducement by law enforcement officials may take many forms including persuasion, fraudulent representations, threats, coercive tactics, harassment, promises of reward, or pleas based on need, sympathy or friendship. However, a request by law enforcement officials to engage in criminal activity, standing alone, is not an inducement.

If you should find no evidence that before the alleged offenses occurred government officers induced or persuaded the defendant to commit the crime charged, but rather they did no more than offer the defendant the opportunity to engage in criminal conduct, there is no entrapment. On the other hand, if you find some evidence in this case that the defendant was induced or persuaded by the government to commit the crime charged, you must go on to consider whether or not the defendant was ready and willing to commit these crimes whenever an opportunity was afforded.

In determining whether the defendant was ready and willing to commit the

crime charged, you need not find that he was involved in any prior offenses or criminal conduct. Willingness to commit the crime may be shown in many ways, including by direct or circumstantial evidence. When evaluating whether the defendant was ready and willing to commit the crime, you should consider all the circumstances.

In summary then, if you find no evidence that the government induced the defendant to commit the crime with which he is charged here, there can be no entrapment. On the other hand, if you find some evidence that the government agent induced the defendant to commit the crime charged, then you must decide if the government has satisfied its burden to prove beyond a reasonable doubt that the defendant was ready and willing before the inducement to commit the crime. If you find that the government has proven beyond a reasonable doubt that the defendant was ready and willing to commit this offense before the government inducement, then you should find that the defendant was not entrapped. However, if the evidence in the case leaves you with a reasonable doubt whether the defendant was ready and willing to commit the offense, then you must find him/her not guilty. Just as it is your responsibility to consider each offense and the evidence concerning each offense separately, it is also your responsibility to consider the evidence concerning entrapment as to each offense separately.

- Government's Objection: The government objects to this instruction because the entrapment defense may not be permitted and because the question oversimplifies the elements of the entrapment defense. If any entrapment instruction is to be included, the government requests Instruction 6.2 from the Ninth Circuit Manual of Model Jury Instructions.

**Government's Proposed Substitute to Defendant's Proposed Instruction**  
**[Ninth Circuit Model Jury Instruction 6.2]**

**Entrapment**

The government has the burden of proving beyond a reasonable doubt that the defendant was not entrapped. The government must prove the following:

1. the defendant was predisposed to commit the crime before being contacted by government agents, or
2. the defendant was not induced by the government to commit the crime.

Where a person, independent of and before government contact, is predisposed to commit the crime, it is not entrapment if government agents merely provide an opportunity to commit the crime.

## **EXPERT WITNESSES**

The government intends to call as an expert witness Sgt. Evelyn Best of the Metropolitan Police Department. She is the MPD's WALES Administrator.

The expert witness will offer testimony on the following areas:

- The expert will testify as to the function and use of WALES, which is the Washington Area Law Enforcement System.
- The expert will testify as to the restrictions on the use of WALES by police personnel and others and the training provided to police personnel regarding WALES.
- The expert will also review and opine on several searches that were conducted using WALES.

The defense will hear and evaluate the testimony and opinion of the government expert and may choose to present expert testimony on like subjects.

## **MOTIONS IN LIMINE**

The defendant has filed one motion in limine:

- Motion to Exclude Evidence as to Why Detective Doe Was Targeted by Confidential Informant or FBI

Copies of the motion and of the government's opposition follow.

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,	:	
	:	
v.	:	Criminal Action No.: 02-5555 (RMU)
	:	
JOHN DOE,	:	
	:	
Defendant.	:	

**DEFENDANT'S MOTION TO EXCLUDE EVIDENCE AS TO WHY  
DETECTIVE DOE WAS TARGETED BY CONFIDENTIAL INFORMANT OR FBI**

Comes now the defendant, John Doe, by his undersigned counsel, Fred Smith, and respectfully moves this court to exclude any evidence as to why Detective Doe was targeted by the confidential informant or the Federal Bureau of Investigation (FBI) for prosecution. In support of this motion, the defendant states as follows:

The government intends to introduce testimony as to why Detective Doe was targeted for prosecution. The government will attempt to elicit testimony from their confidential informant (CI) that the CI believed Detective Doe should be targeted, and that Detective Doe was targeted for prosecution. Upon information, the CI will testify that while she was in the Tasty Coffeeshop, the CI saw two patrons openly stealing coffee mugs and assumed that Detective Doe saw the same thing, yet did not arrest the suspects. The CI then reported to her handlers that she thought Detective Doe was neglecting his police duties and should become the target of an investigation.

First, the question of why someone becomes the target of an investigation is irrelevant to the case at bar. *Smith v. Jones*, 104 F. Supp. 4th 322, 325 (D.D.C. 1997). Neither party may introduce evidence on this point. *Dunn v. Moore*, 650 F. Supp. 4th 998, 999 (D. Wyo. 2001); *Jaime v. Ingall*, 185 F. Supp. 4th 654, 657 (D.D.C. 1995). Because the risk of prejudice is great, virtually all courts exclude such evidence. *Dunn*, 650 F. Supp. 4th at 999; *Neil v. Simpson*, 494 F.4th 229, 231 (D.C. Cir. 1985) ("Simply put, the risk of unfair prejudice is far too great to allow the evidence to be admitted"). This situation mirrors those found in *Dunn* and *Neil*, as in all three cases the government attempted to introduce informant evidence relating to police officer investigations. *Id.*

Second, the defendant denies that the events at the Tasty Coffeeshop ever took place. Where the occurrence of the events themselves is contested, courts must scrutinize the evidence closely, and err on the side of exclusion. *Olson v. Doe*, 555 F. Supp. 4th 312, 313 (D.D.C. 1989). Third, any testimony regarding what Detective Doe allegedly saw or did is hearsay and must not be admitted. *Underwood v. Blake*, 421 F.4th 514, 523 (D.C. Cir. 1992). It is black-letter law that witnesses may not testify as to what another person allegedly said. *Underwood*, 421 F. 4th at 524.

Finally, the prejudicial impact of testimony regarding stolen goods outweighs the probative worth, if any, of the testimony. *Vane v. Hudson*, 873 F.4th. 556, 561 (D.D.C. 2001). Interjecting the topic of stolen goods into a trial in which the only charge is bribery is inappropriate and could cause the jury to infer that Detective Doe condones stealing, thus denying him a fair trial.

Respectfully submitted,  
John Doe, by counsel

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Fred Smith  
Smith, Doe, and Jones, LLP  
5555 Pershing Street, NE  
Washington, DC 21104

### **CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing was sent on this \_\_\_\_ day of \_\_\_\_\_, 2002, via first-class mail, postage prepaid, to Jane Jones, Assistant United States Attorney, 555 Fourth Street, NW, Washington, DC 20001.

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Fred Smith

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,	:	
	:	
v.	:	Criminal Action No.: 02-5555 (RMU)
	:	
JOHN DOE,	:	
	:	
Defendant.	:	

**GOVERNMENT'S OPPOSITION TO  
DEFENDANT'S MOTION TO EXCLUDE EVIDENCE**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully opposes Defendant's Motion to Exclude Evidence. In support of its opposition, the government states the following:

One of the government's witnesses in the case on trial is a Federal Bureau of Investigation (FBI) informant known as "Sherry." Sherry will testify that on November 14, 1999, she went to the Tasty Coffeeshop. At the coffeeshop, she saw the defendant, who she understood to be an off-duty Metropolitan Police Department (MPD) officer. During her time in the coffeeshop, she observed two patrons openly stealing coffee mugs. There was nothing to prevent Sherry from observing this activity and Sherry saw nothing to prevent the defendant from seeing it as well. During the time Sherry watched, the defendant did nothing to restrict this activity.

After leaving the Tasty Coffeeshop, Sherry reported to the FBI what she had observed, and the FBI directed her to encourage further contact with the defendant. She returned to the coffeeshop on November 15 and November 21. On each occasion, she had conversation with the defendant, and mentioned to him that she needed help locating some guys who owed her money.

This testimony should be admitted because it is essential to placing the rest of the government's case in context. Essential testimony for contextual purposes is admissible in this circuit. *Ladd v. Jones*, 478 F.4th 101, 102 (D.C. Cir. 1992). Sherry's observations of the defendant's apparent inaction in the face of open stealing caused her to take note of the defendant and to report her contact to the FBI. It is the reason that the FBI investigation into Detective Doe began. Without this testimony, it would

appear that Sherry tried to contact the defendant and make requests of him for absolutely no reason. It is particularly important here, where the defendant intends to argue that he was unfairly treated by law enforcement. Evidence that rebuts a defendant's expected defense merits consideration by the finder of fact. *Shell v. Timmons*, 404 F. Supp. 4th 221, 223 (D.D.C. 2000).

None of the cases cited by the defendant support his propositions. In *Neil*, the investigation involved allegations of gun-running, not stolen goods. *Neil v. Simpson*, 494 F.4th 229 (D.C. Cir. 1985). There the court found that admission of informant testimony regarding alleged gun purchases would create unfair prejudice to the defendant. *Id.* Here, however, Sherry's testimony on the stolen coffee mugs is unrelated to the bribery allegations and would not create prejudice. As for *Dunn*, not only were the facts distinguishable given that no FBI informant was involved, but that holding comes from the District of Wyoming and is not binding on this court. *Dunn v. Moore*, 650 F. Supp. 4th 998, 999 (D. Wyo. 2001).

For all these reasons, the government opposes defendant's Motion to Exclude Evidence.

Respectfully submitted,  
ROSCOE C. HOWARD JR.  
UNITED STATES ATTORNEY

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Jane Jones  
ASSISTANT U.S. ATTORNEY  
555 Fourth Street, NW  
Washington, DC 20001

### **CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing was sent on this \_\_\_\_ day of \_\_\_\_\_, 2002, via first-class mail, postage prepaid, to Fred Smith, 5555 Pershing Street, NE, Washington, DC 21104

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Jane Jones  
ASSISTANT U.S. ATTORNEY

## **PRIOR CONVICTIONS**

If Detective Doe testifies, the government will seek to impeach him with his two prior convictions of Driving While Intoxicated (D.C. Superior Court, X-555-555). The government will present the defendant with a certified conviction for these offenses.

The defendant reserves the right to oppose the use of one or both of these convictions for impeachment purposes.

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,	:	
	:	
v.	:	Criminal Action No.: 02-5555 (RMU)
	:	
JOHN DOE,	:	
	:	
Defendant.	:	

**GOVERNMENT'S EXHIBIT LIST**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully submits the following list of exhibits that the government intends to introduce in its case-in-chief.

<u>Exhibit No.</u>	<u>Description</u>
1A	Printout of WALES query and result, 11-9-99, 2:15 p.m.
1B	Printout of WALES query and result, 11-12-99, 9:12 a.m.
1C	Printout of WALES query and result, 11-15-99, 11:29 p.m.
2	Training videotape on WALES system
3	Defendant's WALES questionnaire
4	Printout showing WALES password
5	MPD General Order # 4444 regarding recordings
6	Scrap of paper with name and address of Barbara Costello
7	Xerox of five \$100 bills
8	Declaration of Jose Rivera
9	Audiotape of phone call with defendant, 11-12-99, 9:00 a.m.
10	Transcript of Exhibit 9
11	Videotape of meeting with defendant, 11-12-99
12	Audiotape of phone call with defendant, 11-15-99, 11:01 p.m.
13	Transcript of Exhibit 12
14	ATF Form 4473 for firearm purchase, 11-16-99



**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,	:	
	:	
v.	:	Criminal Action No.: 02-5555 (RMU)
	:	
JOHN DOE,	:	
	:	
Defendant.	:	

**VERDICT FORM**

**1. How do you find the defendant, John Doe, as to Count One of the Indictment: Bribery?**

**Not Guilty\_\_\_\_\_ Guilty\_\_\_\_\_**

(If you find the defendant guilty of Bribery, do not go on to consider the lesser included offense of Receipt of an Illegal Gratuity, but proceed to the next count. If you find the defendant not guilty of Bribery, go on to consider Receipt of an Illegal Gratuity. And if, after making all reasonable efforts to reach a verdict on Bribery, you are not able to do so, you are allowed to consider Receipt of an Illegal Gratuity.)

**How do you find the defendant, John Doe, as to the lesser included offense of Count One of the Indictment: Receipt of an Illegal Gratuity?**

**Not Guilty\_\_\_\_\_ Guilty\_\_\_\_\_**

\_\_\_\_\_  
Foreperson

\_\_\_\_\_  
Date