

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
	:	
v.	:	CRIMINAL NO. 92-543-1
	:	
PATRICK A. HARRISON	:	

MEMORANDUM AND ORDER

NORMA L. SHAPIRO, S.J.

MAY 7, 2003

Defendants in a state court civil action entitled Warehouse Associates Corporate Centre II, Inc., et al v. Celotex Corporation, et al, 127th Judicial District, Harris County, Texas), have filed a motion for disclosure of all probation records of the defendant, Patrick A. Harrison, in Criminal No. 92-543-1 (Eastern District of Pennsylvania). Defendant Harrison entered a plea of guilty to making false statements to a bank under 18 U.S.C. § 1014; on March 31, 1993, he was sentenced to three years' probation, house arrest for 60 days (without electronic monitoring), 100 hours of community service, a fine of \$10,000 and a special assessment of \$50.00. His probation expired on March 30, 1996. He had paid the special assessment and fine in full and performed the requisite hours of community service.

United States probation files are confidential court records compiled in the course of fulfilling court-ordered responsibilities; a probation officer must be authorized by the court to release information from the presentence investigation

report or probation files to third parties. A federal court may allow the disclosure of confidential probation reports only when the movant has shown a compelling need. See U.S. v. Charmer Industries, Inc., 711 F.2d 1164, 1175 (2d Cir. 1983).

In a recent action in this circuit, motions to unseal the transcript of an in-chambers conference held to discuss objections to a presentence report and an in-camera offer of proof to supplement the presentence report were granted. U.S. v. Ernest D. Preate, Jr., 927 F.Supp. 163 (M.D. Pa. 1996). Defendant was a former district attorney who had been elected the state attorney general. The court acknowledged that presentence reports were confidential documents and that there was a strong presumption against disclosing such reports to third parties. However, the court noted that the confidentiality of presentence reports was not absolute. A third party could obtain access to a presentence report by demonstrating that disclosure would serve the ends of justice, or by establishing a compelling, particularized need for disclosure.

The court determined that the information sought related to defendant's offense history and concluded that defendant had a lesser privacy interest in that information than other personal background information provided elsewhere in the presentence report, especially in light of his status as a public official. Given that defendant's offenses arose during his campaign for

attorney general, the court held that there was a strong interest in public access to the documents sought by the publishing company and granted the publishing company's motion to unseal the transcript of the in-chambers conference and the proffer filed by the United States in camera during the sentencing phase of defendant's trial.

However, more recently, the motion of a freelance reporter for access to a presentence investigation report was denied even though the defendant had been the majority leader of the state senate for 12 years prior to his plea of guilty in a case with great media interest. See U.S. v. F. Joseph Loeper, Jr., 132 F.Supp. 2d 337 (E.D. Pa. 2001). The court placed the burden on the intervenor to give compelling reasons for disclosing the report and found that there were no special issues or concerns related to the public's interest in knowing what the report contained, or in understanding the sentencing process. A significant amount of personal and other information about the defendant was readily available elsewhere. The court concluded that if disclosure were to become commonplace, persons supplying the information would not likely be as forthcoming in the future. Intervenor's motion was denied because there was no compelling particularized need for disclosure.

Courts have been very reluctant to give third parties access to the presentence investigation report prepared for some other

individual or individuals. See U.S. v. Julian, 486 U.S. 1, 12 (1987). Here, we are asked to release not only the traditionally confidential presentence report, but the entire probation office file, including periodic interviews with the probationer, house visits, compliance issues, and reports to the supervising court. The reason for this fishing expedition is said to arise out of an action in which movants are defendants, Warehouse Associates Corporate Centre II, Inc., et al. v. Celotex Corporation, et al. (Texas law suit).

Plaintiffs are a group of related entities that acquire, develop and operate property in and around Houston. Warehouse Associates is allegedly owned by Patrick A. Harrison ("Harrison") and his partner David R. David ("David"), each of whom has been convicted of federal felonies for bank fraud.

In 1999, Warehouse Associates approached Celotex to purchase a commercial property located at 1400 N. Post Oak Road in Houston, Texas (the "Property"), which was the site of a former Celotex manufacturing facility. Celotex agreed to sell this land to plaintiffs for \$1.7 million dollars, discounted from \$3.4 million because of environmental contamination of the site. Celotex claims it made no representations regarding the Property, that plaintiffs were to conduct their own due diligence on the Property that was purchased on an "As Is/No Reliance" basis "With All Faults." Plaintiffs, suing Celotex in the Texas lawsuit, now

allege that the soil on the Property was represented to be free of all faults, and seek \$12,000,000 in remediation costs and \$6,000,000 in lost profits for their alleged inability to develop the Property.

Plaintiffs also claim that contamination of the Property prevented them from receiving financing to build a multi-million dollar super-warehouse facility, but defendants contend the development was not financed because of the criminal history of plaintiffs' principals, Harrison and David.

In the Texas lawsuit discovery, defendants requested documents relating to criminal histories of Harrison and David, including their compliance with terms of probation from their convictions. When plaintiffs refused to produce those documents, defendants issued a subpoena to the United States Probation Office for the Southern District of Texas to obtain the records relating to Patrick Harrison. Defendants were required to petition this court for the disclosure of the probation information relating to Patrick A. Harrison and show "compelling need for said disclosure."

Celotex requests disclosure of Harrison's probation records (under seal of confidentiality to ensure such probation records do not become part of the public record) to determine and verify the terms of Harrison's probation and whether Harrison violated these terms to perpetrate a fraud on Celotex. Defendants allege that Harrison failed to make full disclosure of his criminal

past to lending institutions from whom he sought financing; these institutions would never have considered lending to plaintiffs if they had been informed of the criminal histories of Harrison and David. Had plaintiffs disclosed their background at the inception of this matter, Celotex claims it would never have dealt with them. But all this can be proved without any use of confidential probation records.

Movants already have all the publicly available information about Harrison, including the criminal charges against defendant, his plea agreement, the government's plea memorandum and sentencing memorandum, the transcripts of his guilty plea colloquy, the sentencing hearing, and the sentence. The terms and conditions of probation are of public record, as is an order granting modification of the terms and conditions in one respect. The docket reveals no charged or adjudicated violation of probation prior to its termination on March 29, 1996.

The only stated purpose for obtaining disclosure of the confidential probation file would be to establish that defendant Harrison in fact violated his probation, even though he was never charged or convicted of any violation. How this would be established by a trial within a trial of another matter, or its relevance, is not clear to the court. Neither the diligence of the Texas probation officers nor the negligence of the supervising judge are on trial in the Texas action.

Disclosure of Harrison's probation file will add little if anything to the issues in the Texas lawsuit, but will do much to harm the work of US Probation officers. Disclosure is not in the interest of the administration of justice.

There is no particularized need compelling or even suggesting disclosure. For the purposes of this motion, the court has accepted all assertions of defendants as true and correct, but makes no judgment as to their credibility in regard to the Texas lawsuit.

The motion for disclosure of probation records of defendant Patrick A. Harrison is **DENIED**.

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UNITED STATES OF AMERICA :
 :
 v. : CRIMINAL NO. 92-543-1
 :
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ORDER

AND NOW, this 7th day of May, 2003, upon consideration of the Motion for Disclosure of Probation Records Relating to Patrick Adam Harrison (filed by Celotex Corporation in connection with an action pending in Harris County, Texas, entitled Warehouse Associates Corporate Centre, II, Inc., et al v. Celotex Corporation, et al., in the 127th Judicial District Court of Harris County, Texas; Cause No. 2001-11968), to which no response was filed, it is **ORDERED** that the motion is **DENIED** for the reasons set forth in the foregoing Memorandum.

S.J.

