

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|--------------------------|---|-----------------------|
| UNITED STATES OF AMERICA |) | Criminal No.: H-97-93 |
| |) | |
| v. |) | Violations: |
| |) | |
| MARK ALBERT MALOOF, |) | 15 U.S.C. §1 |
| |) | 18 U.S.C. § 371 |
| Defendant. |) | Filed 8/25/97 |

**UNITED STATES' RESPONSE TO DEFENDANT'S
MOTION TO COMPEL PRODUCTION OF STATEMENTS MADE TO THE
DEFENDANT BY AGENTS AND PROSECUTORS ON JUNE 21, 1995**

The United States of America, through its undersigned attorney, hereby responds to Defendant's Motion to Compel Production of Statements Made to the Defendant by Agents and Prosecutors on June 21, 1995 ("Defendant's Motion"). In his Motion, Defendant repeats his earlier request for production of all statements made to him by FBI agents and government attorneys during his interview on June 21, 1995. See Def. Mot. for Prod. and Disc., paragraph (e); and Def. Supp. Mot. for Prod. and Disc., paragraph 27. Because the government has fully complied with its obligations under Fed. R. Crim. P. 16 and Brady, the Defendant's Motion should be denied.

Pursuant to Rule 16, the government has already provided defendant with copies of his statements in the government's possession, including a copy of the FBI 302 report of the interview with him on June 21, 1995. Defendant claims, without any legal support, that he is entitled to additional statements of FBI agents and government attorneys. He claims that "threats" were made to him and that his refusal to cooperate with the investigation and accept immunity is exculpatory. Mot. at 2.

The United States disputes Defendant's characterizations that "threats" were made to him and that his refusal to cooperate with the investigation is somehow evidence of an exculpatory nature. See attached letter to Mark White, August 12, 1996. There could be any number of reasons why the Defendant decided not to cooperate with the government's investigation and thereby declined the offer of immunity, most of which are not exculpatory. Moreover, the Defendant knows what was actually said to him by the agents and attorneys, and therefore, this information is outside the requirements of Brady. The government is "not obliged under Brady to furnish a defendant with information which he already has or, with reasonable diligence, he can obtain himself." United States v. Campagnuolo, 592 F.2d 852, 861 (5th Cir. 1979) (quoting United States v. Pryor, 546 F.2d 1254, 1259 (5th Cir. 1977)).

Given Defendant's presence at the interview of June 21, 1995, the FBI 302 of that interview provided to him, and the letter to his counsel dated August 12, 1996, the government has met its obligations under Rule 16 and Brady, and the Defendant's Motion should be denied.

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the United States' Response to Defendant's Motion to Compel Production of Statements Made to the Defendant by Agents and Prosecutors on June 21, 1995 was sent via Federal Express this ___ day of August, 1997, to:

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ORDER

Before the Court is Defendant's Motion to Compel Production of Statements Made to the Defendant by Agents and Prosecutors on June 21, 1995. The government having acknowledged its continuing responsibility to provide defendant with access to all Rule 16 and Brady materials,

IT IS HEREBY ORDERED that Defendant's Motion is hereby DENIED.

DONE AND ENTERED THIS ____ day of _____, 1997.

United States District Judge