IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION

United States of America, Plaintiff, vs. Carl Kenneth Kabat, Gregory Irwin Obed, Michael Robin Walli, Defendants.	)))))))))))	**ORDER RE MOTION TO COMPEL BY DEFENDANT WALLI** Case No. 1:06-cr-059

Before the court is the motion of defendant Walli to compel discovery by his newly-appearing counsel William P. Quigley, which was filed on August 25, 2006. It is necessary to place this motion in its proper context.

The court entered its pretrial order for discovery and motions on July 18, 2006. The court's initial pretrial discovery order required that pretrial motions be filed thirty days prior to trial. However, the court, in an order dated August 8, 2006, extended the deadline for filing discovery motions to August 25, 2006, and to September 1, 2006, for all other motions.

At the time the court entered its initial order for pretrial discovery and motions, Mr. Walli had already insisted on proceeding *pro se* despite repeated recommendations of the court that he accept court-appointed counsel dating back to his initial appearance on June 29, 2006. Nevertheless, the court appointed standby/advisory counsel for Mr. Walli with his consent.

Mr. Walli subsequently changed his mind about proceeding *pro se* but did not do so until mid-August, 2002. On August 17, 2006, Mr. Quigley filed a motion to allow him to appear on behalf of Mr. Walli. On August 18, 2006, the court entered an order that allowed Mr. Walli to

withdraw his election to proceed *pro se* and for Mr. Quigley to appear on his behalf as retained counsel effective upon Mr. Walli filing with the court a written request acknowledging his desire to now be represented by Mr. Quigley and with the understanding that the trial would not need to be postponed. At that time, the court indicated it was also prepared to appoint Mr. Walli's standby counsel as his counsel pursuant to the Criminal Justice Act. Mr. Walli apparently rejected the latter offer and filed his written election to proceed with representation by Mr. Quigley on August 24, 2006.

Mr. Quigley then filed the motion that is now before the court seeking to compel discovery. However, in his motion, he acknowledges that he has not reviewed the discovery that has already been provided by the government pursuant to the pretrial order and he goes on to state that he files the motion "only to protect the rights of Mr. Walli to full and complete discovery and asks that the undersigned counsel be provided with all discovery directly."

The court's pretrial order regarding discovery and motions set forth certain parameters for the discovery that was to take place, including the disclosures that would be required of the government. The order then provided that the parties could motion the court in the event of any discovery disputes.

The present motion does not present the court with any discovery disputes. Rather, it is simply a demand for discovery that has been made without any consideration of the discovery that has already been provided or that is being provided by the government. Consequently, the motion to compel is subject to denial on this basis. Nevertheless, the court believes it is most expedient at this point to address the merits of the motion to the extent it can given the circumstances.

In its response to Mr. Walli's motion, the government has indicated it sent a complete copy of its investigative file to the defendants on August 11, 2006, and supplemented that disclosure with copies of additional photocopies on August 16, 2006. Further, the government has met or talked with the defendants by phone to discuss their concerns about the disclosures and indicated that certain requested items of evidence would be made available for inspection and would be available for trial. Finally, even though the court denied Mr. Quigley's request for another set of the already disclosed information, the government states it forwarded Mr. Quigley a courtesy copy on August 28, 2006.

Also, the court notes that much of the information about the case was disclosed at the preliminary/detention hearing on July 5, 2006. Further, the court notes that substantial information about the case, including photographs of the defendants at the missile site in question, has been posted on a website maintained by the "peace group" affiliated with the defendants, presumably at their request, for a number of weeks already.

The government states it has provided the defendants with the bulk of the evidence that is discoverable under Rule 16, except for a few pieces that are in the process of supplementation. Also, the government has indicated that it will comply with its responsibilities to disclose grand jury testimony when it is required to do so pursuant to 18 U.S.C. § 3500 and that it is aware of its obligations to disclose exculpatory material pursuant to the Brady/Agurs/Bagley line of cases. Consequently, in the absence of Mr. Quigley being able to point with more specificity to what he thinks has been withheld, Mr. Quigley's motion is deemed moot with respect to demands numbered 1, 2, 3, 5, 6, 7, 8, 9, 10, 12, 16 & 20 - at least to the extent that these demands encompass items that are discoverable under Rule 16.

In some instances, the foregoing requests go beyond what is discoverable. For example, items 3 and 20 request copies of treaties and agreements between the United States and the "MHA Nation" and also international laws or treaties as to the use of nuclear weapons. There has been no showing that these materials are in anyway relevant to the charge pending against the defendants. In fact, the cases cited below indicate the information is not relevant. Further, these laws and treaties are within the public domain and are otherwise available to the defendants.

Demand number 16 is phrased in the manner of an interrogatory and Fed.R.Crim.P16 does not provide for the government having to answer interrogatories. Consequently, this item does not need to be responded to as phrased. However, information encompassed within the demand presumably has been, or is in the process of being turned over, to the extent it is in the form of an opinion that will be offered at trial, which is discoverable under Rule 16(a)(1)(G), or is in the form of a document or compilation of data that is discoverable under Rule 16(a)(E).

Discovery demands 4, 17, 18, and 19 raise issues that are clearly not material to any defense that may be presented at trial with respect to the offense charged. E.g., United States v. Urfer, 287 F.3d 663, 665-667 (7th Cir. 2002); United States v. Komisaruk, 885 F.2d 490, 493-494 (9th Cir. 1989); United States v. Kabat, 797 F. 2d 580 (8th Cir. 1986); United States v. Allen, 760 F.2d 447, 453-454 (2nd Cir. 1985). These requests are denied on this basis.

Also, the government is not obligated to provide a list of its witnesses at this point absent a court order, much less the names of persons who it does not intend to call, and the court is not prepared now to order the government to provide a witness list. Fed.R.Crim.P. 16; see United States v. Roach, 28 F.3d 729, 734 (8th Cir. 1993); United States v. Porter, 850 F.2d 464, 465 (8th Cir. 1988). Further, Rule 16 does not generally require the government to provide job descriptions and training

manuals for government witnesses, and the defendant has made no showing that this information is somehow material to its defense. Consequently, discovery demands 11 and 13 are denied on these grounds.

Any remaining demands are denied based on the failure of the defendant to demonstrate the materiality of the requested items.

Based on the foregoing, defendant Walli's motion to compel (Doc. No. 76) is **DENIED**.

IT IS SO ORDERED.

Dated this 30th day of August, 2006.

/s/ Charles S. Miller, Jr.
Charles S. Miller, Jr.
United States Magistrate Judge