

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,)
)
 v.) Criminal No. 08-231 (EGS)
)
 THEODORE F. STEVENS,)
)
 Defendant.)
 _____)

**GOVERNMENT'S OPPOSITION TO DEFENDANT'S
MOTION TO DISMISS INDICTMENT OR FOR A MISTRIAL**

The United States of America, by and through its undersigned counsel, submits the following opposition to defendant Theodore F. Stevens' motion to dismiss the indictment or for a mistrial.

INTRODUCTION

True to form, defense counsel continues with their "win at all cost" tactics. See United States v. Forbes, No. 3:02 CR 00262 (AWT), 2006 WL 680562 at *2 (D. Conn. Mar. 16, 2006). This time, defendant has gone too far, accusing the government of Brady violations and of proffering misleading evidence at trial. Nothing could be further from the truth and, for the reasons set forth below, defendant's motion should be denied in its entirety.

FACTUAL BACKGROUND

As the Court knows, the government listed Robert "Rocky" Williams as a potential trial witness during the government's case-in-chief. The government brought Mr. Williams from Alaska to Washington, D.C. for purposes of trial preparation. See Exhibit 1 (Affidavit of Special Agent Chad Joy). At the time when Mr. Williams was subpoenaed, the government anticipated that he would be one of the first witnesses in the government's case-in-chief. However, when Mr. Williams arrived in Washington, D.C. and met with government counsel to prepare for his

testimony, it was apparent to counsel that Mr. Williams had serious, health-related issues that warranted medical attention. Between the time that he had testified in the grand jury on November 7, 2006, and the present, Mr. Williams had become almost unrecognizable. Mr. Williams had lost a substantial amount of weight, his abdomen was distended (and had been previously drained of excess fluid), he appeared jaundiced, his face was gaunt, he had substantially aged, he had chronic coughing spells, and he was frequently short of breath. Ex. 1. In addition, Mr. Williams told the government he lacked energy and was unable to walk far enough to do any sightseeing as he originally hoped. Id.

The government attempted to prepare Mr. Williams for his testimony. It became apparent, however, that Mr. Williams needed to attend to his medical issues. Mr. Williams advised us that he was under the care of physicians in Alaska, and he further advised us that his doctors were calling him because he had missed scheduled, follow-up appointments for blood work and other tests. The government informed Mr. Williams that he should return to Alaska to attend to his health and to meet with his doctors. We informed Mr. Williams that we would be in contact with him to see if he would be able to testify or not. Id.

The government also told Mr. Williams that, because he was under subpoena with defense counsel, he should contact defense counsel and inform them that he was returning to Alaska. Mr. Williams contacted defense counsel before he left Washington, D.C. and so advised them. See Def. Motion at 5 n.3 (conceding that Mr. Williams had advised defense counsel that he had a telephone message with counsel "while he was in [Washington,] D.C." and further conceding that Mr. Williams left a second message on Friday, September 26, 2008). Moreover, prior to leaving Washington, D.C., Mr. Williams informed the government on September 24,

2008, that he had contacted defense counsel by telephone and left a message for them that included his cellular telephone number and the hotel where he was staying. According to Mr. Williams, defense counsel did not return his call. Ex. 1.

Mr. Williams also informed the government on September 26, 2008, that he had low energy, he felt somewhat better after he had arrived back in Alaska. Mr. Williams also told the government that he understood the government's concern about his health-related issues. Id.

On September 28, 2008, the government contacted Mr. Williams by telephone. Mr. Williams told the government that a physician who is a specialist wanted to conduct a follow-up appointment with him to run another series of tests. Mr. Williams advised the government that, although he did not feel bad, he had shortness of breath, needed to gain at least 10 pounds, and that he might need to get intravenous fluids and vitamin B shots if necessary. He further stated that he felt, "90 years old instead of 58." Mr. Williams had a pervasive cough throughout this conversation. The government asked Mr. Williams if it was possible for him to come back to Washington, D.C. to testify after he met with his physicians. Mr. Williams did not respond to this question, but did refer to additional tests that needed to be done and that he needed to take care of these appointments.

* * *

Late yesterday afternoon, defense counsel demanded by electronic mail that we immediately turn over Mr. Williams' grand jury testimony and any formal reports of interviews of Mr. Williams so that defendant could file an emergency motion for relief. See Exhibit 2. The government contacted defense counsel, who refused to disclose the basis for defendant's motion or why it was imperative that they immediately receive Mr. Williams' testimony and the Form

302s. Notwithstanding defendant's utter lack of good faith negotiation over this issue, we provided defense counsel with a copy of Mr. Williams' grand jury testimony:

[W]e are still confused as to what your concerns are, but we would very much appreciate an opportunity to discuss them to see if they can be resolved. To that extent and in the spirit of cooperation, we are willing to provide you with a transcript of Mr. Williams' grand jury testimony for your review. Please call one of us at your earliest convenience to discuss.

Id.

As the Court also knows, the government has made confidential, Brady-related disclosures concerning Mr. Williams. Those disclosures are contained in, among other things, the government's letter to defense counsel dated August 25, 2008, and September 9, 2008, and are incorporated by reference herein. The government, moreover, provided defense counsel with the entire grand jury transcripts of Augie Paone and Robert Persons and, now, Rocky Williams. In addition to all of this material – including all of the documents produced to defendant – we have provided grand jury testimony of other witnesses pursuant to our obligations under the Jencks Act, 18 U.S.C. § 3500. The government, of course, stands willing and able to provide all of this information to the Court for in camera review.

Prior to trial commencing this morning, the Court advised us to submit an affidavit from Chief William Welch and an affiant familiar with Mr. Williams' health-related issues. Those affidavits are attached hereto as Exhibits 1 and 3.

ARGUMENT

I. THERE HAS BEEN NO VIOLATION OF BRADY

Defendant's motion is the proverbial "Hail Mary." Rather than focusing on the merits of the government's evidence or the flaws in defendant's response to this evidence, defendant resorts instead to leveling baseless accusations against the government. The faulty premise woven throughout defendant's motion is the idea that the government deliberately suppressed exculpatory evidence that should have been produced pursuant to Brady v. Maryland, 373 U.S. 83 (1963), United States v. Giglio, 405 U.S. 150 (1972), and their progeny.

Defendant erroneously suggests that the government withheld exculpatory information concerning Mr. Williams' involvement in the renovations on defendant's house. In fact, the opposite is true. As a result of the government's substantial discovery in this case, including its Brady-related disclosures, defendant has been give access to material above and beyond the government's obligations. In any event, the material produced by the government to defendant fully refutes defendant's unfounded allegations, which we address in turn.

A. Mr. Williams' Time at Girdwood

Defendant contends that Mr. Williams never worked a single full day at the chalet. This statement is contrary to Mr. Williams past statements to the government. In Mr. Williams' grand jury testimony, he stated that he "was usually out there at least three times a week if not more." Grand Jury Testimony, p. 30. Mr. Williams also stated:

Q: About how many hours a week would you say on average you spent out on this site?

A: On, a good 24, maybe even – sometimes more and sometimes – I would say never less than 24 hours a week. I'd have to make at least two trips out for materials and stuff, and a lot of times I was probably out there – at the first part of this, the framing and the stairs and everything going in, I was probably out there every day.

Id. Later in Mr. Williams' grand jury testimony, when discussing VECO electricians who were sent to the project, he stated:

Q: Well, now you were there during most of this time, is

A: I was there . . .

Q: . . . that correct?

A: . . . most of the time. I don't remember . . .

Q: Okay.

A: . . . exactly who did what.

Grand Jury Testimony, at 41.

Furthermore, Mr. Williams, during a recent interview, estimated to the government that he spent approximately 2,000 hours working on defendant's Girdwood residence. He also previously estimated he worked approximately 15-30 hours a week at the Girdwood residence for approximately 10 weeks. Mr. Williams has not advised the government that he "never worked a single full day on the Girdwood home" as stated in defendant's motion.

Moreover, as part of its Brady-related disclosures, the government informed defense counsel that Bill Allen thought the internal billing costs for VECO may have been too high. Importantly, as noted in opening arguments, the issue is not whether the work was worth more than \$188,000 or less. The key issue is whether it was worth more than the threshold amounts triggering disclosure on defendant's financial disclosure forms.

B. Scope Of Mr. Williams' Work

Defendant asserts that Mr. Williams worked on other projects using his cellular phone while at Girdwood. Mr. Williams did not offer this information in his grand jury testimony and

has not advised the government that he spent any significant time directing other projects from Girdwood for Allen via his cellular telephone.

Moreover, defendant is aware of various statements from Robert Persons which make clear that Mr. Williams' worked at the site. Specifically, defendant produced to the government an e-mail from Persons to defendant dated 8/23/2000 wherein Persons stated in relevant part: "[I] kind of torment [R]ocky to keep him concentrating on the chalet rather than all the other projects [B]ill keeps him working on. [T]he skies are clear in [G]irdwood and we are still running behind on the chalet, [I] don't want to waste this good construction weather." GX 1033 (also marked as DX 0396).

Defendant also produced to the government an e-mail from Bob Persons dated 9/10/2000 wherein Persons stated in relevant part: "[I] can't emphasize enough how much and how well [R]ocky does, [B]ill has a true gem there the guy works 7 days a week on [B]ill's projects." GX 1017 (also marked as "DX 0436").

Defendant also produced an e-mail dated January 13, 2001 at 3:02 p.m. wherein Persons stated to defendant:

"[D]ear [S]enator, [I] have just returned form the house and it looks good. [A]ll of the interior walls were finished yesterday and [S]teve finished the shower on the first floor. [T]he electrician and [D]ave [A]nderson's son were the only workers this morning but everyone will be back on the job [M]onday morning. [I] spoke to [R]ocky by phone and he iis [sic] trying to round up special paint and a new wood stove insert that cas wants. [T]he biggest holdup is materials for specialized portions of the construction. [W]e have \$30,000 in bills that [R]ocky is trying to get [B]ill to look at and o.k.. [T]here is some concern on [R]ocky's part that we have already paid some of the plumbing bill. [I]t looks to me as if all that is needed is some varnish, underlayment and flooring and trim out but [R]ocky believes it will take until the end of [F]ebruary, [I] don't know what to say, it just does not look like that much work. [I] was only able to keep

[P]at [J]efferson up here for one week and [I] think we need some more skilled help. [I]'ll call [B]ill [A]llen and see if we can spur this thing up a bit. [L]et me know of any concerns you have and [I] will see to them post hast. [M]y best, bob.

GX 444.

Finally, defendant also produced an e-mail dated January 13, 2001 at 11:08 p.m. wherein

Persons stated in relevant part:

[I] called [B]ill [A]llen to try to speed the operation up and we have played phone tag today, hopefully [I] will get him tomorrow. [I]f you don't need the chalet until [M]arch it may be best to let [R]ocky take his time. [I] am amazed by his attention to detail, he is repainting your old ceiling because you can see the joints. [W]here the tongues and grooves come together. [L]ooked fine to me but [I] know cas will love it when it is finished.

GX 1034 (also marked as DX 0330).

C. VECO's Involvement With Project

Defendant contends that Mr. Williams advised Allen that VECO should be involved as little as possible in the renovation of defendant's Girdwood residence. Mr. Williams, however, advised the government on numerous occasions that VECO was heavily involved and he so told the Grand Jury. The e-mail traffic produced by defendant noted above also demonstrates that VECO was heavily involved with the project.

The government also previously advised defendant in a Brady disclosure letter that Mr. Williams stated in an interview with law enforcement agents that 99 percent of the work at defendant's Girdwood residence was performed by Christensen employees and that in a subsequent interview Mr. Williams did not recall making that statement. In the same letter, the government also advised defendant that Allen believes Mr. Williams has a drinking problem. The government also advised defendant in a previous Brady disclosure letter that "[t]he

government is also aware of rumors concerning excessive alcohol use by Mr. Williams and it is possible that Mr. Williams may have an alcohol dependency issue." In that same letter the government advised defendant of Mr. Williams' criminal history that includes convictions for manslaughter, failure to assist/render aid, and DWI

D. Raising The Girdwood Residence

Defendant contends that Mr. Williams' statement that raising the chalet beyond what was necessary for a daylight basement was not substantially more expensive. Mr. Williams, however, also testified in his grand jury testimony that expanding the scope of the project made the project more complicated, stating:

Q: Okay. Did there come a point in time in which some renovation work started on the house in Girdwood, Senator Stevens' house?

A: Yes, it did. I think at that time we had already determined that the project had grown from just putting 28 feet of wall up and four-foot high to what was – ended up being a fairly major project. So – I'm sorry, I . . .

Grand Jury Testimony, p. 12. Mr. Williams went on to state that cost to jack the house up from 4 to 8 feet was not substantially more expensive, but then stated that enlarging the size meant the project was "wasn't something that was just going to be a fairly simply [sic] job" and at that point suggested getting a contractor involved. *Id.*, p. 13.

E. The \$2,000 Check

Defendant is already in possession of a cancelled check from Catherine Stevens to Rocky Mr. Williams noting on the memo line that the check was for items from defendant. Mr. Williams testified in the grand jury about his transaction as follows:

Q: And did you think this was a fair price for the stuff that you bought?

A: I thought it was a little more than fair.

Q: And by that, sir, just if you can clarify?

A: Well, the one nice heater was probably worth \$800. The electric heater wasn't worth much. And the cabinets. I probably wouldn't have given \$1500 for the whole shebang.

Grand Jury Testimony, p. 54. Through discovery, defendant has been aware of this transaction for quite some time.

F. Defendant's Interest In The Renovation

Defendant is well aware of his own sentiments. Defendant's sentiments as to his motivation for the renovation do not impact whether he was aware of the value of work and materials that he did not pay for or otherwise account for on his financial disclosure forms.

II. DEFENDANT IS NOT ENTITLED TO A DISMISSAL OR A NEW TRIAL

Defendant's motion fails to establish that any Brady violation has occurred. To find a Brady violation, the Court must determine that (1) the evidence was suppressed by the government; (2) the suppressed evidence was favorable to the accused; and (3) prejudice must have occurred. In re Sealed Case No. 99-3096 (Brady Obligations), 185 F.3d 887, 892 (D.C. Cir. 1999). In order for prejudice to have occurred, the suppressed evidence must be material to the defense. See Kyles v. Whitley, 514 U.S. 419, 432-38 (1995). Materiality is established only if there is a reasonable probability that the evidence would have changed the outcome of the proceeding. In re Sealed Case, 185 F.3d at 892.

The Supreme Court has emphasized that a defense claim that the government failed to produce information that is cumulative, irrelevant, or merely "useful" to the defense is insufficient to establish a Brady violation. E.g., United States v. Ruiz, 536 U. S. 622, 630 (2002) ("But the Constitution does not require the prosecutor to share all useful information with the

defendant."); Weatherford v. Bursey, 429 U.S. 545, 559 (1997) ("It does not follow from the prohibition against concealing evidence favorable to the accused that the prosecution must reveal before trial the names of all witnesses who will testify unfavorably."). In addition, the government is not required to provide information that already is known to the defendant and its failure to do so cannot be deemed prejudicial. See United States v. DiGiovanni, 544 F.2d 642, 645 (2d Cir. 1976) ("The government is not required to make a witness' statement known to a defendant who is on notice of the essential facts which would enable him to call the witness and thus take advantage of any exculpatory testimony he might furnish.") (internal citation omitted); United States v. Prior, 546 F.2d 1254, 1259 (5th Cir.1977) ("numerous cases have ruled that the government is not obliged under Brady to furnish a defendant with information which he already has or, with any reasonable diligence, he can obtain himself.") (citations omitted).

As the Court explained at length in United States v. Agurs, 427 U.S. 97 (1975):

The Court of Appeals erred in assuming "that the prosecutor has a constitutional obligation to disclose any information that might affect the jury's verdict. . . . If everything that might influence a jury must be disclosed, the only way a prosecutor could discharge his constitutional duty would be to allow complete discovery of his files as a matter of routine practice Whether or not procedural rules authorizing such broad discovery might be desirable, the Constitution surely does not demand that much The mere possibility that an item of undisclosed information might have helped the defense, or might have affected the outcome of the trial, does not establish 'materiality' in the constitutional sense.

Id. at 108-10; see also Moore v. Illinois, 408 U.S. 786, 795 (1972) ("We know of no constitutional requirement that the prosecution make a complete and detailed accounting to the defense of all police investigatory work on a case"); Zeigler v. Callahan, 659 F.2d 254, 266 (1st

Cir. 1981) (cumulative evidence not material where defense had opportunity to impeach witness by other means).

For the reasons detailed in the factual statement, above, the information defendant frames as the basis for a claim Brady violation was not suppressed, is not favorable to the accused, and is certainly not material. Accordingly, defendant's motion should be denied. Further, the proper remedy for a claimed Brady violation at this stage of the proceedings would not be dismissal of the indictment or the declaration of a mistrial.

CONCLUSION

For the foregoing reasons, the government respectfully requests that defendant's motion to dismiss the indictment or for a mistrial be denied.

Respectfully submitted,

WILLIAM M. WELCH II
Chief, Public Integrity Section

/s/

BRENDA K. MORRIS
Principal Deputy Chief

NICHOLAS A. MARSH
EDWARD P. SULLIVAN
Trial Attorneys

JOSEPH W. BOTTINI
JAMES A. GOEKE
Assistant United States Attorneys
for the District of Alaska

Criminal Division, Public Integrity Section
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**IN THE UNITED STATES DISTRICT COURT
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UNITED STATES OF AMERICA,)
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THEODORE F. STEVENS,)
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Defendant.)
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**AFFIDAVIT IN SUPPORT OF GOVERNMENT'S OPPOSITION
TO DEFENDANT'S MOTION TO MOTION FOR DISQUALIFICATION**

CHAD JOY, having been duly sworn, deposes and states as follows:

1. I am a Special Agent of the Federal Bureau of Investigation ("FBI"), United States Department of Justice. I have been employed as a Special Agent of the FBI since August 2003. For approximately the past four and a half years, I have been assigned to the FBI Anchorage Division. Since approximately early 2004, the government has been involved in an ongoing federal investigation into corruption within the State of Alaska. Much of the investigation has related to Bill J. Allen, the former Chief Executive Officer and principal owner of VECO Corporation, and Richard L. ("Rick") Smith, the former Vice President of Community and Government Affairs for VECO. As a Special Agent with the FBI, I have been involved in an on-going investigation of corruption within the State of Alaska. I am familiar with most aspects of this investigation, including that portion of the investigation as it relates to defendant.

2. I am an "investigative or law enforcement officer" within the meaning of 18 U.S.C. § 2510(7), that is, an officer of the United States who is empowered by law to conduct investigations and to make arrests for offenses enumerated in 18 U.S.C. § 2516.

3. This affidavit is submitted in support of the United States' opposition to defendant's motion to dismiss the indictment or for a mistrial.

4. It is my understanding that the government listed Robert "Rocky" Williams as a potential trial witness during the government's case-in-chief. The government brought Mr. Williams from Alaska to Washington, D.C. for purposes of trial preparation. It is also my understanding that, at the time Mr. Williams was subpoenaed, the government anticipated that he would be one of the first witnesses in the government's case-in-chief.

5. The government met with Mr. Williams shortly before he traveled from Anchorage, Alaska to Washington, D.C. At that time, it appeared to the government that Mr. Williams had health-related issues. We suggested to Mr. Williams at the time that he contact his doctors to determine whether he was fit enough to travel. Mr. Williams assured us that he was interested in testifying, was looking forward to walking around Washington, D.C. to see the tourist attractions. However, he did not subsequently advise the government whether he had contacted his physicians.

6. When Mr. Williams arrived in Washington, D.C. and met with the government to prepare for his testimony, it was apparent to the government that Mr. Williams' health had deteriorated considerably and that his health-related issues warranted medical attention. Between late 2006 and the present, Mr. Williams appeared to have lost weight, his abdomen was distended (and had been previously drained of excess fluid), he appeared jaundiced, his face was gaunt, he had substantially aged, he had chronic coughing spells, and he was frequently short of breath. In addition, Mr. Williams told me that he lacked energy and was unable to walk around the city as he had originally hoped.

7. The government attempted to prepare Mr. Williams for his testimony. It became apparent, however, that Mr. Williams needed to attend to his medical issues. Mr. Williams advised us that he was under the care of physicians in Alaska, and he further advised us that his doctors were calling him because he had missed scheduled, follow-up appointments for blood work and other tests. The government informed Mr. Williams that he should return to Alaska to attend to his health and to meet with his doctors. We informed Mr. Williams that we would be in contact with him to see if he would be able to testify or not.

8. The government also told Mr. Williams that, because he was under subpoena with defense counsel, he should contact defense counsel and inform them that he was returning to Alaska.

9. Prior to leaving Washington, D.C., Mr. Williams informed me on September 24, 2008, that he had contacted defense counsel by telephone and left a message for them that included his cellular telephone number and the hotel where he was staying. According to Mr. Williams, defense counsel did not return his call.


10. Mr. Williams also informed me on September 26, 2008, that he had low energy, he felt somewhat better after he had arrived back in Alaska. Mr. Williams also told me that he understood the government's concern about his health-related issues.

11. On September 28, 2008, I contacted Mr. Williams by telephone. Mr. Williams told me that a physician who is a specialist wanted to conduct a follow-up appointment with him to run another series of tests. Mr. Williams advised me that, although he did not feel bad, he had shortness of breath, needed to gain at least 10 pounds, and that he might need to get intravenous solutions and vitamin B shots if necessary. He further stated that he felt, "90 years old instead of

58." Mr. Williams had a pervasive cough throughout this conversation. I asked him if it was possible for him to come back to Washington, D.C. to testify after he met with his physicians. Mr. Williams did not respond to this question, but did refer to additional tests that needed to be done and that he needed to take care of these appointments.

I declare under the penalty of perjury that the foregoing is true and correct.

Dated: September 29, 2008



SPECIAL AGENT CHAD JOY

Sullivan, Edward

From: Marsh, Nicholas
Sent: Sunday, September 28, 2008 5:17 PM
To: Morris, Brenda; 'Cary, Rob'; Sullivan, Edward; Bottini, Joe; 'Goeke, James (USAASK)'
Cc: 'Sullivan, Brendan'; 'Singer, Craig'; 'Romain, Alex'; 'Stewart, Beth'
Subject: RE: Grand Jury Testimony

Rob:

Following up on Brenda's message, we are still confused as to what your concerns are, but we would very much appreciate an opportunity to discuss them to see if they can be resolved. To that extent and in the spirit of cooperation, we are willing to provide you with a transcript of Mr. Williams' grand jury testimony for your review. Please call one of us at your earliest convenience to discuss.

Thanks,
Nick

-----Original Message-----

From: Morris, Brenda
Sent: Sunday, September 28, 2008 4:59 PM
To: Cary, Rob; Marsh, Nicholas; Sullivan, Edward; Bottini, Joe; Goeke, James (USAASK)
Cc: Sullivan, Brendan; Singer, Craig; Romain, Alex; Stewart, Beth
Subject: RE: Grand Jury Testimony

Rob, I just left you a voice message. What is this about?

Brenda K. Morris
Principal Deputy
Public Integrity Section
(202) 514-1439 - Direct
(202) 514-3003 - Facsimile

-----Original Message-----

From: Cary, Rob [mailto:RCary@wc.com]
Sent: Sunday, September 28, 2008 4:19 PM
To: Morris, Brenda; Marsh, Nicholas; Sullivan, Edward; Bottini, Joe; Goeke, James (USAASK)
Cc: Sullivan, Brendan; Singer, Craig; Romain, Alex; Stewart, Beth; Cary, Rob
Subject: Grand Jury Testimony

Counsel:

In conjunction with an emergency motion we are preparing, please provide the grand jury testimony and Forms 302 for Robert Williams. Please provide that material by no later than 6:00 P.M. this evening.

Thank you.

Rob Cary

NOTICE:

This message is intended for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by reply or by telephone (call us collect at (202) 434-5000) and immediately delete this message and all its attachments.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)
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v.) Criminal No. 08-231 (EGS)
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THEODORE F. STEVENS,)
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Defendant.)
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**AFFIDAVIT IN SUPPORT OF GOVERNMENT'S OPPOSITION TO DEFENDANT'S
MOTION TO MOTION FOR DISQUALIFICATION**

WILLIAM M. WELCH II, having been duly sworn, states as follows:

1. I am the Chief of the Public Integrity Section, Criminal Division, United States Department of Justice. I have been the Chief of the Public Integrity Section (hereinafter "the Section") since March, 2007. As such, I have supervisory responsibility over the litigation of the Section, including the investigation and prosecution of United States v. Theodore Stevens.

2. This affidavit is submitted in support of the United States' opposition to motion to defendant's motion to dismiss indictment or for a mistrial. The information contained herein comes from conversations with agents or prosecutors assigned to the Stevens prosecution, except where I note my own personal observations.

3. As the Court knows, the government listed Robert "Rocky" Williams as a potential trial witness during the government's case-in-chief. Pursuant to a trial subpoena, the government brought Mr. Williams from Alaska to Washington, D.C. for purposes of trial preparation and appearance as a witness. Mr. Williams arrived in Washington, D.C. and met with government counsel and/or agents to prepare for his testimony. Over the course of his stay in Washington, D.C., it was reported to me that Mr. Williams had serious, physical health-related

issues. I learned that Mr. Williams had lost a substantial amount of weight, his abdomen was distended, his pallor was yellow, he had a chronic cough, had a significant amount of fluid in his chest, and he was frequently short of breath.

4. I also learned that Mr. Williams had been under the care of physicians in Alaska, and that he had missed scheduled, follow-up appointments. I also learned that those physicians or their offices had been calling Mr. Williams to find out why he had missed his appointments, and had been recommending his return to Alaska to attend to his health and to meet with his doctors.

5. In the days leading up to September 24th, 2008, I was aware that Mr. Williams' health was an increasing focus of concern for the agent primarily assigned to assist Mr. Williams while he was in Washington, D.C., Special Agent Chad Joy.

6. On the evening of September 24th, 2008, Special Agent Joy brought Mr. Williams into the Section. I did not know the purpose of the visit. However, I do recall that Special Agent Joy had to bring Mr. Williams past my office door in order to bring him into our conference room. I had never met Mr. Williams before, but I recall that I could hear Mr. Williams wheezing and coughing even before I physically saw him pass my door. When Mr. Williams did pass my door, I was surprised at how poor he looked and how slow he was moving. I was also surprised at how loud his wheezing and coughing was. The manner in which he was wheezing and coughing made me believe that he had fluid collecting in his lungs.

7. Shortly after his arrival at the Section, it was recommended to me that Mr. Williams be sent home. The primary reason was concern over Mr. Williams' health. I was informed that Mr. Williams had been served a defense subpoena for his appearance. Therefore, I

inquired about his appearance date on the defense subpoena. I specifically recall being told that the date was Monday, October 6th. I also recall that I was told that Mr. Williams had advised the agents that, upon his arrival in Washington, D.C., he had called Williams & Connolly and left both his cellular telephone number and his hotel number. According to Mr. Williams, no one from Williams & Connolly had returned his call.

8. I ultimately authorized the decision for Mr. Williams to return back to Alaska. My reason for doing so was medical. I was very concerned about Mr. Williams' health given the reports leading up to September 24th and my own observations on September 24th. In my mind, Mr. Williams needed to return to Alaska and get medical attention from his primary physicians. In addition, when I learned that the appearance date on the defense subpoena was October 6th, I believed that this would provide Mr. Williams ample time to obtain medical attention and afford either the government or defense counsel the necessary time to bring Mr. Williams back to Washington, D.C. if either party compelled his appearance. In addition, the estimate of the length of the government's case-in-chief was still approximately three weeks, so if Mr. Williams did need to return for the defense, I did not believe that it would have occurred until the week of October 12, 2008.

9. I further recall that I was told that Special Agent Joy would tell Mr. Williams that he should try to re-contact Williams & Connolly. I understand that Special Agent Joy in fact passed that instruction onto Mr. Williams.


10. Given the appearance date of October 6, 2008 on the defense subpoena, once the decision had been made to send Mr. Williams home, I respectfully and in good faith believed that the court's jurisdiction over Mr. Williams did not attach until October 6, 2008 or perhaps earlier

if Mr. Williams had ever indicated that he did not intend to honor the defense subpoena. Of course, the latter scenario never occurred.

11. At no time did the government intend to engage in any type of deception. When I authorized Mr. Williams' return to Alaska, I respectfully submit that I was not aware of any rule or standing order that required either party to seek the Court's prior approval for such a decision. Instead, the government was primarily concerned with Mr. Williams' health. I apologize to the court for the delay and inconvenience caused.

I declare under the penalty of perjury that the foregoing is true and correct.

Dated: September 29, 2008


WILLIAM M. WELCH II
Chief
Public Integrity Section
Criminal Division
U.S. Department of Justice
1400 New York Ave., N.W.
Washington, D.C. 20005

Author: Muskyx2@aol.com at Internet

Date: 08/23/2000 11:12 AM

Normal

TO: *\$ted stevens at Stevens-DC

Subject: Re: chalet

----- Message Contents

that does not sound good, hopefully it will be something that responds to treatment quickly. getting immediate attention is the wise thing to do, so many people let things go until illnesses get out of hand. i'm off to town early this morning and will be back early so i can get on the concrete and rocky line. i kind of torment rocky to keep him concentrating on the chalet rather than all the projects bill keeps him working on. the skies are clear in girdwood and we are still running behind on the chalet, i don't want to waste this good construction weather. good luck with the treatment for your chest condition. bob



043643

DX 0396

Author: Muskyx2@aol.com at internet
Date: 09/10/2000 4:56 PM
Normal
TO: *\$ted stevens at Stevens-DC
Subject: Re: the chalet

----- Message Contents

hello senator, catherine did give me one check for hannah which will pay for the house-raising. we will owe him for the small footing and block he installed but we are not going to pay him his "off the top of his head" figure of \$1200. that is twice what hthe work should have cost. we put he center wall up yesterday and should be ready to install the plywood next week. we won't be finished when you get here but you will be able to see exactly what the finished product will be. i can't emphasize enough how much and how well rocky does, bill has a true gem there the guy works 7 days a week on bill's projects. tell catherine we have a plan to expand the bathroom. my best, bob



DX 0436

Kerley, Patrick (Stevens)

To: Muskyx2@aol.com
Sent: Saturday, January 13, 2001 3:02 PM
From: *\$ted stevens
Subject: the house
Attachments: Text Item.TXT; RFC822.TXT

dear senator, i have just returned from the house and it looks good. all of the interior walls were finished yesterday and steve finished the shower on the first floor. the electrician and dave anderson's son were the only workers this morning but everyone will be back on the job monday morning. i spoke to rocky by phone and he is trying to round up special paint and a new wood stove insert that cas wants. the biggest holdup is materials for specialized portions of the construction. we have \$30,000 in bills that rocky is trying to get bill to look at and o.k.. there is some concern on rocky's part that we have already paid some of the plumbing bill. it looks to me as if all that is needed is some varnish, underlayment and flooring and trim out but rocky believes it will take until the end of february, i don't know what to say, it just does not look like that much work. i was only able to keep pat jefferson up here for one week and i think we need some more skilled help. i'll call bill allen and see if we can spur this thing up a bit. let me know of any concerns you have and i will see to them post haste. my best, bob



Kerley, Patrick (Stevens)

From: Musky2@aol.com
Sent: Saturday, January 13, 2001 11:08 PM
To: *sted stevens
Subject: Re: Ref[2]: re rocky
Attachments: Text Item.TXT; RFC822.TXT

those aare great king cakes, i'm on a diet and tried to avoid the one we had but i could not resist a pecan, cream cheese filling and had several pieces last night. i should have thought about jenifer she seems to have all the info needed to move around d.c. i called bill allen to try to speed the operation up and we have played phone tag today, hopefully i will get him tomorrow. if you don't need the chalet until march it may be best to let rocky take his time. i am amazed by his attention to detail, he is repainting your old ceiling because you can see the joints. where the tongues and grooves come together. looked fine to me but i know cas will love it when it is finished. thanks for everything, bob



DX 0330

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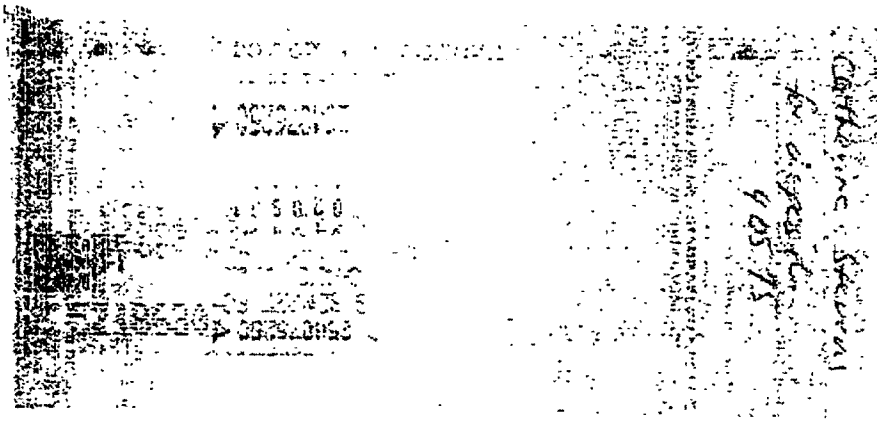
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