

- (1) Can the Government prove by a preponderance of the evidence that a Defendant in this case engaged or acquiesced in wrongdoing that was intended to, and did, procure the unavailability of Bobby Powell, per the requirements of Rule 804(b)(6)?
- (2) Assuming the Court finds that the Government has proven the above question affirmatively, is all of the testimony proffered by the Government in its Motion in Limine (Doc. # 273) relevant to the underlying substantive charges in this case, or is some of it solely related to the issue of whether the hearsay testimony of Bobby Powell is admissible?
- (3) Similarly to question two, assuming the Court finds that the Government has proven the first question affirmatively, is any of the testimony proffered by the Government in its Motion in Limine (Doc. # 273) inadmissible due to Rules 401 and/or 403?
- (4) Are there any hearsay exceptions, other than Rule 804(b)(6), by which any of the testimony proffered by the Government in its Motion in Limine (Doc. # 273) may be admissible in the trial of the underlying substantive charges in this case?
- (5) Assuming the Court finds that the Government has proven the first question affirmatively as to only one Defendant, to what degree is this testimony admissible against both Defendants under a Pinkerton theory of conspiratorial responsibility?²

Additionally, the Court orders the Government to release the identities of the witnesses

² For an examination of a theory of agency based on the principles of conspiratorial liability enunciated in Pinkerton v. United States, 328 U.S. 640 (1946), in the context of Rule 804(b)(6), counsels' attention is initially directed to United States v. Cherry, 217 F.3d 811 (10th Cir. 2000) and United States v. Rivera, 412 F.3d 562 (4th Cir. 2005).

it has only identified by letters of the alphabet in its Motion in Limine (Doc. # 273) to defense counsel by noon on Friday, May 10, 2006.³ The Government shall also file a written response to Don Harrell's Motion in Limine (Doc. # 296) by 4:00pm on Friday, May 10, 2006.

SO ORDERED, this the 11th day of May, 2006.

s/ Hugh Lawson
HUGH LAWSON, JUDGE

pdl

³ Should the Government contest this directive based on concerns about witness safety, witness tampering, or on any other ground, it should inform the Court at its earliest possible convenience, in writing and in detail. Otherwise, all counsel and the Defendants are admonished to refrain from engaging in any contact with these witnesses, or any others who may be called in this case, that might even hint of impropriety.