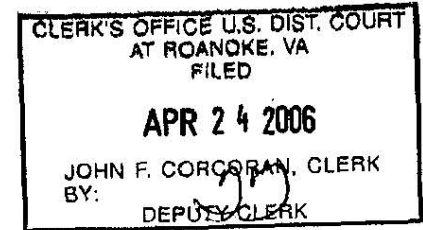


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April 22, 2006

**VIA HAND DELIVERY**

The Honorable James C. Turk

Re: United States of America v. Carl B. Hutcherson, Jr.  
Case No. 6:05cr00039

Dear Judge Turk:

On the afternoon of Friday, April, 21, 2006, the Friday before the start of trial on Monday, April 24, 2006, the defendant received from the government a set of additional discovery documents. Included in these documents were two pages, CH-6992 and CH-6993, copies of which are attached to this letter as Exhibit One.

These two pages apparently generated from the Social Security Administration contain obviously exculpatory and material information which conflicts completely with the government's contentions that the defendant stole social security funds as alleged in the Superseding Indictment and the government's 404(b) Notice. Specifically, an unnamed individual (Initials "SRM") writes:

"Fraud is not an issue – All monies Accounted for."

This statement indicates clearly that according to a Social Security investigation, no crime was committed by Carl Hutcherson. These pages reference information which the defendant must have time to investigate including the identity of the unidentified author and others with similarly exculpatory information and the existence of the documents that support this exculpatory conclusion. It is clear that others in addition to the unnamed individual will have knowledge of this exculpatory information and conclusion as even these two computer entries originate with different people.

Further review of these two pages reveals that two months after John P. Fishwick, Jr. was appointed by Judge Urbanski to represent the defendant, the Social Security office of Inspector General was investigating the defendant with the FBI and conducted a sting operation on the defendant on March 29, 2005. The document makes clear the sting was set up because of concern that certain records had been destroyed apparently by the Social Security Administration.

Specifically, the document states:

**“He [Mr. Childress] would like us to keep this low key and ‘routine’ so that Mr. Hutcherson doesn’t become aware that we are investigating him. Please call Mr. Hutcherson in and get all the above information, getting his statements over the penalty clause. S. Kominic, DM”.** The document further reveals that “Mr. Hutcherson came to office with all bank and stmts (sic) and cancelled checks and completed and signed SSA 623.”

This document proves that while Hutcherson by counsel was moving to quash the government’s subpoena for records in his case, the investigation arm of the Social Security Administration was concealing its active investigation of the defendant and luring him into the office to make statements and produce documents. Mr. Hutcherson was a target and was represented by counsel. The government had formally acknowledged that the Defendant had asserted his 5<sup>th</sup> Amendment privilege (see, Government’s Response to Petitioner Hutcherson’s Motion to Quash and to Place Under Seal, March 1, 2005).

The actions revealed in the attached documents implicate the defendant’s 5<sup>th</sup> Amendment rights to the extent of any documents produced, statements made and the fruits thereof.

The defendant has the right to investigate this apparent violation of his 6<sup>th</sup> Amendment right to counsel and to evaluate whether such violation warrants dismissal of the applicable count(s) of the indictment.

Moreover, some of the individuals referenced in the two pages attached are the same individuals involved in the facts clearly set out in defendant’s Motion to Compel which motion this court granted after the Social Security Administration had resisted production of records for a significant period of time. The defendant had diligently sought documents from the Social Security Administration. The attached Exhibit One was covered by the defendant’s subpoena and it was not produced to the defendant, even after the Court granted the defendant’s motion to compel.

The defendant is made aware for the first time of this key exculpatory information and the clear investigative leads flowing from it on the Friday afternoon before the Monday trial. Such does not allow anything close to an effective use of such information at trial. The evidence is material and will likely lead to evidence which will be used not only for impeachment purposes but as evidence in the defendant’s case in chief.

To go forward with the trial next week will deny Mr. Hutcherson the opportunity to investigate this clearly exculpatory and material evidence and thus will deny Mr. Hutcherson a fair trial. Therefore, we respectfully ask this Court to continue the trial to allow such investigation.

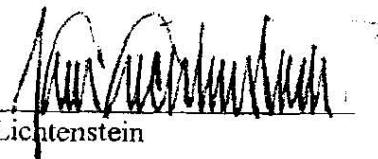
We regret the need to bring this matter to your Honor’s attention over the weekend. However, in an effort to prevent cost and inconvenience to the government and the jurors, we will plan to telephone your Honor this afternoon and to conference in the government.

We greatly appreciate the Court’s consideration of this important matter.

Respectfully submitted,



John P. Fishwick, Jr.



John E. Lichtenstein

cc: Thomas J. Bondurant, Jr. (via facsimile)  
William F. Gould (via facsimile)

# EXHIBIT ONE

[REDACTED] KATHL PRICE

031805 - RECEIVED A CALL FROM ROB CHILDRESS IN OIG REGARDING THIS CASE. THE PRIOR PAYEE WAS CARL HUTCHERSON, MAYOR OF LYNCHBURG, WHO IS CURRENTLY UNDER INVESTIGATION BY THE OIG AND FBI FOR A NUMBER OF ALLEGED VIOLATIONS. HE WAS PAYEE FOR THE CLAIMANT SINCE 2000, AND ALLEGEDLY HAS BEEN TAKING 20 % OF HER CHECK EACH MONTH AS PAYMENT FOR HIS SERVICES. THIS SURFACED RECENTLY WHEN A FRIEND OF THE CLAIMANT, HELEN POPIANAI (WHO IS NOW THE PAYEE) BECAME SUSPICIOUS AND CONTACTED THE CLAIMANT'S BANK. THEY TOLD HER THAT MR. HUTCHERSON HAD BEEN TAKING \$150 EACH MONTH OUT OF MS. PRICE'S ACCOUNT AND PUTTING IT INTO HIS PERSONAL BANK ACCOUNT. SOMEHOW, LYNCHBURG SOCIAL SERVICES GOT INVOLVED AND ASKED HIM ABOUT IT. HE TOLD DSS THAT HE HAD BEEN USING THE MONEY TO BUY MS. PRICE A BURIAL PLOT, AND ALSO TOLD THEM THAT HE WAS JUST KEEPING CASH AVAILABLE IN CASE SHE NEEDED IT. HE TOLD DSS HE DIDN'T KNOW HE WAS DOING ANYTHING WRONG, AND THAT IF HE WAS, HE WOULD REFUND THE MONEY.

ROB SAID THAT HE HAS TRIED TO GET MS. PRICE'S FILE, BUT APPARENTLY IT HAS BEEN DESTROYED, ALONG WITH ANY PAYEE ACCOUNTING FORMS THAT MAY HAVE BEEN IN THERE. HE WOULD LIKE US TO CALL MR. HUTCHERSON IN AND DO A FINAL ACCOUNTING. IF THERE ARE ANY CONSERVED FUNDS, WE NEED TO GET THEM BACK. THE LAST PAYEE ACCOUNTING MORE REMARKS (Y): Y  
FIELDS ARE PROTECTED - PF3 TO TERMINATE - PRESS ENTER TO ADVANCE

KATHL PRICE

WAS DONE IN APRIL, 2001, SO ROB WOULD LIKE US TO TRY AND GET A FULL ACCOUNTING OF ALL BENEFITS PAID TO MR. HUTCHERSON SINCE THEN. HE WOULD LIKE US TO KEEP "HIS LOW KEY AND "ROUTINE" SO THAT MR. HUTCHERSON DOESN'T BECOME AWARE THAT WE'RE INVESTIGATING HIM. PLEASE CALL MR. HUTCHERSON IN AND GET ALL THE ABOVE INFORMATION, GETTING HIS STATEMENTS OVER THE PENALTY CLAUSE. S. KOMINIC, DM 032905 MR HUTCHERSON CAME TO OFFICE WITH ALL BANK STMTS AND CANCELLED CHECKS AND COMPLETED AND SIGNED SSA 623- WAS VERY POLITE AND COOPERATIVE. SAID HE DID GIVE MS PRICE CASH AND WOULD WRITE A CHECK TO HIMSELF TO HAVE CASH ON HAND FOR HER OR TO REINBURSE FOR MONEY GIVEN - THESE CHECKS WERE USUALLY \$50.00 TO 60.00 PER MONTH- IF MONEY LEFT FROM THIS THEN HE PUT TOWARD FUNERAL FUND - NOTHING WAS IN WRITING - HE SAID HE RETURNED \$1100.00 THAT WAS HELD IN BURIAL FUND AND 230.00 THAT WAS CHURCH CONTRIBUTIONS THAT SHE LATER DECIDED SHE DID NOT WANT TO CONTRIBUTE- HE SAID ALL FUNDS WERE RETURNED IN FEB 2005 WHEN PAYEE WAS CHANGED APPEARS THAT 150.00 WAS ONLY WRITTEN TO PAYEE A COUPLE OF TIMES - SOME MONTHS NO CHECKS WERE WRITTEN TO PAYEE AND OTHER MONTHS IT WOULD BE FOR 50.00 OR 60.00 FRAUD IS NOT AN ISSUE - ALL MONIES ACCOUNTED FOR. SRM ABOVE MONEY WAS RETURNED TO THE ACCOUNT AND INCLUDED IN PAYEE ACCOUNTING - SAID MONEY LEFT IN ACCT WAS GIVEN TO NEW PAYEE.

MORE REMARKS (Y):

FIELDS ARE PROTECTED - PF3 TO TERMINATE - PRESS ENTER TO ADVANCE