IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA, Plaintiff, vs. LAWRENCE J. LAWSON, JR., Defendant.	Case No. 3:16-cr-00121-TMB-DMS

ORDER FINDING
GOVERNMENTAL MISCONDUCT
Under Seal

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I. INTRODUCTION

Defendant Lawrence J. Lawson, Jr., is a medical doctor specializing in oncology and practicing in the Matanuska-Susitna Valley, north of Anchorage, Alaska. He was indicted on four counts of tax evasion for the tax years 2009–2012 and one count of corruptly obstructing the administration of the Internal Revenue Code (Docs. 7; 252).

The first four counts of the Indictment allege that Lawson willfully attempted to evade his duty to pay his individual income taxes in 2009–2012 by: (1) falsely claiming deductions on his individual and business tax returns; (2) paying for personal expenses using funds drawn from a bank account owned by his medical practice, Midnight Sun Oncology; and (3) falsely claiming that he did not receive any valuable property in return for charitable contributions made to Pilgrim Walk, a registered 501(c)(3) non-profit organization (Doc. 252 at 2–6).

Count Five alleges that Lawson tried to obstruct the administration of the Internal Revenue Code by: (1) paying for personal expenses using funds drawn from the Midnight Sun account after March 2011; (2) filing false personal tax returns for 2010, 2011, and 2012; (3) filing false tax returns for Midnight Sun Oncology for 2010 and 2012; (4) filing false tax returns for years 2010 and 2011 for From the Vault, Inc., a non-profit entity created by Lawson to acquire and maintain a collection of fossils, maps, and rare books; (5) using Little Wing, Inc., an Alaska corporation set up by Lawson, to conceal individual income after March 2011; and (6) lying to an IRS agent during the 2012 audit by falsely claiming that he did not receive anything of value in return for payments made to Pilgrim Walk (Doc. 252 at 7).

Lawson filed a Motion to Suppress Interview Statements (Doc. 185), and an evidentiary hearing was held from May 17–May 18, 2018 (Docs. 219; 220). During and after the suppression hearing, the Court heard serious allegations of discovery violations. As a result, Lawson filed a

Motion to Dismiss the Indictment based on government misconduct (Doc. 254). The Court held evidentiary hearings from August 6–8, 2018 (Docs. 388; 389; 390; 394).

Post-hearing briefs (Docs. 416; 423; 426) were completed by October 3, 2018. The Court ordered further briefing on the topic of potential remedies for government misconduct (Doc. 435), and those briefs were filed by January 7, 2019 (Docs. 436; 437). The government's brief on remedies was signed by supervisors of the original prosecution team, Steven Skrocki, Deputy Criminal Chief for the U.S. Attorney's Office in Anchorage, and Larry Wszalek, Chief, Western Criminal Enforcement Section of the Department of Justice Tax Division. The factual findings in this Order resulted from the May and August hearings, as well as the parties' briefs.

A plea agreement was reached between the government and Dr. Lawson (Doc. 470). On March 11, 2019, Lawson pled guilty to one count of Willful Failure to Pay a Tax, in violation of 26 U.S.C. § 7203, for the calendar year 2009 (Doc. 474). The agreement calls for all counts of the indictment to be dismissed. Sentencing is scheduled for May 22, 2019, at 10:00 a.m. in Anchorage Courtroom 1.

In light of the guilty plea, the Motion to Suppress (Doc. 185) and Motion to Dismiss (Doc. 254) have been denied as moot (Doc. 485).

On December 26, 2018, this Court issued an order finding flagrant government misconduct and a violation of *Brady v. Maryland* (Doc. 435), stating a more detailed description of the misconduct and the Court's reasoning would follow.

II. PROCEDURAL BACKGROUND

In October 2010, Lawson filed his 2009 individual income tax return, reporting unpaid individual taxes of $1,765,565 (Doc. 317 at 1). On March 3, 2011, Internal Revenue Service (IRS) Revenue Officer Group Manager John Williamson opened a collections action involving Lawson,

and assigned it to Revenue Officer (RO) [redacted].[1] On approximately March 8, 2011, Williamson reported to his supervisor, IRS Program Manager Chris Harris, that he had a conflict of interest in the case. Williamson was removed, and the supervision of the case and was assigned to IRS RO Group Manager (GM) Doug Hartford.

By October 3, 2011, Lawson paid the 2009 taxes owed, more than $1.7 million (Doc. 185-3). However, in the course of examining tax returns for Lawson and his related businesses, RO [redacted] became concerned about indicators or possible "badges of fraud." With GM Hartford's approval, [redacted] referred the Lawson matter on September 6, 2011, to the IRS Civil Enforcement Division for further examination and audit (Doc. 224 at 24–27; Gov. Ex. 3).[2]

Supervisory Special Agent Sonia Oen, group manager of revenue agents who conduct the civil audits of tax returns in Anchorage, opened a civil examination and assigned it to Revenue Agent (RA) Femi Dixon (Gov. Ex. 4).

In October 2011, Lawson filed his 2010 tax return, reporting unpaid individual income taxes of $2,020,384 (Doc. 317 at 1). He was notified by letter January 26, 2012, that an audit of the 2010 tax return of his business Little Wing, Inc., had been started (*id.*).

GM Oen reassigned the Lawson matter to RA Michael Zeznock April 5, 2012 (Doc. 418, ¶ 21; Gov. Ex. 4). During his civil examination, Zeznock consulted with an IRS civil employee, Fraud Technical Advisor (FTA) Kris Kalanges, who provided advice to revenue agents throughout

[1] [redacted] was known as [redacted] and [redacted] during the events described in this report. However, by the time of the 2018 hearings, her last name was [redacted]. Because most witnesses referred to her current name when testifying, to avoid confusion she is called [redacted] throughout this report.

[2] This report cites from transcripts of the evidentiary hearings held May 17–18, 2018 (Docs. 224, 225) and August 6–8, 2018 (Docs. 398, 399, 400). Exhibits introduced during the hearings are labeled "Gov. Ex." or "Def. Ex."

the Pacific Northwest about how to develop evidence of fraud during their civil examinations, and when to refer a case for further criminal investigation (Doc. 224 at 138–40).

On July 12, 2012, Lawson was informed of the audit of his 2009 and 2010 personal tax returns (Doc. 185-13). Zeznock expanded his examination to include Midnight Sun Oncology in August 2012, because he determined Midnight Sun to be the donating party for large cash contributions (Doc. 225 at 11).

Zeznock interviewed Lawson on August 17, 2012, and toured the airplane hangar owned by Little Wing on August 21, 2012. The civil examination continued until the criminal referral was made by Zeznock with the approval of GM Oen in early February 2013 (Doc. 224 at 103–04; Def. Ex. 37). IRS Criminal Investigative Division (IRS-CID) Special Agent (SA) Tonya Rhame was assigned to the criminal referral in February 2013. Zeznock was assigned to continue to work with Rhame on the criminal investigation. IRS-CID SA Rhame interviewed RO [redacted] about the case in March 2013 (Doc. 256 at ¶ 25).

In July 2013, a grand jury investigation of Lawson and his businesses was begun in Anchorage, Alaska, supervised by Assistant United States Attorney (AUSA) Thomas Bradley (Doc. 317 at ¶ 8). In March 2014, Department of Justice (DOJ) Senior Trial Attorney Lori Hendrickson was assigned to assist with the investigation (*id.* at ¶ 9). In September 2015, AUSA Bradley left the U.S. Attorney's Office. Hendrickson became lead counsel. DOJ Trial Attorney Timothy Russo and AUSA Retta Randall joined the prosecution team (*id.* at ¶ 11). In January 2016, following a review of the evidence by attorneys in the DOJ Tax Division, prosecution of Lawson was authorized (*id.* at ¶ 13).

On October 18, 2016, a federal grand jury indicted Lawson on one count of tax evasion in 2009 (Doc. 2). A month later, a superseding indictment was returned, adding three additional

counts for tax evasion in 2010–2012 and one count of obstructing the administration of the Internal Revenue Code (Doc. 7). A second superseding indictment was returned June 19, 2018, modifying the alleged acts of obstruction in response to the Motion to Dismiss Count Five filed earlier by the defense.

The initial production of discovery was provided in December 2016 and included grand jury testimony and a detailed index of materials (Doc. 317 at ¶¶ 19–20). Defense requests for additional discovery began in May 2017. A heated discovery battle developed before the Court from August 2017 through August 2018. *See* Sections IV and V, *infra.* A more detailed timeline of relevant events is provided as Appendix 1.

III. STATEMENT OF RELEVANT FACTS

A. Williamson-[redacted]-Lawson Triangle

In Fall 2009, sometime after a difficult divorce (Docs. 256 at ¶ 13; 398 at 216–17), GM Williamson met [redacted] online[3] (Doc. 398 at 127–28). This encounter developed into a romantic relationship by February 2010 (Doc. 257 at ¶ 4; Def. Ex. F at ¶ 10).

The relationship became strained at times after [redacted] revealed to Williamson her prior relationship with Lawson, the doctor who had treated her for cancer (Doc. 257 at ¶ 3). Williamson became uncomfortable when [redacted] described the "fancy . . . trips" Lawson provided (Doc. 398 at 29–31, 33), and became "shocked" and "upset" when he saw a sexually explicit text exchange between [redacted] and a person whom Williamson believed to be Lawson (*id.* at 93–94, 97, 129–

[3] [redacted] married sometime after the events described in this report and when called to testify in 2018 her name was [redacted]. To lessen confusion, she is referred to throughout this report as [redacted] because many witnesses referred to her in that manner.

30). Williamson reported that [redacted] regularly received calls from a person whom Williamson believed to be Lawson (based on an emoji and a ringtone) (*id.* at 130–31, 163–64, 166–67).[4]

In October 2010, Williamson and [redacted] broke up, but maintained contact (Def. Ex. F at ¶¶ 12–13). For example, Williamson helped [redacted] after a car accident (Def. Ex. F at ¶ 12), and in Spring 2011, they rekindled their relationship (Doc. 257 at ¶ 5).

What followed was a sequence of events including (1) Williamson's opening of a tax-collection case against Lawson; (2) Williamson's removal from the case due to a conflict of interest; (3) Williamson's alleged unauthorized disclosure of Lawson's tax information to [redacted]; and, finally, (4) Williamson's unauthorized and allegedly illegal entry[5] into [redacted]'s apartment located inside Lawson's hangar.

1. Williamson opened tax collection case on Lawson

On March 3, 2011, Williamson opened a tax collection case on Lawson and assigned it to RO [redacted]. As a group manager, Williamson had the authority to "select[taxpayer] files he wanted to manage from a queue and assign them to ROs that he supervised" (Doc. 256 at ¶ 5).

Some of the taxpayer files are listed in the computerized queue as mandatory for assignment (Docs. 398 at 114; 399 at 210–11), while others can be opened at the GM's discretion (Doc. 399 at 210–12). Managers are supposed to open the most serious cases first, whether marked mandatory or not (Doc. 399 at 210–11). It is unclear whether it was mandatory for Williamson to open the Lawson case (Doc. 399 at 202–03). Harris, Williamson's supervisor, first testified that he "[doesn't] believe [the Lawson file] was a mandatory assignment" (Doc. 399 at 202), but later

[4] [redacted] denied having a romantic relationship with Lawson (Doc. 399 at 189–90) and Lawson denied it through counsel (Doc. 231 at 11). It is unnecessary for the Court to determine whether the relationship was romantic in nature because it is clear from the testimony of Williamson and RO [redacted] that Williamson believed the relationship between [redacted] and Lawson was of a romantic, sexual nature.

[5] Alaska Stat. §§ 11.46.320 and 11.81.900(b)(22) prohibit criminal trespass based on a nonconsensual entry.

stated that he "[doesn't] recall if it was mandatory or discretionary . . . because that's something that the [GM] sees" (Doc. 399 at 211). Williamson testified it was mandatory, yet also said he did not open the case, that GM Hartford did (Doc. 398 at 55–56). Harris said Williamson opened the file and then called him about removal from the case due to his conflict of interest (*id.*) Only the assigning GM sees the mandatory status, with no record kept of whether it was listed as mandatory (Doc. 399 at 210–11, 221–22). Concurrent to his assignment of the case to RO [redacted], Williamson started talking to [redacted] about his relationship with [redacted] (Doc. 398 at 218).

2. Williamson removed from case due to conflict of interest

On or about March 8, 2011, after assigning the case (Docs. 256 at ¶ 6; 398 at 261; 399 at 53) on March 3, Williamson told his supervisor Harris that he "identified [a] case from the computer," but was "uncomfortable working [the] case" because he knew the taxpayer (Doc. 399 at 201). Harris instructed Williamson to "keep the revenue officer [redacted] on the case," but made clear that "she will report to [GM] Doug Hartford" from that point on (Doc. 399 at 203). **Harris also prohibited Williamson from further discussing the case with [redacted] (Doc. 399 at 203).** Driving [redacted] to Lawson's hangar and discussing the assets inside, as well as his feelings toward Lawson, clearly violated Harris' instructions to have no conversations with [redacted] about Lawson (Doc. 399 at 203). Williamson also admitted he shared information about Lawson's assets with GM Hartford (Doc. 398 at 177).

3. Williamson's alleged release of Lawson's tax information to [redacted]

In Spring 2011, [redacted] was looking for a place to live and considered moving into an apartment located inside a hangar owned by Lawson (Doc. 257 at ¶¶ 5–6). About this time, Williamson revealed to [redacted] that Lawson was under a "really bad" IRS investigation, and that

Williamson "knew everything that was going on," according to [redacted] (Docs. 257 at ¶ 7; 399 at 195–96; *see* Doc. 399 at 191). She said:

> He was sitting at his desk and I was sitting on his bed and he told me that Larry Lawson was under investigation for IRS -- with the IRS.
>
> . . . .
>
> I specifically recall him saying that he worked in the same office, in the same space, so he heard things, so he knew pretty much everything that was going on.

(Doc. 399 at 195–96.)

Williamson was asked whether he revealed confidential § 6103[6] information to [redacted]. He initially said he did not mention the collection case to [redacted] during their time dating (Doc. 398 at 159). But he immediately modified his testimony when pressed by counsel, stating: "I don't recall doing that. But I -- by and large, no, sir. I don't *usually* have those discussions (Doc. 398 at 159–60) (emphasis added). When asked, "It's possible you could have had that conversation with [redacted] and you just don't remember, right," he answered, "I don't recall" *(id.)*.

[redacted]'s report was credible and constitutes a serious allegation that Williamson violated Internal Revenue Code (I.R.C.) § 6103(a), which prohibits the disclosure of confidential "return information," including the IRS investigation of a taxpayer. *See* § 6103(a)(b)(2)(A).

[redacted] moved into Williamson's house instead of the apartment (Doc. 257 at ¶ 8).

4. Williamson's break-in of Lawson's hangar

[redacted] moved out of Williamson's home in late 2011 (Doc. 257 at ¶¶ 9–15). She stayed with friends before moving into the apartment inside Lawson's hangar, the one that she earlier

[6] Title 26 United States Code (U.S.C.) codifies the Internal Revenue Code (I.R.C.). Section 6103 of 26 U.S.C. is at times alternatively referred to herein as I.R.C. § 6103.

considered (Doc. 257 at ¶¶ 9–15). Williamson and [redacted] maintained contact in an "on-and-off" relationship (Docs. 257 at ¶ 17; 398 at 52–53, 56, 136, 144), while Williamson rekindled a relationship with his previous girlfriend, [redacted], and [redacted] started dating [redacted], whom she later married (Doc. 398 at 52, 62; Def. Ex. F at ¶ 30). The Williamson-[redacted] relationship deteriorated further, culminating in a heated confrontation in March 2012 (Def. Ex. F at ¶ 26; Doc. 398 at 143–44). Yet the two remained in communication (Doc. 398 at 144). And on April 4, 2012, Williamson drove to Lawson's hangar while on IRS field duty with [redacted], entered the hangar without authorization, and observed [redacted]'s apartment inside. When she testified in August, [redacted] credibly denied giving Williamson permission on April 4 to enter the hangar or her apartment (Doc. 399 at 188–89, Def. Ex. NN at ¶ 14.) Williamson's account of the trespass differs significantly from that of [redacted], who witnessed the event. Both accounts are described below.

(a) RO [redacted]'s account

After [redacted] moved into Lawson's hangar, Williamson told [redacted] he believed [redacted] was dating Lawson and expressed jealousy over the expensive gifts Lawson gave her that Williamson could not afford (Doc. 398 at 219–20).

On April 4, [redacted] had two scheduled field meetings with taxpayers in Wasilla and Sutton (Def. Ex. XX).[7] She informed Williamson of these meetings when she arrived at work sometime after 8:00 a.m. (Doc. 398 at 225–26). As she prepared to leave the IRS Anchorage office, Williamson informed her that he would come along (Doc. 398 at 225). At about 9:15 a.m., Williamson signed out a government vehicle, got behind the wheel of his personal vehicle, and

[7] The facts related in this account are found in the email RO [redacted] forwarded to SA Siegel two days after the event, April 6, 2012 (Def. Ex. XX), her testimony in August, 2018 (Doc. 398), and a declaration signed May 30, 2018 (Def. Ex. H).

asked [redacted] to follow him in the government vehicle to his home. They briefly stopped at a gas station, without getting gas, where Williamson met and spoke to [redacted] (Def. Ex. XX).

After reaching his home, Williamson dropped off his personal vehicle, picked up some mail (Doc. 398 at 229), and took the wheel of the government vehicle with [redacted] in the front passenger seat. It was unusual for the manager to drive. On the drive to [redacted]'s first meeting, Williamson discussed his divorce and relationships with [redacted] and [redacted]. The first field meeting concluded at about 12:30 p.m. (Def. Ex. XX).

On the way to [redacted]'s second meeting in Sutton, Williamson, still behind the wheel, said he needed to drop off lunch and mail for his ex-girlfriend [redacted]. He turned the car around and headed to the Walmart in Wasilla.

Williamson bought lunch at the Walmart McDonald's, and delivered it to [redacted] along with her mail at her workplace at the Mat-Su Hospital. Williamson and [redacted] resumed the trip to Sutton. En route Williamson again spoke about his relationships with [redacted] and [redacted], and his struggle to let go of [redacted] (Def. Ex. XX).

After the unsuccessful attempt to contact the taxpayer in Sutton, Williamson said, "[H]e wanted to check something quickly," and drove towards Wasilla rather than returning directly to Anchorage. They arrived at a hangar. [redacted] cautioned Williamson that she recognized the hangar as belonging to her "former taxpayer" Lawson. Having previously heard Williamson talk about [redacted] and Lawson (Doc. 398 at 219–20), [redacted] asked if that was where [redacted] lived. Williamson said yes and said that [redacted] was, in fact, living in the hangar rent-free (Def. Ex. XX).

Disregarding [redacted]'s repeated demands to leave (Doc. 398 at 232), Williamson circled the hangar, parked in the backlot, and exited the vehicle to peek into the hangar's back windows (Def. Ex. XX). Returning to the vehicle visibly upset and slamming the door (Doc. 398 at 231),

Williamson drove and parked the vehicle at the front of the hangar and warned [redacted]: "[W]hat you [sic] about to see, you never saw." Williamson exited the vehicle, entered a security code on a PIN pad, and entered the hangar (Def. Ex. XX).

Williamson spent a few minutes inside the hangar and returned to the vehicle, again looking upset (Def. Ex. XX; Doc. 398 at 232). He said that "he went upstairs and looked around [redacted]'s] apartment," and that he believed that someone was staying in the apartment with [redacted]. **He told [redacted] that Lawson had two planes and a limo in the hangar and offered to show them to her. She refused** (Def. Ex. XX) (emphasis added).

Finally complying with [redacted]'s demands that they leave, Williamson drove away from the hangar (Def. Ex. XX). He stopped by [redacted]'s house to let her dogs out, then drove to the house of [redacted], [redacted]'s new boyfriend, which was up for sale. Williamson said he identified [redacted]'s address from the "tax assessors webpage" and commented that [redacted] must be staying there because the snow tracks and the dirt road at the house matched the appearance of [redacted]'s car at the hangar. He had [redacted] take an advertisement flyer from the house before finally heading back to Anchorage, again speaking about his relationships with [redacted], [redacted], and his ex-wife the entire trip (Def. Ex. XX; Doc. 398 at 234).

(b) GM Williamson's account

On April 4, Williamson accompanied [redacted] to her field meetings as pre-arranged (Def. Ex. F at ¶ 27; Doc. 398 at 59). Prior to the first meeting, Williamson had [redacted] follow him in a government vehicle from the IRS Anchorage office to his house, which was along the way, so he "could drop off his personal vehicle" (Doc. 236-1 at 9). En route to his house, he briefly stopped at a gas station and met [redacted] (*id.*).

Williamson dropped off his personal vehicle at his house, picked up some of [redacted]'s mail there, and drove [redacted] to her first meeting in Wasilla, which lasted about two hours (*id.* at 10). He said it was not unusual for the manager to drive on field visits. Afterwards, Williamson drove to a Walmart McDonald's and bought two chicken sandwiches and a cheeseburger (*id.*). He then drove to [redacted]'s workplace and dropped off her mail and the cheeseburger, intending this to be "his final step in removing [redacted] completely from his life" (*id.* at 9–10).

After this, Williamson "spontaneous[ly]" decided that he should show [redacted] Lawson's hangar, which was nearby and which happened to be [redacted]'s residence (Docs. 398 at 70; 236-1 at 10; Def. Ex. F at ¶ 27).[8] Williamson claimed he drove to the hangar with [redacted]'s consent (Doc. 398 at 67). Upon arriving, Williamson decided to enter the hangar, despite not having permission (Doc. 398 at 69–70). He then walked up the stairs to the front of [redacted]'s apartment in order to "check up on what was going on with [redacted]" and to see "if there was evidence that someone else had been in her apartment" (*id.* at 69, 151, 75; Def. Ex. B). Williamson concluded that someone else did indeed stay there (Doc. 398 at 75; Def. Ex. B). Williamson claimed he did not step inside the apartment (Doc. 398 at 71), but only looked through the open apartment doors (Def. Ex. E).

Williamson spent four minutes inside the hangar. After leaving the hangar, he drove to [redacted]'s house (Def. Ex. E), the address of which Williamson found on a "public . . . property records website" (Def. Ex. F at ¶ 30). The house was up for sale. Williamson had [redacted] take a flyer and then left (Def. Ex. E).

[8] The facts related in Williamson's account come from a written memo dated April 1, 2013 (Def. Ex. E), a memo of his interview with government agents June 15, 2018 (Def. Ex. F), and Williamson's testimony August 6, 2018 (Doc. 398).

The Court finds [redacted]'s account to be credible, noting she memorialized the event in an email two days later (Def. Ex. XX). She also is corroborated by Williamson on several points. He admitted the unauthorized entry and his inappropriate conversations with [redacted]. He also admitted talking with [redacted] about Lawson's assets after the case was assigned (Doc. 398 at 122). However, Williamson was untruthful when accounting details of his interactions. For example, Williamson claimed [redacted] agreed to go to the hangar (*id.* at 67); that [redacted] picked that day to have Williamson ride along as her supervisor (*id.* at 59); his only purpose in going to the hangar was to show [redacted] its location (*id.* at 68); he did not remember looking in the windows (*id.* at 69); he did not recall telling [redacted] not to tell anyone of the visit (*id.* at 77); he insisted his visit to the hangar and other actions April 4 were unintentional not willful (*id.* at 88); he denied that [redacted] advised him to remain in the car when they arrived at the hangar (*id.* at 187).

B. TIGTA Investigation of Williamson

Feeling "sick to [her] stomach" from Williamson's break-in, [redacted] immediately consulted IRS ethics guidelines upon returning to the office on April 4 (Docs. 398 at 233; 256 at ¶ 23). She reported the incident to Treasury Inspector General for Tax Administration (TIGTA) on the same day, and spoke to TIGTA Special Agent (SA) Jacqueline Siegel (Doc. 398 at 235). [redacted] contacted SA Siegel again the following day, expressing her concern about retaliation if Williamson found out she reported him (Doc. 419 at ¶ 21). Siegel told [redacted] that she would investigate (Docs. 256 at ¶ 24; 236-1 at 4; 398 at 235). To aid Siegel's investigation, [redacted] detailed the incident in the email on April 6 (Def. Ex. XX).

1. SA Siegel's investigation

Siegel started the investigation with a TIGTA Case Worksheet, on which she focused the investigation on Williamson's "misuse[of] Government Owned Vehicle" (Doc. 242-1 at 1).

Siegel interviewed [redacted] (Doc. 242-1 at 3). She looked at Williamson's personnel files [redacted] (Doc. 236-1 at 8). She then looked at the Performance and Results Information System (PARIS)[9] and Investigations Management Information System (IMIS),[10] and located no relevant information on Williamson. Then, more than four months later, on August 30, 2012, Siegel interviewed Williamson about the incident. This was when Williamson first learned that [redacted] had reported him (Docs. 256 at ¶ 24; 398 at 152–53). SA Siegel did not contact [redacted] or Lawson to determine if Williamson had consent to enter the hangar or apartment.

Approximately ten weeks later, on November 14, 2012, Siegel completed the TIGTA Investigation Report, designating Williamson's misconduct as misuse of a government vehicle while doing field work (Doc. 236-1 at 1). TIGTA referred the matter to IRS management to determine the appropriate sanction. Williamson received a 30-day suspension as punishment (Doc. 242-1 at 11). SA Siegel described his conduct as "just ha[ving] a bad day" (Doc. 256 at ¶ 24). When asked if it was possible to report the unauthorized entry to state law enforcement for prosecution, SA Siegel said 26 U.S.C. § 6103, which prohibits disclosure of taxpayer return information, would not allow it (Doc. 400 at 11–12).

[9] A Homeland Security database. PARIS, https://www.dhs.gov/publication/performance-and-results-information-system-paris (last visited Jan. 12, 2019).

[10] A database tracking the status and progress of IRS criminal investigations. IRM 9.9.4.2.

2. Former TIGTA investigator's criticism of Siegel's investigation

SA Siegel's handling of this investigation was heavily criticized by her former instructor Stephen Walsh, a retired IRS investigator "with over 25 years of investigative and supervisory experience" (Doc. 419 at ¶ 1). Walsh was a TIGTA supervisor and, in fact, trained Siegel during that time (*id.* at ¶ 9). Upon reviewing the material on behalf of the defense, Walsh identified multiple deficiencies in Siegel's investigation: (a) misrepresentation of the scope of [redacted]'s narrative (*id.* at ¶¶ 12–13); (b) contradiction of [redacted]'s statements (*id.* at ¶ 21); (c) failure to attach [redacted]'s narrative to the Investigation Report (*id.* at ¶ 20); **(d) failure to investigate whether Williamson illegally accessed or modified any information on the IRS system pertaining to Lawson, [redacted], and [redacted] (*id.* at ¶¶ 15–19, 23); (e) failure to contact Lawson and [redacted] (*id.* at ¶¶ 14, 26); and (f) failure to report the illegal entry to law enforcement (*id.* at ¶¶ 24–25, 27–28)** (emphasis added). Walsh described the report deficiencies in detail, as described below.

(a) Misrepresentation of the scope of [redacted]'s narrative

RO [redacted]'s narrative did not focus on the misuse of a government vehicle. Her concern focused on Williamson's illegal entry with a security code into Lawson's property, the property of a taxpayer being audited; Williamson's animosity towards Lawson and possibly [redacted], and Williamson's obsession with [redacted] (Def. Ex. XX).

SA Siegel failed to address [redacted]'s concerns in her investigation (Doc. 236-1). Instead, she cherry-picked only the details that could, at most, corroborate a vehicle-misuse charge, Walsh said (Doc. 236-1).

(b) Contradiction of [redacted]'s stated facts

In addition to the omission of [redacted]'s details, Walsh noted Siegel also explicitly contradicted [redacted]. [redacted] informed Siegel about Williamson warning her "what you [are]

about to see, you never saw" (Def. Ex. XX). But Siegel reported that "Williamson never warned [ ] to not tell anybody" (Doc. 236-1 at 5). informed Siegel that she "strongly [feared] retaliation from [Williamson] if he knew [she is] talking to [TIGTA]" (Doc. 419 at ¶ 21). Yet Siegel reported that "was not fearful of retaliation" (Doc. 236-1 at 5). With such contradictory reporting, Siegel appeared intent on minimizing and burying the allegations, Walsh said.

(c) Failure to attach 's narrative to investigation report

Inconsistent with "TIGTA investigative protocol," Siegel failed to attach 's narrative email to the Investigation Report (Doc. 419 at ¶ 20). 's email is the best source of information, not only because it is the only "first-hand account" of the break-in, but also because it was written only two days afterwards, Walsh said (*id.*). Accordingly, this failure deprived reviewing IRS officials of a critical piece of evidence.

(d) Failure to investigate illegal accesses/modifications of IRS information

This failure constitutes a "serious misstep on Siegel's part" as a TIGTA investigator, according to Walsh (Doc. 419 at ¶ 19). It is "standard practice" in TIGTA investigations to search IRS Audit Trails[11] to see if the employee under investigation "impermissibly accessed or modified information on IRS systems" (*id.* at ¶ 15). Given 's revelation about Williamson's trespass and hostile/jealous emotions towards Lawson, , and , a "reasonably competent and impartial [TIGTA] SA would have run a search on all of Williamson's Audit trails to look for anything out of the ordinary," Walsh said (*id.* at ¶¶ 18–19). Siegel should have looked for "*any* searches Williamson did on IRS systems at *any* time pertaining to Lawson, [ ], and . . . and *any* of their related entities . . . [to check] whether Williamson accessed and/or modified *any* [of their] information" (*id.* at ¶ 18) (emphases added). Siegel did not "look into whether

[11] Audit Trails contain a summary of an IRS employee's access to IRS systems; the Trails would reveal who an employee searched for, what information was retrieved, and whether the employee modified any IRS records (Doc. 419 at ¶ 16).

Williamson interfered with or inserted himself into IRS actions pertaining to Lawson," according to Walsh (*id.* at ¶ 23).

(e) Failure to contact Lawson and [redacted]

TIGTA SAs are expected to investigate "*any* possible violations of the law" by IRS employees, "including state and local crimes," according to Walsh (Doc. 419 at ¶ 14) (emphasis added). Based on [redacted]'s description of events, a "reasonably competent and impartial TIGTA SA would have taken steps to determine how Williamson acquired the passcode to the hangar, whether he was authorized to use it, and whether he damaged or took anything," Walsh said (*id.*). This necessarily would involve talking to both Lawson and [redacted] (*id.*).

(f) Failure to notify law enforcement

Contrary to Siegel's testimony (Doc. 400 at 25–27), TIGTA SAs have the authority to "investigate . . . and report . . . to local law enforcement" non-tax crimes such as "burglary and trespass," according to Walsh (Doc. 419 at ¶¶ 24–25). Moreover, no IRS rules would prevent Siegel from contacting Lawson and [redacted] to inquire about Williamson, he said (Doc. 419 at ¶ 26).

Also contrary to Siegel's testimony (Doc. 400 at 25–26), I.R.C. § 6103 does not bar the disclosure of crimes discovered during TIGTA investigation to local law enforcement (Doc. 419 at ¶ 27). There are "many ways to . . . disclos[e such crimes] without disclosing [confidential] tax information," Walsh said (*id.* at ¶ 28). Even so, taxpayers always can "consent to the disclosure," Walsh explained (*id.*).

Unlike a "reasonably competent and impartial SA," Siegel did not actually "investigate possible misconduct" (*id.* at ¶¶ 18, 22). Instead, she "assumed[d a lessor] violation at the beginning of the investigation," cherry-picked the facts, and reverse-engineered the investigation to match

her "assumed" violation, Wash said (*id.* at ¶ 22). It can be argued that Siegel's faulty investigation in 2012 made it difficult, if not impossible, to assess the extent of Williamson's misconduct (such as digital insertions in IRS actions against Lawson, or evidence obtained during the break-in) in the present time.

IV. COURT ORDERS RELATED TO RULE 16/*BRADY* DISCOVERY MATERIAL AND RESPONSE BY PROSECUTORS

On December 13, 2016, the Court's routine Order for the Progression of a Criminal Case directed that:

> **The United States shall disclose *Brady v. Maryland*, 373 U.S. 83 (1963) material reasonably promptly after it is discovered. The law requires that *Brady* material be provided by the prosecutor early enough so that the defense can use it effectively at trial.**

(Doc. 21 at 2) (emphasis added). The order also directed the disclosure of impeachment material pursuant to *Giglio v. United States*. The order stated, in part:

> **Impeachment material which is not contained in a witness statement must be disclosed in sufficient time to permit the defendant to make effective use of it. In most cases, that will be well in advance of trial. . . .**

(Emphasis added.)

On January 10, 2017, in an Order Regarding Discovery Plan and Pretrial Motion Schedule, the Court again directed the government to produce all *Brady* material (Doc. 38 at 2). **At the time of the status hearing in January, 2017, the government represented that all documents and objects required to be produced pursuant to Fed. R. Crim. P. 16(A)(1)(E) had been produced.**

A. First Motion for Discovery Pursuant to Rule 16 and *Brady/Giglio* Requirements

On August 17, 2017, the defense moved for further discovery of documents related to the government's investigation of Lawson, Pilgrim Walk, tax filings of Dr. Lawson, Midnight Sun Oncology, Inc., Little Wing, Inc., From the Vault, and Freeze Frame. They asserted the records

were needed to prepare Lawson's defense and that they contained exculpatory evidence and "impeachment evidence relating to the credibility and bias of the government's trial witnesses."

In a Supplement to the Motion, the defense made clear they sought the information because it could be used as evidence in the defendant's case-in-chief or it could cause him to abandon a defense (Doc. 98 at 2). Counsel also stated, "The Government . . . [has] acknowledged that it is capable of obtaining documents in the possession of the Internal Revenue Service (IRS) upon request" (*id.*).

When responding to the requests by letter dated May 23, 2017, Lead Prosecutor Hendrickson said:

> . . . [T]he government will provide any exculpatory material, or evidence otherwise favorable to the defense, pursuant to *Brady v. Maryland*, soon after it is discovered. Additionally, the government will comply with its discovery obligations related to *Giglio* and *Henthorn* when it has identified government witnesses who will be testifying in the government's case-in-chief. Any potential impeachment information discovered for any government witness will be provided no later than December 29, 2017.

Doc. 83-3, Ex. C at 3.

In an email dated June 1, 2017, Hendrickson admitted that "many records which were listed in the discovery index were inadvertently not copied to the CDs." The omission was noticed by the defense when comparing the criminal discovery they received to the IRS files obtained by the defense in response to a Freedom of Information Act (FOIA) request. Portions of the documents received through the FOIA production had significant sections redacted. The defense sought some of the same records unredacted from the prosecution team.

By letter June 28, 2017, Hendrickson took the position that the defense requests for all IRS records related to Lawson or his business entities was too broad. She said:

> The government's obligation is to provide you with records that were gathered during the criminal investigation and which are in the possession of the prosecution team. We do not have an obligation to "seek out" other IRS records which are not in our possession and which may have no relevance to the criminal case. Moreover, as we have discussed on prior occasions by phone and in person, you are already in possession of all the documents "that form part of the government's criminal indictment against Dr. Lawson."

Doc. 83-5, Ex. E at 6.

In the government's response to the Motion for Discovery, Prosecutor Hendrickson repeated these arguments, that information "beyond that contained in the government's files was not subject to *Brady*" and that the government "has no duty to volunteer information that it does not possess or of which it is unaware," stating that the scope of the government's obligation under Rule 16(a)(1)(C) "should turn on the extent to which the prosecutor has knowledge of and access to the documents sought by the defendant in each case" (Doc. 85 at 12).

On September 29, 2017, this Court held a hearing on the Discovery Motion (Doc. 107). The defense pointed out the lack of production of the civil audit of Little Wing, Inc. (*id.* at 16–18), Lawson's business whose assets were stored in the hangar Williamson entered without authority.

During the hearing, the defense also noted that the IRS could not locate the original 2009 tax return filed by Lawson. The defense was seeking IRS policies regarding the retention and storage of such documents. The government initially resisted this request. And throughout the hearing, Hendrickson appeared resistant to producing civil audit files in the possession of the IRS Civil Division, carefully crafting her responses about what had been produced to describe only what had been produced that currently was in the possession of the criminal prosecution team (Doc. 107).

In response to the Court's inquiry, Hendrickson said the government had turned over all civil audit or civil investigation files of Lawson, Little Wing, Midnight Sun Oncology, and From the Vault from both the IRS Civil Division and Criminal Investigative Division (Doc. 107 at 29.)

Defense counsel Ariana Seldman Hawbecker then said that simply was not true:

> They're saying that there's no other civil audit files that exist. We know they exist. We have the redacted civil audit files, and I can show Your Honor examples of those files. We showed the Government examples of those files.

(Doc. 107 at 39.)

Following the hearing, the Court ruled that **"the prosecution is deemed to be in possession of any evidence of which it has both knowledge and a right of access"**, citing *United States v. Shryock*, 342 F.3d 948, 983 (9th Cir. 2003). The Court went on to note that **"the prosecution is deemed to possess evidence held by a federal agency participating in the investigation of the defendant, regardless of whether the prosecutor is personally aware of such evidence,"** citing *Bryan* at 868 F.2d at 1036 (emphasis added).

Given the facts of the case and the involvement of RA Zeznock in the criminal investigation, the Court found:

> **That the prosecution is as a general matter, in constructive possession of the IRS Criminal Division's and Civil Enforcement Division's files for the purposes of Rule 16 and *Brady*.**

(Doc. 156 at 9) (emphasis added).

The Court went on to deny Lawson's general request for all information involving his tax returns as overbroad and non-specific. However, the Court held that Lawson was entitled to **"evidence that is material to his defense under Rule 16, *Brady* or *Giglio*" (Doc. 156 at 20).**

The Court was relying upon government counsel to fulfill their discovery responsibilities as required by the law and the Court's order.

B. Second Motion for Discovery Pursuant to Fed. R. Crim. P. 16(a)(1) and *Brady/Giglio*

On November 3, 2017, defense counsel Hawbecker filed a second discovery motion, asking for among other things:

> Any and all documents, material, memoranda, email, recording or other objects related to the conflict of interest that caused ROGM 44 to take over management of the investigation in place of ROGM 41 as reflected in an IRS document produced in discovery.

(Doc. 112 at 2).

This is the first specific request for documents related to the removal of Williamson (ROGM 41) from the case. Defense counsel had learned of the removal from review of IRS documents provided in December 2016.

In this motion, the dialogue between the parties about what constituted matters "material to the defense" and what materials were "in the possession of the government" continued. Defense counsel argued materiality is a low threshold, "it is satisfied so long as the information . . . would have helped," citing *United States v. Soto-Zuniga*, 837 F.3d 992, 1003 (9th Cir. 2016) (internal citations omitted) (Doc. 112 at 8). The defense also argued that the government possesses files that it has knowledge of and access to, even if those files are maintained by an agency not involved in the criminal prosecution (*id.* at 8).

The government responded:

> The decision of IRS management regarding assignment of personnel to work on individual cases is not discoverable because it is internal government documents excluded by Rule 16(a)(2). These records are also not relevant to any issue in the criminal case. **The government reviewed this information for exculpatory material that should be disclosed pursuant to *Brady v. Maryland*, 373 U.S.**

> **83 *(1963)* or *United States v. Giglio*, 405 U.S. 150 (1972) (Giglio) but none was found.**

(Doc. 117 at 6) (emphasis added).

In its Order Granting in Part Defendant's Second Motion for Discovery, **the Court ordered the government to review and produce all documents pertaining to the removal of ROGM 41 from Lawson's case due to a conflict of interest for material discoverable under Criminal Rule 16(a)(1)(A)-(D), (F) and (G), *Brady*, *Giglio* and the Jencks Act (Doc. 157 at 9).**

Here, again, the Court was relying upon government counsel to fulfill their discovery obligations in a professional manner. However, the Court went one step further than previously, directing that government counsel physically review all documents related to the removal of Williamson.

The Court denied as overbroad the request for all documents related to the conflict of interest and removal. **The Court noted that the government must produce material relevant to the development of a possible defense or to changing the quantum of proof in the defendant's favor (Doc. 157 at 5). The Court also noted that "material evidence held by federal agencies not directly involved in the investigation is always discoverable whenever the prosecutor has knowledge of and access to the materials sought. [Citations omitted.]" (Doc. 157 at 7) (emphasis added).**

C. Prosecution Team's Response to Order to Review and Produce Conflict of Interest/Removal Records

On February 13, 2018, the government produced additional material pursuant to the second discovery order (Doc. 157). Three days later, the defense emailed the government, stating we "do not believe [we] received any documents pertaining to ROGM 41's removal" (Def. Ex. GG).

In early 2013, IRS-CID Special Agent Tonya Rhame learned of Williamson's break-in from RO [redacted]. In 2014, SA Rhame informed Prosecutor Hendrickson and AUSA Bradley that Williamson had "broken into" Lawson's hangar (Doc. 399 at 151).

The Court's order of December 11, 2017, directed that the government "review and produce all documents pertaining to the removal of ROGM 41 from Lawson's case due to conflict of interest." Nevertheless, SA Rhame testified she did not review any records or seek to access the TIGTA report about Williamson after December 11, 2017. **She asked Prosecutor Hendrickson if she should retrieve the TIGTA report for review and possible production and she was told not to request the report (Doc. 399 at 158).**

On February 26, 2018, Hendrickson drafted a letter in response to defense counsel's February 13 email. It said in pertinent part:

> We confirmed that there are no documents regarding that issue [ROGM 41's removal from the case] that are discoverable pursuant to Rule 16(a)(1)(A)-(D), (F), and (G), *Brady*, *Giglio* or Jencks. To give you more clarity concerning the conflict issue, we can provide the following details:
>
> The IRS initially assigned Revenue Officer [redacted] ([redacted]) [redacted][12] to collect Dr. Lawson's taxes in 2011. On August 22, 2011, she conducted a field call during which she visited Midnight Sun's office and served a levy (Form 668-C) for Dr. Lawson's wages on "[redacted]" from his office. [redacted] [redacted]'s Group Manager, John Williams, accompanied her on the field call. **As is common during field calls, [redacted] [redacted] and Mr. Williams visited other locations to determine what, if any, assets Dr. Lawson possessed for purposes of collection. One of those locations was Dr. Lawson's hanger where [redacted] [redacted] lived in the apartment that she rented from Dr. Lawson.** During the field call or shortly thereafter, Mr. Williams disclosed to [redacted] [redacted] that he had previously dated [redacted] [redacted] but that they were no longer in a relationship. Because the IRS deemed this to be a conflict, by around January 2012, it reassigned future collection of Dr. Lawson's taxes to Revenue Officer Doris Marshal and Group Manager Doug Hartford.

[12] [redacted] ([redacted]) [redacted] is RO [redacted].

(Doc. 399, Def. Ex. HH) (emphasis added).

Hendrickson forwarded this letter for review to fellow prosecutors AUSA Randall and Trial Attorney Russo and to Agent Rhame. Rhame expressed concern that the paragraph was not accurate. Hendrickson responded: ". . .[I]f you want to propose a more general and accurate description of what happened then please do so, but we have to give them enough information so it is clear to Judge Smith that the circumstances do not constitute *Brady* or *Giglio* information which might require additional disclosure by the government . . ." (Doc. 399; Def. Ex. II).

Agent Rhame suggested the following language:

> During collection field operations in August 2011, Revenue Officer Manager John Williamson allegedly acted inappropriately towards the property of his ex-girlfriend, [redacted], who was staying in a hangar owned by Dr. Lawson. Because of the perceived interaction, [redacted] reported the activity to be further reviewed. Subsequent to the activity, Williamson was temporarily relieved of his management capacity over the Lawson case pending the review.
>
> **I am not sure if we need to go any further than that and am not sure if the defense would be entitled to the TIGTA report, but if you want to go down the road of telling the defense what happened, I would feel better fully disclosing the issue rather than only stating part of the facts in the letter.**

(Doc. 399, Def. Ex. II) (emphasis added). Hendrickson responded to Rhame's concern as follows:

> If Williamson was going to be a trial witness, then we would disclose all information including the TIGTA report to defense counsel and then file a motion in limine to seek a court order that none of it is proper impeachment and should not be raised during cross-examination. Since he is not a witness they are not entitled to that information, because it is not exculpatory/*Brady* information, which would be the only other basis to disclose it.

(Def. Ex. II). Remarkably, after SA Rhame expressed concerns about accuracy and providing defense counsel with the full picture, the letter was redrafted to state the following:

> The IRS initially assigned Revenue Officer [redacted] ([redacted]) [redacted] to collect Dr. Lawson's taxes in 2011. On August 22, 2011, she conducted a field call during which she visited Midnight Sun's office and served a levy (Form 668-C) for Dr. Lawson's wages on "Nina" from his office. [redacted]'s group manager John Williamson accompanied her on the field call. **As is common during field calls, [redacted] and Mr. Williamson visited other locations to determine what, if any, assets Dr. Lawson possessed for purposes of collection. One of those locations was Dr. Lawson's hanger where [redacted] lived in the apartment that she rented from Dr. Lawson.** During the field call or shortly thereafter, Mr. Williamson disclosed to [redacted] that he had previously dated [redacted] but that they were no longer in a relationship. Because the IRS deemed this to be a conflict, by around January 2012, it reassigned future collection of Dr. Lawson's taxes to Revenue Officer Doris Marshal and Group Manager Doug Hartford.

(Def. Ex. HH) (emphasis added).

This passage is misleading and untruthful in several ways. It suggests that [redacted] and Williamson went to the hangar for the purpose of locating Lawson's assets. Neither [redacted] nor Williamson support this version of events in their statements. It states it was a common practice for managers to accompany revenue agents when serving levies or investigating assets—but it fails to reveal Williamson was recused from working on the Lawson case at the time of the trip. It deletes the date of the event, which conceals that the trip to the hangar was in 2012, when [redacted] no longer had any responsibility for the case. It leaves the erroneous impression that IRS supervisors only learned of Lawson's relationship with [redacted] after the visit to the hangar. **Finally, and most importantly, it avoids any mention that Williamson entered the hangar without authorization.**

This final draft was circulated by Hendrickson to SA Rhame, Randall, and Russo for review by email. AUSA Randall responded by email that "[T]he letter with the new edits is fine. Thanks" (Def. Ex. JJ). The letter was sent to defense counsel.

A few months later, in April 2018, SA Rhame spoke with [redacted] to tell her she needed to deliver a trial subpoena to her. [redacted] asked about the Williamson matter in relation to the upcoming trial. SA Rhame said, "I hoped it did not come up at a trial, because that could create a smoke-and-mirror effect" (Doc. 399 at 177). When asked, ". . .[Y]ou knew it was the defense that would make use of that information, not the prosecution; right," Rhame answered, "I mean, potentially, if they chose to create those smoke and mirrors" (Doc. 399 at 177).

Defense counsel inquired whether SA Rhame thought anything had gone wrong in this case. For example, when Hendrickson instructed her not to obtain the Williamson TIGTA report following the Court's December order, should she have done anything differently in hindsight? "To be honest, I probably would have asked for a second opinion" (Doc. 399 at 179).

In the course of questioning in the August hearing, Agent Rhame acknowledged the reason Williamson went to Lawson's hangar "was not to go look at Dr. Lawson's assets." It was because he wanted to view [redacted]'s apartment (Doc. 399 at 183). This statement is in direct conflict with the information prepared for defense counsel in the February 26 letter.

D. Motion for Compliance with Discovery Orders and Request for *In Camera* Review of Withheld Documents

On March 30, 2018, Lawson filed a Motion to Compel and Request for *In Camera* Review of all documents regarding Williamson's removal from the investigation. Prosecutor Hendrickson responded:

> [A]fter the Court issued its Orders on December 11, 2017, the government did its best to determine whether such evidence existed and timely produced the few additional records that were located**. . . . On February 26, 2018, the government confirmed to defendant, in writing, that it did not discover any records responsive to the Court's order regarding the removal of Williamson due to a conflict of interest.**

(Doc. 209 at 12) (emphasis added). These statements directly contradict the testimony of SA Rhame that, when asked whether the Williamson TIGTA report should be obtained and reviewed following the Court's order, Hendrickson said no.

On May 15, 2018, Trial Attorney Russo emailed defense counsel and stated there were no documents subject to discovery concerning ROGM 41 (Doc. 255, Def. Ex. KK).

Prior to the May 17, 2018, evidentiary hearing, defense counsel interviewed RO [redacted] and learned of the trespass. At the hearing, defense counsel brought to the Court's attention for the first time that there may have been a break-in at Lawson's hangar by an IRS manager. He requested the production of any internal investigation that may have been done (Doc. 440-1 at 5).

The Court asked Prosecutor Hendrickson: "Was there an internal investigation of this group manager trespassing or breaking into Dr. Lawson's property?" Hendrickson evasively replied, "We have no firsthand knowledge" (Doc. 224 at 80). The judge then inquired, "How about second or thirdhand knowledge? Is there any evidence of that?" Hendrickson then said, "[Y]es, that's our understanding" (Doc. 224 at 80).

When the judge ordered that the internal investigation be produced as potential *Brady* and *Giglio* material, Hendrickson responded, "Okay. We had reviewed what we had possessed in response to the Court's order, but we did not determine it to be *Brady* or *Giglio* or impeachment for any trial witness, but we will comply with the Court's order."

The Court ordered the IRS to produce records related to any alleged misconduct by John Williamson and any sanctions imposed for *in camera* review (Doc. 228). The documents were reviewed and the government was ordered to provide most of the records reviewed by the Court, including the TIGTA investigation, to the defense (Doc. 287).

In the Court's Order Granting in Part Defendant's Motion for Compliance with Discovery Orders and Request for In Camera Review of Withheld Documents, **the Court ordered that Lawson was entitled to any additional evidence pertaining to Williamson's influence on the investigation, any additional discovery concerning the aftermath of Williamson's entry into the hangar, such as when RA Zeznock became aware that Williamson had entered Lawson's hangar and all communications between the case agents and revenue officers regarding Williamson's entry. The Court reminded the prosecution that it had a continuing duty to provide these materials to the defense should they be discovered at a later date** (Doc. 385) (emphasis added).

E. Statement by Lead Prosecutor in August Regarding Misleading Information Provided to the Defense and Court

Prosecutor Hendrickson acknowledged that she knew about the break-in at Lawson's hangar as early as 2014, but stated she did not know "the timing of it." During closing argument following the three-day hearing on the Motion to Dismiss Indictment, Hendrickson was asked:

> THE COURT: So as of February 26th, 2018, you knew about the TIGTA report and what was in it?
>
> MS. HENDRICKSON: Did not know any of the contents because we had to file a motion and get a Court order.
>
> THE COURT: How can you make a determination you don't have to turn it over as *Brady* or *Giglio* if you don't know the contents of it?
>
> MS. HENDRICKSON: Our understanding at the time -- and now I -- standing here now, Your Honor, we would not fight this, and I agree a hundred percent with the Court. In October of 2017, when they first asked for it, the best course would have been to just get it so then we knew the facts and we weren't trying to answer questioned that we didn't have full information.

(Doc. 400 at 56).

By this date, Hendrickson had assured the Court at least twice that all records related to the removal of Williamson had been reviewed. She assured the Court that the records contained no *Brady/Giglio* material or Rule 16 material, without having read the TIGTA report.

F. Who Knew What When—When did the Agents and Prosecutors Learn of Williamson's Alleged Trespass at Lawson's Hangar

- TIGTA Special Agent Siegel learned of Williamson's misconduct on the same day it occurred, April 4, 2012 (Doc. 398 at 235).
- The record is unclear when RA Zeznock learned of the break-in. [redacted] said she told him within one to two months of the event, April 4, 2012 (Docs. 225 at 86–89; 398 at 240–41; 317 at ¶¶ 29–30; Def. Ex. 46). When testifying in May, Zeznock initially set the date of his notification as late August, 2012 (Doc. 225 at 85–90). When testifying in August 2018, he later acknowledged it could have been much earlier, but did not give an exact date (Doc. 399 at 79–82).
- IRS Fraud Technical Advisor Kalanges provided significant input during Lawson's fraud referral process (Doc. 224 at 163–65, 207). Zeznock testified he told Kalanges in late August, 2012 (Gov. Ex. 7 at RA1398; Def. Exs. 46, 47). On August 31, 2012, Kalanges recommended Zeznock suspend the civil examination "until a related issue has been settled" (Gov. Ex. 7 at RA1398), describing the situation as a type that "has not [been] encountered . . . before" (Def. Ex. 46).
- IRS-CID SA Rhame learned the details of Williamson's misconduct from [redacted] in March 2013 (Docs. 256 at ¶ 25; 383 at 3; 398 at 241, 243–45; 399 at 136; 423 at 6.) She also learned at that time that Lawson dated [redacted] [redacted]. SA Rhame interviewed [redacted] alongside RA Zeznock in September 2013 and inquired about "what types of things Lawson kept in the hangar, along with other questions" (Doc. 257 at ¶ 23; *see* Doc. 399 at

144; Def. Ex. CC). [redacted] was not asked at that time if she gave Williamson permission to enter the hangar (Def. Ex. NN, ¶¶ 21, 23).

- Lead Prosecutor Hendrickson learned of Williamson's break-in and the TIGTA report from SA Rhame in 2014 (Docs. 399 at 146–47, 151–52, 154–55; 322 at ¶ 8; 423 at 7; 400 at 54). She had at least one additional discussion with Rhame about the break-in before the grand jury indictments in October and November 2016 (Doc. 317 at ¶ 14). And as noted *supra*, in February 2018, Rhame inquired if the TIGTA report should be obtained and reviewed. Hendrickson said no (Doc. 399 at 156–58). RA Zeznock said he informed the prosecutors of the break-in "one to two weeks" before the May hearing (Doc. 399 at 81–89). Hendrickson recalls discussing it with Zeznock May 15 and 16, 2018 (Doc. 317 at ¶¶ 29, 30).
- As of February 26, 2018, Prosecutor Russo was aware of Williamson's presence at the hangar April 4, having been included in the email exchange between Hendrickson and Rhame, and having discussed it on the phone with Rhame (Doc. 399 at 168). Zeznock testified that he informed the prosecution team of the break-in approximately "one to two weeks" before the May 17 evidentiary hearing (Doc. 399 at 87–89). On May 15, 2018, Russo emailed the defense, stating there were "no documents subject to discovery concerning ROGM 41" (Def. Ex. KK).
- AUSA Randall also was aware of the issue related to Williamson's presence at the hangar as of February 26, 2018, having been included in the email exchange described above. And, as noted *supra*, Zeznock testified that he informed the prosecution team of the break-in approximately one to two weeks before the May 17 evidentiary hearing. The record is

silent whether Randall knew Williamson had entered the hangar without authorization before Zeznock's May notification.

- The record also is silent regarding whether, and if so when, SA Rhame or Prosecutor Hendrickson informed Randall or Russo of all the details of the break-in they first learned from RO [redacted] in 2013 and 2014.

V. DISCOVERY PROBLEMS RELATED TO THE MOTION TO SUPPRESS

On March 9, 2018, the defense moved to suppress the statement Lawson made to RA Zeznock on August 17, 2012, during a civil audit interview. Zeznock reported that Lawson denied receiving items of value in exchange for charitable deductions included on his 2009 and 2010 tax returns. The defense argued that the IRS engaged in misleading and deceptive conduct during the audit in order to gain evidence for use in a potential criminal case. They argued that "indicators of fraud" had been flagged and Zeznock had been instructed by FTA Kalanges to "stop requesting information and refer the case to CI." The defense further argued that Zeznock failed to warn Lawson that what he said could be used against him in a criminal trial (Doc. 185).

The government responded that it is not unusual to continue a civil audit after indicators of fraud have been located and that there was no referral to the Criminal Division until early 2013, long after the interview. The government argued further that there was no affirmative misrepresentation made during the audit; that the interview occurred at the office of Lawson's attorney, and neither Lawson nor his attorney inquired whether the matter being discussed could result in criminal action (Doc. 204).

Three witnesses were presented by the government during the May 17–18 hearing: Zeznock, Kalanges, and Oen. The defense motion argued that an IRS form maintained by Zeznock showed the date of Kalanges' directive to stop the civil investigation and refer the matter criminally

occurred on July 10, 2013, prior to the Lawson interview. However, during the hearing, Zeznock testified that the July 10 date was in error because he failed to update his entries on the form. He testified that the Kalanges advice came later after the interview and that the criminal referral did not occur until February 2013. Consideration of the merits of the Motion to Suppress by the Court was severely hampered by two evidentiary developments described below.

A. Late Disclosure of FTA Kalanges' Investigation by TIGTA for Illegal Disclosure of Taxpayer Information

On May 7, 2017, the defense requested the production of *Henthorn* materials relating to RA Zeznock and other testifying witnesses. The request was repeated September 13, 2017. The government did not provide *Henthorn* impeachment material for witnesses testifying at the May 2018 pretrial hearing, including FTA Kalanges.

On June 5, 2018, after Kalanges testified on the Motion to Suppress and after the revelation of Williamson's misconduct, the defense notified the government of its intention to call Kalanges' former IRS manager Vicki Boos at the August hearing (Doc. 402 at 5). The following day, the government for the first time spoke to Boos, and for the first time learned of the TIGTA investigation of Kalanges (*id.*). The prosecutors informed the Court, an order was issued requiring TIGTA to produce the documents, and an *in camera* review of the material took place. The Court directed that the report be made available to the defense.

On July 12, 2018, the government produced Kalanges' TIGTA Investigation Report (Doc. 246-1). The report revealed that from 2008 to 2012, Kalanges used restricted government databases to obtain private information about co-workers, family members, and numerous women he met or rode the commuter train with. He accessed the personal information of 43 individuals over 400 times for no valid IRS business purpose (*id.* at 2). When confronted by TIGTA investigators, Kalanges admitted accessing his brother's information and minimized the conduct,

claiming the information was already public. He said he did not recall inappropriately accessing anyone else's information. Investigators challenged Kalanges, who eventually, after prodding and being presented with evidence of his wrongdoing, admitted the conduct (Doc. 415-1 at 8–81). It is important to note that the TIGTA investigation of Kalanges was ongoing while Kalanges was working on the Lawson case. It began March 9, 2012 (Doc. 246-1 at 1), and Kalanges was interviewed by TIGTA investigators February 28, 2013 (Doc. 415-1).

When asked how this information should affect the Court's consideration of Kalanges' May testimony, remarkably, Prosecutor Timothy Russo argued that:

> FTA Kalanges's misconduct is not probative of his character for truthfulness or untruthfulness. His misconduct was not related to his duties as an FTA and did not impact any taxpayer's audit. In fact, when asked about his actions, **FTA Kalanges admitted wrongdoing and accepted responsibility for his actions.** For these reasons, the government does not believe that prior knowledge of this issue by the parties or the Court would have impeached his credibility regarding his involvement in the civil audit of Lawson.

(Doc. 402 at 8) (emphasis added).

The Court strongly disagrees. The TIGTA investigators concluded that Kalanges abused his position of trust and inappropriately obtained sensitive taxpayer information (Doc. 246-1). He initially denied wrongdoing and misrepresented the extent of his misconduct until pressured by investigators. Cross-examination on this topic during a pretrial hearing would have been permitted. However, neither party opted to recall FTA Kalanges for further cross-examination in August. So the Court was left to sift through his May testimony, comparing it to other testimony and documents, as well as the TIGTA investigation, when trying to determine what weight to give the testimony.

B. Late Disclosure of Evidence Related to Motion to Suppress

On February 11, 2019, defense counsel notified the Court that on February 5, 2019—approximately five weeks before trial and seven months after the hearing—the government produced additional discovery including hand-written agent notes that record a meeting/conversation of five people discussing the Lawson case on February 26, 2012. According to the note, the individuals were "FTA Kris Kelly [Kalanges], Kevin Key, Sonia Oen, Tonya Rhame and Mike Zeznock." The note concludes, "[. . .] last week of March get back together" (Doc. 463-2).

Explaining the significance of this, defense counsel Hawbecker stated:

> Prior to February 7, 2019, the defense was unaware of the existence of the Agent Notes and the items within them. Nor was the defense aware that a meeting between the Criminal and Civil Divisions of the IRS had taken place prior to August 2012 concerning Dr. Lawson.
>
> Because a central premise of the Motion to Suppress is that the government improperly used the Civil Division via Revenue Agent Zeznock to obtain information for use in a criminal case by Special Agent Rhame, and failed to warn Dr. Lawson of that fact, the fact that Special Agent Rhame was involved in discussions with civil IRS agents at least five months prior to August 2012 is pertinent to the Court's analysis on the Motion to Suppress.

(Doc. 463 at 2.)

This note is clearly Rule 16 evidence; it is material to the defense and is *Brady/Giglio* material. It is also *Henthorn* material. Yet again, the Court is asked to weigh the reliability of the testimony of Kalanges, Zeznock, and Oen at the May hearing without the benefit of meaningful cross-examination about this evidence.

VI. ADDITIONAL LATE DISCOVERY OF RULE 16 EVIDENCE

Newly assigned counsel for the government in this case, AUSA Stephen Corso notified the Court February 7, 2019, that in the course of preparing for trial, counsel discovered a box of documents that had not been previously produced. These were documents provided to the government by Lawson's attorney Janet Bolvin on August 8, 2012, during the civil audit. The government added that many of the documents previously had been produced, but from a different source. Government counsel notified the defense and identified those documents that had not been previously produced. These records constitute Rule 16 evidence that should have been produced in December 2016. Government counsel assured the Court in January, 2017, that all relevant Rule 16(A)(1)e material already had been produced.

VII. HENDRICKSON'S AND SIEGEL'S INTERPRETATION OF I.R.C. § 6103

SA Siegel, in her testimony, and Prosecutor Hendrickson, in her closing argument (Doc. 400 at 50–51), cited I.R.C. § 6103 as support for the non-disclosure of Williamson's break-in to local law enforcement, representing to the Court that this was confidential taxpayer information that legally could not be disclosed pursuant to 26 U.S.C. § 6103 (Doc. 400 at 50–51).

On August 8, 2018, Hendrickson stated, in her capacity as a former IRS Special Agent, that § 6103 would protect from disclosure information relating to "an IRS agent['s breaking] into the property of a taxpayer under audit totally illegally [and] totally unrelated to [the] audit" (*id.*). Her assertion was contradicted by Walsh, former TIGTA supervisor and defense expert.

As noted *supra,* Walsh pointed out that § 6103 does not bar the disclosure of crimes discovered during TIGTA investigation to local law enforcement, since there are "many ways to make [such] disclosure without disclosing [confidential] tax information" (Doc. 419 at ¶¶ 27–28).

And the taxpayer also can consent to the disclosure of their information to local law enforcement[13] (*id.* at ¶ 28). Walsh "frequently worked with local law enforcement" during his career as a TIGTA investigator (*id.* at ¶ 27). Walsh explained that the § 6103 confidential provisions are formulated to protect taxpayers, "not to protect the IRS" from its misconduct (*id.* at ¶ 26).

VIII. ANALYSIS: PROSECUTORS FAILED TO TIMELY PRODUCE *BRADY* AND RULE 16 MATERIAL

The government's discovery obligations under Rule 16 and its constitutional obligations under *Brady* are separate and distinct. *United States v. W.R. Grace*, 401 F. Supp. 2d 1069, 1074 (D. Montana 2005). The Court discusses each below.

A. Prosecutors Failed to Timely Produce *Brady* Material

While there is "no general constitutional right to discovery in a criminal case," *Weatherford v. Bursey*, 429 U.S. 545, 559 (1977), the Due Process Clause of the Fifth Amendment requires that the government disclose to the defense evidence in its possession that is material and favorable to the accused. *See Brady v. Maryland*, 373 U.S. 83, 87, 83 S. Ct. 1194, 1196–97 (1963) (holding that "the suppression by the prosecution of evidence favorable to the accused upon request violates due process where the evidence is both material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.").

Evidence is material if "there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *United States v. Bagley*, 473 U.S. 667, 682 (1985). Favorable evidence includes not only exculpatory evidence but also impeachment evidence. *Giglio v. United States*, 405 U.S. 150, 155, 92 S. Ct. 763, 766 (1972) (reversing defendant's conviction and ordering a new trial because the prosecution "failed to

[13] *See* I.R.C. § 6103(c), which states tax information may be disclosed to a taxpayer's "designee" such as local law enforcement.

disclose an alleged promise made to its key witness that he would not be prosecuted if he testified for the Government.").

The prosecution has an affirmative duty to disclose *Brady* evidence even in the absence of a defense request for exculpatory evidence. *Kyles v. Whitley*, 514 U.S. 419, 432-34 (1995); *see also United States v. Alderdyce*, 787 F.2d 1365, 1369 (9th Cir. 1986).

However, where the defense has requested particular exculpatory evidence, the prosecution bears a duty to examine those documents and determine whether they contain "information favorable to the defense." *United States v. Cadet*, 727 F.2d 1453, 1467 (9th Cir. 1984). If the prosecution is uncertain about the materiality of information within its possession, "it may submit the information to the trial court for an *in camera* inspection and evaluation." *Cadet*, 727 F.2d at 1467–68 (quoting *United States v. Gardner*, 611 F.2d 770, 775 (9th Cir. 1980)).

In this case, the prosecution failed to produce the email [redacted] complaint about Williamson's April 4 conduct (Def. Ex. XX), the TIGTA investigation of that complaint (Doc. 236-1), as well as a 2013 hand-written note of Agent Rhame that recorded [redacted]'s statement that "[redacted] dated Lawson in 2008-9" (Doc. 463). These materials were not produced until after three defense motions for *Brady* material (Docs. 82; 112; 273), three Court orders (Docs. 156; 157; 385), and a Court-ordered *in camera* review of the records. The documents were produced only after government witnesses had concluded their testimony in a pretrial hearing in which the defense sought to establish that the civil audit process had been tainted by biased investigators and was improperly used to obtain information for a criminal case (Docs. 224; 225).

To recap, the documents established that an IRS Group Manager, who opened the tax collection action against Lawson, was jealous of him and perceived himself to have been in a romantic triangle with Lawson (Def. Ex. XX; Doc. 463).

The evidence further established that while a civil audit of Little Wing was underway, GM Williamson surreptitiously, illegally entered the property of Lawson, who was the subject of the audit, without the taxpayer's permission or knowledge. He also entered without the permission of the ex-girlfriend, who was living as a tenant in the apartment within the airplane hangar. Williamson reported to [redacted] about the assets belonging to the taxpayer, which he observed while inside. The record establishes that [redacted] discussed Williamson's trespass with Zeznock, the civil Revenue Agent who later worked as a part of the criminal investigation team and was a future trial witness.

No TIGTA investigator informed Lawson of the trespass. Zeznock did not inform Lawson of the trespass when he interviewed him in August, 2012 (Doc. 225 at 90). When IRS-CID Agent Rhame and RA Zeznock interviewed [redacted] to obtain evidence for use against Lawson, they did not inform her of Williamson's trespass (Doc. 234 at ¶¶ 21, 23; Def. Ex. NN).

The Williamson evidence is material to guilt and could cause a juror or jurors to vote for acquittal. It is clearly as important to a trier of fact as learning of alleged promises made to a key witness for the prosecution. *See Giglio*, 155 U.S. at 155. The documents provide impeachment evidence against Williamson, but most importantly, they constitute impeachment evidence against potential trial witness Agent Zeznock.

The government's insistence that this material constituted only impeachment evidence against Williamson, whom they did not intend to call as a trial witness, was myopic. It affords the IRS agents involved in the civil and criminal investigations a presumption of regularity and

professionalism that the surprising facts of this case, related to Williamson and Kalanges, do not merit.

As noted *supra*, the criminal case agent learned Williamson had broken into Lawson's property as early as 2013, and Hendrickson was informed as early as 2014. Whether or not they absorbed the news provided in 2013 that Lawson and [redacted] had dated, and recognized its significance, the news of the break-in alone certainly imposed a "duty to learn of any . . . evidence known to others acting on the government's behalf. " *United States v. Price*, 566 F.3d 900, 909 (9th Cir. 2009).

In 1984, the Ninth Circuit announced in *United States v. Cadet*, 727 F.2d 1453, 1467 (9th Cir. 1984), that when the defense requests specific exculpatory evidence, the prosecutor bears a duty to examine the documents and determine if they are favorable to the defense. If there is any uncertainty, it is the duty of the prosecutor to seek *in camera* review by the Court. *See id.* at 1467–68. The government failed in its duty. The failure to provide this evidence in a timely manner constituted a violation of the Due Process Clause of the Fifth Amendment.

B. Prosecutors Failed to Timely Produce Rule 16 Discovery

Whereas *Brady* requires the government to disclose exculpatory evidence even absent a request from the defense, Rule 16(a)(1)(E) of the Federal Rules of Criminal Procedure requires the prosecutor to provide a defendant, upon request, with evidence in its "possession, custody, or control" if:

> (i) the item is material to preparing the defense;
>
> (ii) the government intends to use the item in its case-in-chief at trial;
>
> or
>
> (iii) the item was obtained from or belongs to the defendant.

Thus, unlike with *Brady* material, in order to trigger the government's duty to disclose under Rule 16, the "defendant must make a prima facie showing of materiality" by presenting facts that demonstrate that the evidence sought would be helpful to preparing a defense. *United States v. Lucas*, 841 F.3d 796, 804 (9th Cir. 2016) (internal citations and quotation marks omitted); *see also United States v. Mandel*, 914 F.2d 1215, 1219 (9th Cir. 1990) ("While the Federal Rules of Criminal Procedure do not set the outer limits of permissible discovery . . . ordering production without any preliminary showing of materiality is inconsistent with Rule 16.").

Evidence is "material to preparing the defense" under Rule 16(a)(1)(E)(1) if it is relevant to the development of a possible defense, *United States v. Soto-Zuniga*, 837 F.3d 992, 1003 (9th Cir. 2016), or if it will enable the accused to "substantially alter the quantum of proof in his favor," *United States v. Marshall*, 532 F.2d 1279, 1285 (9th Cir. 1976) (citations omitted). The test is not whether the evidence would be admissible at trial; instead, evidence is material if it could lead to admissible evidence. *Sota-Zuniga*, 837 F.3d at 1003 (citing *United States v. Hernandez–Meza*, 720 F.3d 760, 768 (9th Cir. 2013)).

The same evidence described above—the [redacted] complaint, the Williamson TIGTA report, and the agent notes recording [redacted]'s statement that [redacted] and Lawson dated in the past—is not only *Brady/Giglio* material, it is also material to the defense, so the prosecution must produce it pursuant to Rule 16. The evidence is relevant to the development of a possible defense that Lawson did not have the requisite willful intent to evade taxes, but instead was the victim of an overzealous, biased investigation and prosecution team that improperly used the civil process to obtain evidence for use in a criminal matter. During the course of the five days of evidentiary hearings in 2018, the defense developed lines of inquiry that could lead to admissible evidence and effective impeachment. *See Sota-Zuniga*, 837 F.3d at 1003.

In addition to the late, Court-ordered disclosure of the Williamson-related documents, the government was late in producing other Rule 16 material.

- The agent note, hand-written, that appears to record a meeting February 26, 2012, between Civil Division agents and Criminal Agent Rhame, prior to the criminal referral in early 2013, described *supra*. This date could be in error, but if it accurately depicts the date of the meeting, it supports the defense theory that the civil examination process was used or directed to obtain a criminal referral and indictment. The note was not produced until early February, 2019 (Doc. 463-2).
- A box of documents produced by Bolvin, Lawson's tax attorney and "Power of Attorney," provided to RA Zeznock during the civil audit process. As noted, these records also were produced in early February 2019, during trial preparation (Doc. 461).

C. Prosecutors Were Required to Produce the *Brady* and Rule 16 Material—They Had Knowledge and Access

As with *Brady*, under Rule 16 the prosecution is only obligated to discover evidence in its actual or constructive possession. *United States v. Santiago*, 46 F.3d 885, 893 (9th Cir. 1995); *United States v. Bryan*, 868 F.2d 1032, 1037 (9th Cir. 1989). Although the text of Rule 16(a)(1)(E) only requires discovery of evidence "within the government's possession, custody or control," the Ninth Circuit requires the government to discover any material evidence, which the prosecutor has knowledge of and access to. *United States v. Bryan*, 868 F.2d 1032, 1036 (9th Cir. 1989); *see also United States v. Ross*, 372 F.3d 1097, 1111 (9th Cir. 2004).

The prosecution generally is "deemed to have knowledge of and access to anything in the possession, custody or control of any federal agency participating in the same investigation of the defendant." *Bryan*, 868 F.2d at 1036. "[A]ctual awareness (or lack thereof) of exculpatory

evidence in the government's hands, [. . .] is not determinative of the prosecution's disclosure obligations." *United States v. Price*, 566 F.3d 900, 909 (9th Cir. 2009) (internal citation and quotation marks omitted). "Rather, the prosecution has a *duty to learn* of any . . . evidence known to others acting on the government's behalf." *Id*. (emphasis in original).

However, the fact that a federal agency has participated in the investigation is a "sufficient, but not necessary, factor to show that the prosecution was in 'possession' of the agency's information" under the Ninth Circuit's knowledge and access test. *United States v. Santiago*, 46 F.3d 885, 893 (9th Cir. 1995). Material evidence held by federal agencies not directly involved in the investigation is always discoverable whenever the prosecutor has knowledge of and access to the materials sought. *United States v. W.R. Grace*, 401 F. Supp. 2d 1069, 1075 (D. Mont. 2005) (citing *Santiago* 46 F.3d at 893); *see also United States v. Shryock*, 342 F.3d 948, 983 (9th Cir. 2003) ("Prosecutors must turn over *Brady* materials when the prosecutors have knowledge of and access to the documents sought by the defendant.").

In this case, shortly after indictment, the Court issued routine orders that all *Brady/Giglio* and Rule 16 materials be produced in a timely manner (Docs. 21; 38).

Later, the Court reminded the prosecution that the defense was entitled to all *Brady* and Rule 16 materials of which the prosecution had knowledge and a right to access. The Court also ruled that the prosecution had constructive possession of any *Brady* and Rule 16 discovery in the custody and control of the IRS Criminal Division and Civil Enforcement Division (Doc. 156).

In a second discovery motion, the defense sought *Brady/Giglio* and Rule 16 material specifically related to the removal of Williamson from Lawson's case. Concerned that not all relevant materials were being made available to the defense, as noted *supra*, the Court directed that the government **review** and produce all records related to the removal of Williamson, noting

that even *Brady* material in a personnel record may have to be produced. The Court also ruled that the prosecution must produce records in the possession of any federal agency, even one not involved directly in the investigation, if the prosecutor had knowledge of and access to the materials (Doc. 157).

Through laborious and time-intensive discovery litigation, each of the prosecutors' objections to producing the Williamson material were eliminated by Court order. Nevertheless, the prosecution continued to resist production, requiring the defense to file a Motion to Compel (Doc. 202).

By the time of the May 17, 2018 evidentiary hearing, the Court had ordered the prosecution team no fewer than four times to produce all *Brady* and Rule 16 material of which it had knowledge and access. The Court specifically had ordered that the team review and produce all Rule 16 and *Brady* records related to the removal of Williamson.

D. Evasions and Misrepresentations by the Government

During the course of the litigation, members of the prosecution team made numerous false or misleading statements to the Court and defense, cited *supra*. They are repeated here:

- In response to Lawson's second discovery motion seeking *Brady* and Rule 16 material related to Williamson's removal (Doc. 112), Hendrickson responded on November 17, 2017, stating:

> These records are . . . also not relevant to any issue in the criminal case. The government reviewed this information for exculpatory material that should be disclosed pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963) or *United States v. Giglio*, 405 U.S. 150 (1972) (Giglio) but none was found.

(Doc. 117 at 6.) The Williamson TIGTA report had not been reviewed by any prosecutor at the time.

- On February 13, 2018, Russo filed a Discovery Conference Certificate assuring the Court, "The government certifies that it has fulfilled its discovery obligations by providing additional discovery responsive to the Court's orders at dockets 156 and 157" (Doc. 183).
- Hendrickson sent the defense the February 26, 2018 letter, providing the incorrect reason and date for Williamson's removal from the case and trip to the hangar. The letter also failed to disclose Williamson entered the hangar. All three prosecutors reviewed the letter before it was sent (Def. Exs. HH; II; JJ).
- In response to Lawson's Motion to Compel Discovery (Doc. 202), Hendrickson responded:

> After the Court issued its Orders of December 11, 2017, the government did its best to determine whether such evidence existed and timely produced the few additional records that were located. . . . On February 27, 2018, the government confirmed to the defendant, in writing, that it did not discover any records responsive to the Court's order regarding the removal of Williamson due to a conflict of interest.

(Doc. 209 at 12.)

- Russo sent a May 15 email to the defense, stating: "Pursuant to the Court's Order at Doc. 157, there are no documents subject to discovery concerning ROGM 41 . . . ." (Def. Ex. KK).
- When initially asked by the Court during the May evidentiary hearing whether there was an internal investigation of Williamson, Hendrickson said: "I have no first-hand knowledge of it." Only after additional questioning, did she acknowledge it existed (Doc. 224 at 80).

- During closing arguments following the August hearing, Hendrickson admitted that she had made statements that the TIGTA report contained no *Brady* or Rule 16 material without having reviewed the documents (Doc. 400 at 56).

Given the lengthy discovery litigation and the content of this Court's orders, rejecting each reason given for withholding the Williamson material, at the very least, the prosecution team was willfully blind about what the law required to comply with *Brady* and Rule 16 precedents and recklessly disregarded their responsibilities.

And when Hendrickson's misrepresentations are viewed in context with when she first learned about the Williamson break-in in 2014, the Court can only conclude she knowingly and intentionally misled the Court and defense, and purposely acted to prevent disclosure of the material. The Court has no alternative but to sadly conclude the actions taken and omissions allowed by Hendrickson and her team constitute flagrant government misconduct.

IX. ANALYSIS: THE PROSECUTION FAILED TO PROVIDE KALANGES' *HENTHORN* MATERIAL PRIOR TO HIS PRETRIAL TESTIMONY

Upon defense request in a criminal case, the government must produce the personnel files of all law enforcement witnesses the government intends to call at trial. *United States v. Henthorn*, 931 F.2d 29 (9th Cir. 1991). When making a *Henthorn* request, the defense bears no burden of showing the materiality of the requested files. *Id.* at 31. Rather, the prosecution bears an affirmative duty to examine the files and determine whether they contain information material to the defense. *Id.* Where the prosecution is uncertain as to the materiality of information, it may submit the files to the court for *in camera* review. *Id.* at 30–31 (quoting *United States v. Cadet*, 727 F.2d 1453, 1467–68 (9th Cir. 1984)). *Henthorn* further noted that its opinion did not reach the question of whether the government was required to produce the files of an officer who did not testify at trial. *Id.* at 31 n.2.

Decisions following *Henthorn* likewise have required production of personnel records only for government witnesses who will testify at trial. *See*, e.g., *United States v. Dominguez-Villa*, 954 F.2d 562, 565 (9th Cir. 1992) (rejecting the government's argument that the district court should not have required it to examine the personnel files of all law enforcement witnesses it intended to call at trial); *United States v. Santiago*, 46 F.3d 885, 895 (9th Cir. 1995) ("[T]he government has a duty, upon defendant's request for production, to inspect for material information the personnel records of federal law enforcement officers who will testify at trial"; *United States v. Booth*, 309 F.3d 566 (9th Cir. 2002) (affirming the district court's denial of a motion to produce FBI agent's personnel files where the agent was not a potential government witness).

Subsequent decisions have also declined to require production where the witness is not employed by a federal law enforcement agency. *See*, e.g., *United States v. Dominguez-Villa*, 954 F.2d 562, 555–56 (9th Cir. 1992) (holding that *Henthorn* does not require the prosecution to review personnel files of state law enforcement witnesses).

Henthorn and its progeny thus make clear that the Constitution imposes no duty on the government to comply with defense requests for personnel records of witnesses who (1) will not testify at trial, and (2) are not federal law enforcement agents. Nevertheless, published Department of Justice policy encourages federal prosecutors to go beyond their constitutional duties.[14]

The Discovery Policy for the U.S. Attorney's Office (USAO) for the District of Alaska provides that the government's duty of disclosure includes, "but is not limited to, [disclosure of]

[14] The Department of Justice's Justice Manual, Title 9 section 5.001 subsection (C) recognizes that "a fair trial will often include examination of relevant exculpatory or impeachment information that is significantly probative of the issues before the court but that may not, on its own, result in acquittal or, as is often colloquially expressed, make the difference between guilt and innocence. As a result, this policy requires disclosure by prosecutors of information beyond that which is "material" to guilt as articulated in *Kyles v. Whitley*, 514 U.S. 419 (1995), and *Strickler v. Greene*, 527 U.S. 263, 280–81 (1999)" (emphasis added).

exculpatory information contained in interview memoranda of testifying and non-testifying witnesses and in internal emails, memos, and other reports." DISCOVERY POLICY, United States Attorney's Office, District of Alaska at 5.[15]

Furthermore, "[i]mpeachment information relating to government witnesses who will testify at a preliminary/detention hearing**, motion to suppress, or other pre-trial hearing** should be disclosed sufficiently in advance of the hearing to allow the hearing to proceed efficiently." *Id.* at 5 (emphasis added). "[A]ny information that may be indicative of the witness's bias including, but not limited to, the witness's incarceration, probation, or supervised release status; . . . and **other prior bad acts**" must be turned over by the government. *Id.* (emphasis added).

District of Alaska policy specifically burdens the prosecution with *Henthorn* obligations pre-trial: "In some cases AUSAs may encounter *Henthorn* or *Giglio* issues with respect to law enforcement witnesses who will be the affiant or a witness at a hearing or trial." *Id.* at 7.

AUSAs for the District of Alaska are expected to request impeachment information from the *Henthorn* coordinator officer, who will request information from the witness's agency. *Id.* at 7–8. Once the agency discloses any *Henthorn* information to the *Henthorn* coordinator, the coordinator and the AUSA are to review the material and determine whether it requires disclosure to the court or the defense.[16] *Id.* at 8.

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[15] OFFICES OF THE UNITED STATES ATTORNEYS: PUBLIC USAO CRIMINAL DISCOVERY POLICIES (UPDATED APRIL 3, 2015), https://www.justice.gov/usao/resources/foia-library/public-usao-criminal-discovery-policies (last visited February 13, 2019). Notably, footnote 1 provides that "[t]his policy applies equally to Assistant United States Attorneys, Special Assistant United States Attorneys, and any DOJ attorney working on a criminal case in the District of Alaska."

[16] This policy appears to be the one proposed by the Department of Justice and approved by the Ninth Circuit in *United States v. Jennings*, 960 F.2d 1488 (9th Cir. 1992), allowing for the approved agency to examine its personnel files, rather than the AUSA doing so personally, and notifying the AUSA of any potential *Brady* material, so long as the AUSA makes the determination whether the material should be disclosed. *See also United States v. Herring*, 83 F.3d 1120, 1121 (9th Cir. 1996) (reaffirming *Jennings* in the wake of *Kyles v. Whitley*, 514 U.S. 419 (1995)).

The Internal Revenue Manual (IRM) for the IRS outlines the relevant procedures for fielding *Henthorn* requests from a U.S. Attorney's Office. I.R.M. 9.6.3.7.1.1 (05-15-2008). *Henthorn* requests are forwarded from the attorney for the government to the Special Agent in Charge (SAC) at the IRS. *Id.* at ¶ 5. The SAC or her designee is responsible for determining the materiality of information contained in the personnel file of IRS "field level" employees. *Id.* Notably, the IRM does not distinguish between civil "field level" employees and criminal "field level" employees. Nor does it distinguish between pre-trial witnesses and those who will testify at trial. It does, however, list as relevant to a *Henthorn* request any employee investigative files. *Id.* at ¶ 9.

Once a materiality determination has been made, the SAC or her designee will then write a letter to the attorney declaring that the personnel files have been reviewed and stating whether the file may contain material subject to discovery. *Id.* at ¶ 7. Thus, both the U.S. Attorney's Office and the Internal Revenue Service provide a mechanism for the government to adequately comply with *Henthorn* requests.

On May 9, 2017, the defense requested the production of *Henthorn* materials relating to RA Zeznock and other testifying witnesses. The request was repeated by letter dated September 13, 2017 (Doc. 415-4).

The government responded, saying that it had not yet identified its testifying witnesses and did not believe the materials were due until the deadline for Jencks Act material, clearly anticipating a *Henthorn* review solely for trial witnesses.

The government uncovered the TIGTA investigation of Kalanges only after he had testified (Doc. 402 at 5). The government subsequently asked this Court to order disclosure of this report from the IRS (Doc. 238). Notably, the IRS was able produce the report in less than a week

(Doc. 246-1). The *Henthorn* material was made available to the defense almost a year after it was requested.

As noted *supra,* when ultimately reviewed, [redacted].

As noted *supra,* the Court required briefing from the government to explain how this serious problem arose. The government stated:

> . . .[I]n accordance with the local practice of the U.S. Attorney's Office, the government did not ask the IRS to conduct a *Henthorn* review of the personnel file of former FTA Kalanges. In the District of Alaska, such review is usually limited to law enforcement witnesses, at trial, pursuant to an agreement between the U.S. Attorney's Office and local federal government agencies.

(Doc. 402 at 4.) In a footnote, the government stated: "Because of this incident, the U.S. Attorney's Office and the Tax Division are revising their Henthorn policies" (Doc. 402 at 4, n.2).

The government's refusal to produce Kalanges' personnel files did not violate its constitutional duty as articulated in *Henthorn,* which applies only to requests regarding law enforcement witnesses who will testify at trial. *See Henthorn*, 931 F.2d at 30. Because the government did not intend to call Kalanges at trial, *Henthorn* did not require disclosure of his employment records.[17]

[17] The government further contends that, because he worked for the IRS's civil division, Agent Kalanges was not a law enforcement witness within the meaning of *Henthorn* (Doc. 403 at 3). Although this point is mooted by the fact that Kalanges was a pre-trial witness to whom *Henthorn* does not apply, the Court disagrees that he was not a law enforcement witness. Notably, the government made *Henthorn* requests for two other civil employees included on the defense list, Hartford and [redacted], but failed to do the same for Kalanges and Oen (Doc. 414 at 6). Second, the IRS's stated mission is to "[p]rovide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and enforce the

Nevertheless, the Court finds it troubling and worth noting that the government appears to have violated the USAO Alaska District's official written discovery policy. That policy directs AUSAs to request impeachment information with respect to both pre-trial and trial witnesses. *See* DISCOVERY POLICY, United States Attorney's Office, District of Alaska at 7.

This case certainly demonstrates the wisdom of the policy. Hopefully, the U.S. Attorney's Office will modify its local practice to conform with the well-considered written policy, which insures the reliability of law enforcement testimony proffered by the government at pre-trial hearings while protecting the defendant's rights.

X. ANALYSIS: THE GOVERNMENT MISPRESENTED THE SCOPE AND PURPOSE OF 26 U.S.C. § 6103

The statute states, in relevant part:

> **§ 6103. Confidentiality and disclosure of returns and return information**
>
> **(a) General rule.**—Returns and return information shall be confidential, and except as authorized by this title—
>
> (1) no officer or employee of the United States,
>
> . . . .
>
> shall . . . disclose any return or return information obtained by him in any manner in connection with his service as such an officer or an employee . . . .
>
> **(b) Definitions.**—For purposes of this section—

law with integrity and fairness to all." I.R.M. 1.1.1.2 (emphasis added) ("This mission statement describes IRS role and the public's expectation about how IRS should perform that role. In the United States, the Congress passes tax laws and requires taxpayers to comply. The taxpayer's role is to understand and meet his or her tax obligations. The IRS' role is to help the large majority of compliant taxpayers with the tax law, while ensuring that the minority who are unwilling to comply pay their fair share."). Thus, the IRS's role is to enforce tax law, and whether it does so through criminal or civil enforcement action, its employee-investigators are law enforcement agents. The facts of this case demonstrate why this is so. Kalanges guided Agent Zeznock's initial investigation and even identified it as a strong case for criminal referral (Gov. Ex. 10). Hence, Kalanges directly influenced the decision of whether to enforce the matter as a civil fraud investigation or a criminal proceeding.

> **(1) Return.**—The term "return" means any tax or information return, declaration of estimated tax, or claim for refund . . . .
>
> **(2) Return information.**—The term "return information" means—
>
> (A) a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense,
>
> . . . .
>
> **(3) Taxpayer return information.**—The term "taxpayer return information" means return information as defined in paragraph (2) which is filed with, or furnished to, the Secretary by or on behalf of the taxpayer to whom such return information relates.
>
> . . . .
>
> (c) **Disclosure of returns and return information to designee of taxpayer.**—The Secretary may, subject to such requirements and conditions as he may prescribe by regulations, disclose the return of any taxpayer, or return information with respect to such taxpayer, to such person or persons as the taxpayer may designate in a request for or consent to such disclosure, or to any other person at the taxpayer's request to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person. However, return information shall not be disclosed to such person or persons if the Secretary determines that such disclosure would seriously impair Federal tax administration . . . .

26 U.S.C. § 6103.

Prior to the enactment of § 26 U.S.C. § 6103 in 1976, the IRS was free to disclose tax payer information to other agencies in accordance with regulations promulgated by the President, or

pursuant to an executive order. Elena M. Gervino, TAX LAW-THE INTERNAL REVENUE CODE: INTERPRETING THE "HASKELL AMENDMENT' TO 26 U.S.C. S 6103-DEFINING "RETURN INFORMATION', 9 W. New Eng. L. Rev. 269, 270 (1987). This legal regime resulted in "well documented abuse by government entities." *Id.* For example, the Nixon impeachment hearings revealed "that the former President had requested and attempted to obtain, confidential information contained in income tax returns from the Internal Revenue Service allegedly for political and other purposes not authorized by law." *Id*. (quoting Benedict & Lupert, FEDERAL INCOME TAX RETURNS—THE TENSION BETWEEN GOVERNMENT ACCESS AND CONFIDENTIALITY, 64 Cornell L. Rev. 940, 942 n.5 (1979)).

Congress enacted 26 U.S.C. § 6103, which precludes the IRS from sharing information to other federal agencies unless a statutory exception applies. Gervino at 270. According to the Joint Committee on Taxation, Congress passed § 6103 to preserve the citizenry's faith and trust in the United States' voluntary tax assessment system.

The staff of the Joint Committee on Taxation gave the following reasons behind the enactment:

> The IRS probably has more information about more people than any other agency in this country. Consequently, almost every other agency that has a need for information about U.S. citizens sought it from the IRS . . . . Questions were raised and substantial controversy created as to whether the . . . disclosure of returns and return information to other Federal and State agencies for non-tax purposes breached a reasonable expectation of privacy on the part of the American citizen . . . . This, in turn, raised the question of whether the public's reaction to this possible abuse of privacy would seriously impair the effectiveness of our country's very successful voluntary assessment system, which is the mainstay of the Federal tax system . . . . [T]he Congress strove to balance the particular office or agency's need for the information involved with the citizen's right to privacy and the related impact of the disclosure upon the continuation of compliance with our country's voluntary tax assessment system.

STAFF OF THE JOINT COMM. ON TAXATION, GENERAL EXPLANATION OF THE TAX REFORM ACT, 314–15 (1976).

Congress enacted I.R.C. § 6103 to protect citizens from government abuse and to maintain the public's trust in the federal taxation system; there is nothing in the legislative history to suggest Congress intended for § 6103 to be used as a mechanism to conceal government misconduct from the public.

SA Siegel and Prosecutor Hendrickson were in serious error when they argued that 26 U.S.C. § 6103 prohibited disclosure of Williamson's misconduct to local or state authorities to determine if prosecution for trespass was appropriate.

XI. ANALYSIS: THE DEFENDANT WAS SUBSTANTIALLY PREJUDICED BY THE GOVERNMENT'S MISCONDUCT

Federal courts are inherently vested with the power to supervise their cases and courtrooms effectively. *In re Judicial Misconduct*, 906 F.3d 1167, 1169 (9th Cir. 2018). These supervisory powers include the power to ensure the parties' obedience to the court's orders. *United States v. W.R. Grace*, 526 F.3d 499, 509 (9th Cir. 2008) (citing *Aloe Vera of Am., Inc. v. United States*, 376 F.3d 960, 964–65 (9th Cir. 2004) (per curium). However, these powers should be exercised with restraint and discretion. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 45 (1991).

The Supreme Court has recognized only three legitimate bases for a district court's exercise of this supervisory power: (1) to implement a remedy for the violation of a recognized statutory or constitutional right; (2) to preserve judicial integrity by ensuring that a conviction rests on appropriate considerations validly before a jury; and (3) to deter future illegal conduct. *United States v. Simpson*, 927 F.2d 1088, 1091 (9th Cir. 1991) (citing *United States v. Hasting*, 461 U.S. 499, 505 (1983); *United States v. Gonsalves*, 781 F.2d 1319, 1320 (9th Cir. 1986); *United States v. Gatto*, 763 F.2d 1040, 1044 (9th Cir. 1985)).

Additionally, a court should not use its supervisory powers "to mete out punishment absent *prejudice* to a defendant." *United States v. Isgro*, 974 F.2d 1091, 1097 (9th Cir. 1992) (emphasis in original).

A. Defense Counsel Argued that Lawson is Prejudiced in Four Ways

Defense counsel argued prejudice to Lawson in the following ways:

1. The six-year delay in informing Lawson of the April 2012 break-in, "a few years after he sold the hangar," made it impossible for him to fully investigate and assess what Williamson did when he entered the hangar. This basically is a complaint that evidence may have been lost or destroyed due to the inability to timely investigate (Doc. 426 at 7).
2. Lawson also suggested that had he been informed of the illegal entry in 2012, he would have "been less naïve of the IRS's purported innocent intentions in just wanting to 'clear things up' during the 'routine audits' in 2012," and he would have handled his interactions with the IRS differently (Doc. 426 at 7).
3. Lawson noted that the government's misconduct required defense counsel to make numerous discovery requests and litigate two discovery motions, costing in excess of $80,000 in attorney's fees and expenses (Doc. 423 n.3).
4. The government's intransigence in providing discovery interfered with Lawson's right to a speedy trial, counsel argued. The first discovery request was made in mid-2017 and, if immediately made available, it could have been evaluated before the January 2018 trial date. The defense did not object to the continuance from January to August 2018. However, Lawson did object to the continuance from August 2018 to March 2019, to permit the *in camera* review of records previously

withheld by the government and the evidentiary hearing on the Motion to Dismiss Indictment (Doc. 400 at 7–8). Lawson credits the combined delay caused by the government's misconduct related to discovery to be over one year.

B. The Government Argued Lawson Experienced No Prejudice

The government argues that there has been no prejudice to Lawson because he has had substantial time to analyze the evidence regarding Williamson's misconduct in advance of trial, having eight months to "conduct his own investigation" following the receipt of the evidence (Doc. 423 at 19–21).

C. Court Finds Substantial Prejudice to Lawson

1. Loss or unavailability of evidence

The prosecutor's delay in providing discovery made it difficult for Lawson to investigate the errors made by IRS agents during the investigation of this matter and their import on Lawson's case seven years after the fact. As former TIGTA investigator Walsh noted, important steps in a thorough TIGTA investigation went undone, such as determining whether Williamson accessed IRS Audit Trails or databases and followed or changed any digital information collected during the civil collection action and audits. Former girlfriend [redacted] quoted Williamson saying, "he worked in the same office, in the same space, so he heard things, so he knew pretty much everything that was going on [about the Lawson matter]" (Doc. 399 at 195). The defendant's opportunity to fully investigate evaporated, and it was not possible to know if additional evidence was lost to history.

2. Diminishment of witness memory

Compounding the possible loss of physical or digital evidence, is the loss or diminishment of witness memories years after the fact. An example of this problem is illuminated by reviewing the testimony of RA Zeznock during the May and August hearings.

(a) Zeznock testimony in May 2018

Throughout the May hearings, the defense attempted to show that the government witnesses were biased against Lawson and that the civil audit was improperly influenced to obtain a criminal referral/ indictment.

When asked by defense counsel why his audit was suspended in August 2012, due to a related issue and what the "related issue" was, Zeznock said it was an investigation of a collection manager's misuse of a government vehicle (Doc. 225 at 78).

Five questions later, Zeznock said, **"All I know is that he didn't use it [the car] for business purposes"** (*id.* at 79) (emphasis added). Prosecutor Randall argued the questions were not relevant, elicited hearsay, and asked to see on what witness interviews the defense based their inquiry (*id.* at 79–81). Defense counsel requested that any further discussion of the basis of the question take place outside the presence of the witness, so he could not shape his testimony to match any proffer which took place. RA Zeznock was excused.

As noted *supra*, earlier in the day, the Court had ordered the government to produce all *Brady/Giglio* material related to why Williamson had been removed from the case. The judge inquired why counsel's questioning could not wait until the documents had been produced; Defense Attorney John Littrell said:

> . . . [I]f the Court orders them to get a document, they [the prosecutors] will show that document to each witness, they will meet with each witness, they will get their story straight. Right now

> we have a witness who is saying only that there was an unauthorized use of a vehicle.
>
> . . . .
>
> The only benefit of waiting is to allow the witnesses to basically get their story straight, including Special Agent Rhame who's here, who I also think had personal knowledge of this.

(Doc. 225 at 83.)

The Court permitted further questioning and slowly, with detailed cross-examination, Agent Zeznock revealed that as of August 31, 2012, he had been informed that Williamson was investigated for driving a government vehicle to property owned by Lawson because his ex-girlfriend lived there. He said he learned this because he was asked for advice about whether to report the matter. "And I told her to report it" (*id.* at 86–87).[18] After two more pages of cross-examination, Zeznock revealed that he had heard Williamson entered the property of Little Wing (*id.* at 88–89). He acknowledged the Williamson matter was related to his investigation of Lawson (*id.* at 89). He testified **incorrectly** that the unauthorized entry happened after Zeznock had toured the hangar (*id.* at 90). When asked when the trespass occurred, he said he did not know. "I was notified by [redacted] [redacted] on that date [August 31], and that's when I provided information to the FTA" (Doc. 225 at 90).

(b) Zeznock testimony in August

After production of the discovery materials, including the Williamson TIGTA investigation, the parties convened for the August evidentiary hearing. Zeznock's testimony related to his knowledge of the Williamson matter differed significantly from his reluctant sharing of limited information in May. He no longer was sure of when he first learned of the unauthorized

[18] This testimony suggests Zeznock learned of the illegal entry as early as April 4, 2012, when [redacted] was deciding whether to report Williamson's conduct on that day.

entry. He recalled having two conversations with [redacted] about it. During the first conversation, she was "freaking out" about what she had observed. During a later, second conversation, he was informed by [redacted] that TIGTA was investigating Williamson (Doc. 399 at 80–81).

RA Zeznock was the source who carried this information to his supervisor, Oen, and FTA Kalanges (*id.* at 81). Kalanges then advised him to "suspend case action until the related issue has been settled." He also advised by email: "One other thing, why don't you prepare a memo for the case file documenting when you became aware of the related collection issue. That way you have documentation that the evidence you developed to date was done, so prior to becoming aware of collections issue, and the fact should protect your case evidence" (Doc. 399 at 95).[19] Zeznock did not draft such a memo (*id.* at 84).

D. Delay of Trial Over Defense Objection

The discovery litigation began in August, 2017, when the trial date was scheduled for January 2018. The defense sought a continuance of the trial date while two discovery motions and the suppression motion were pending and the date was continued until August 29, 2018. The government's failure to review and provide information related to the removal of Williamson and the break-in of the hangar came to light during the May, 2018, suppression hearings. Because of the time needed for *in camera* review of the materials related to Williamson and Kalanges, it was necessary to continue the August trial date until March 11, 2019. This continuance was granted over the objection of defense counsel and was necessary solely because of the government's discovery violations. The defendant's trial was delayed over six months directly due to the government's misconduct.

[19] This advice from Kalanges suggests he expected a challenge to the integrity of the investigation and a possible need to establish that the information obtained during the audit was from an independent source other than Williamson's unauthorized entry.

E. Cost of Discovery Litigation

In August, the Court requested that defense counsel report the costs and attorneys' fees associated with the protracted discovery litigation. Counsel provided a detailed estimate of the fees and expenses, totaling $77,943.42 as of August 31, 2018 (Doc. 407, 407-1). That amount does not include the cost of preparing the defendant's post-hearing briefs. Very few defendants appearing in federal court can afford such a costly discovery battle. It underscores the necessity of crafting a remedy that effectively discourages such government misconduct in future cases.

As discussed *supra*, the Court has concluded that the prosecution committed serious Rule 16 and *Brady v. Maryland* violations, which caused substantial prejudice to the defense.

XII. ANALYSIS: POSSIBLE REMEDIES FOR GOVERNMENT MISCONDUCT

A. Removal of Prosecutors

A court may remove the prosecutor from a case as a sanction for her or his prosecutorial misconduct and as a deterrent against "future prosecutorial excesses." *See United States v. Horn*, 29 F.3d 754, 776–77 (1st Cir. 1994); *United States v. Wilson*, 149 F.3d 1298, 1304 (9th Cir. 1998). This dismissal, however, should be weighed against potential prejudices to the government. *Compare United States v. Horn*, 811 F. Supp. 739, 752 (D.N.H. 1992), rev'd in part, 29 F.3d 754 (1st Cir. 1994) (removing the lead prosecutor does not "unduly disadvantage" the government because the team had three other prosecutors), *with United States v. Sanchez*, 2004 WL 315266, at *2 (S.D.N.Y. Feb. 18, 2004) (declining to remove the lead prosecutor "less than three months" before trial in part because he had been on the case for "over five years").

In December, 2018, having ruled that serious Rule 16 discovery violations and *Brady v. Maryland* violations occurred in this case, which constituted flagrant government misconduct, the Court sought further briefing on the appropriate remedy or remedies, asking specifically for

comment on whether a prosecutor could be held personally liable for attorney's fees expended during the discovery battle and whether removal of a prosecutor was an appropriate sanction as a deterrent against future prosecutorial excesses (Doc. 43).

In its brief, the government argued against the imposition of attorney's fees and announced that Hendrickson and Russo had voluntarily removed themselves from the team. The pleading also stated that all three attorneys had self-reported the Court's ruling to the Office of Professional Responsibility (OPR), as DOJ policy requires upon a finding of discovery violations by the Court.[20]

A notice of withdrawal from the case by Hendrickson was filed January 9; by Russo, January 10; and by AUSA Randall, January 14.

This departure of the team was proactive on DOJ's part. One question for the Court is whether the team's departure adequately protected the defendant's rights and cured any prejudice going forward. The Court must note that discovery issues did not evaporate with the departure of the team, but continued. The new trial team was required to make at least two late productions of significant evidence. The problems created by serious discovery violations do not disappear with the removal of the offending prosecutor or prosecutors from the case. Removal of the prosecuting team did not cure the prejudice created and was insufficient to prevent future similar misconduct.

[20] AUSA Randall filed an Errata on January 8, 2019, stating she asked to be removed form the trial team after the August hearing due to conflicts with Hendrickson and stating she had not self-reported to OPR because she did not believe she had done anything wrong. (Doc. 438.) Hendrickson filed a Clarification Regarding the Errata (Doc. 440) on that same day, taking issue with some statements Randall made in her filing. On January 10, 2019, Frank Russo, Criminal Chief of the U.S. Attorney's Office in Anchorage and Larry Wsalek, Chief of the Western Criminal Enforcement Section of the DOJ Tax Division, filed a Notice with the Court, stating that Randall and Hendrickson were not authorized to file the Errata and Clarification and stating "all relevant documents have been sent by both offices to the Department's Office of Professional Responsibility. "This will ensure that the statements contained in the Order are 'thoroughly examined in a comprehensive way and appropriate actions taken by the Department's entities charged with that responsibility.'" (Doc. 444 at 2.)

B. Payment of Attorney's Fees by the United States

Sovereign immunity prohibits a court from using its supervisory power to order the federal government to "pay attorney's fees and costs as a sanction for prosecutorial misconduct in a *criminal* case." *United States v. Horn*, 29 F.3d 754, 770 (1st Cir. 1994) (emphasis added) (overturning the lower court's award of attorney's fees for prosecutorial misconduct discovered pre-trial); *see also Ruckelshaus v. Sierra Club*, 463 U.S. 680, 684–85 (1983) ("Except to the extent it has waived its immunity [under statute or otherwise], the Government is immune from claims for attorney's fees").

However, the government may be ordered to pay attorney's fees if sovereign immunity has been expressly waived by statute or by rule. *United States v. Woodley*, 9 F.3d 774, 781 (9th Cir. 1993) (citing *Block v. North Dakota*, 461 U.S. 273, 287 (1983)). Pursuant to the Hyde Amendment,[21] for instance, the Ninth Circuit permits the awarding of attorney's fees for prosecutorial misconduct in limited circumstances—only where the defendant is the "prevailing party in a criminal case" and where the court finds that the government's position was "vexatious, frivolous, or in bad faith." *United States v. Pocklington*, 831 F.3d 1186, 1187 (9th Cir. 2016). By contrast, the Ninth Circuit has held that Rule 16 contains no explicit waiver of sovereign immunity. *Woodley*, 9 F.3d at 781. Therefore, the remedy of ordering the government to pay the more than $80,000 in attorney's fees expended by Lawson during the discovery litigation is not available.

C. Monetary Sanctions Against Prosecutors Individually

In light of the government's sovereign immunity, when faced with acts of prosecutorial misconduct some courts have concluded that their supervisory powers include the ability to award

[21] DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS ACT, 1998, PL 105–119, November 26, 1997, 111 Stat. 2440 (18 U.S.C.A. § 3006A Note).

monetary sanctions against individual prosecutors themselves. *See United States v. Keen*, 676 F.3d 981, 996 (11th Cir. 2012) ("improper remarks and conduct . . . especially if persistent, ought to result in direct sanctions against an offending prosecutor *individually*") (quoting *Wilson*, 149 F.3d at 1304); *Horn*, 29 F.3d at 759, 766–67 (notwithstanding sovereign immunity, the Court could have held the prosecutor personally liable for the $46,477.80 resulting from his misconduct); *United States v. Sumitomo Marine & Fire Ins. Co.*, 617 F.2d 1365, 1371 (9th Cir. 1980) (permitting monetary sanction of $500 imposed personally on government attorney where such sanction against the government is not statutorily authorized); *Chilcutt v. United States*, 4 F.3d 1313, 1319 (5th Cir. 1993) (upholding imposition of monetary sanction for discovery abuse against government attorney as only available target for such sanctions).

However, two of these were civil cases and based their award of individual monetary sanctions upon Fed. R. Civ. P. 37(b). *See Sumitomo*, 617 F.2d at 1369; *Chilcutt*, 4 F.3d at 1319–20. Rule 37(b) explicitly authorizes a court to award monitory sanctions against an attorney who has violated the court's discovery orders. *See id.* By contrast, the comparable Federal Rule of Criminal Procedure, Rule 16, does not mention monetary sanctions. *See Woodley*, 9 F.3d at 781. At most, Rule 16 provides that if a party fails to comply with the rule, the court may "enter any other order that is just under the circumstances." Fed. R. Crim. P. 16(d)(2).

Although at least two courts have opined that in the criminal context a court's supervisory powers allow it to impose monetary sanctions against prosecutors individually, neither of the courts chose to exercise that power under the facts presented to them. *See Horn*, 29 F.3d at 766–67; *United States v. Jones*, 620 F. Supp. 2d 163, 167–68 (D. Mass. 2009).[22]

[22] Even if the prosecutors were monetarily sanctioned by this Court, federal regulations allow them to apply for indemnification from the Department of Justice. Title 28 of the Code of Federal Regulations section 50.15, subsection (c)(1) provides: "The Department of Justice may indemnify the defendant Department of Justice employee for any verdict, judgment, or other monetary award which is rendered

Given the sparse support for the practice in case law, the remedy of sanctioning the individual prosecutors in this case is not realistically available.

D. Evidentiary Sanction

Some courts have also concluded that their supervisory powers allow them to impose evidentiary sanctions when faced with prosecutorial misconduct. *See*, e.g., *United States v. Miranda*, 526 F.2d 1319, 1324–25 n.4 (2d Cir. 1975) (noting that potential sanctions for discovery violations include the exclusion or suppression of other evidence concerning the subject matter of the undisclosed material); *United States v. Pasha*, 797 F.3d 1122 (D.C. Cir. 2015) (concluding that *Brady* violation which caused prejudice in trial preparation and in potential disappearance of memory and availability of evidence required not only a new trial but also evidentiary sanctions); *United States v. Chapman*, 524 F.3d 1073, 1078 (9th Cir. 2008) (trial judge noting that if he discovered the government had failed to disclose *Brady* materials regarding last-minute government witness, the witness's testimony would be stricken).

However, an evidentiary sanction does not address the substantial prejudice presented by the inability to fully investigate the Williamson trespass and effectively cross-examine trial witnesses. It also does not address the issue of prejudice and cost to the defendant caused by pretrial delay.

E. Dismissal of the Indictment

Our circuit has recognized several times that "[a] district Court may dismiss an indictment for a violation of due process or pursuant to its supervisory powers." *United States v. Kearns*, 5 F.3d 1251, 1253 (9th Cir. 1993); *see also*, e.g., *United States v. Struckman*, 611 F.3d 560, 577 (9th

against such employee, provided that the conduct giving rise to the verdict, judgment, or award was taken within the scope of employment and that such indemnification is in the interest of the United States, as determined by the Attorney General or his designee."

Cir. 2010) (recognizing dismissal of an indictment with prejudice pursuant to a court's supervisory powers as an appropriate remedy for a *Brady* or *Giglio* violation but declining to do so there); *United States v. Williams*, 547 F.3d 1187, 1202 (9th Cir. 2008) (recognizing that a *Brady* violation may require dismissal of an indictment in cases of "flagrant prosecutorial misconduct"); *United States v. Blanco*, 392 F.3d 382, 395 (9th Cir. 2004) (recognizing a range of options available to the court on remand, including dismissal of the indictment for governmental misconduct). However, the instant Motion to Dismiss has been denied as moot in light of the defendant's plea of guilty.

XIII. REFERRAL FOR DISCIPLINARY ACTION

Initially, the government provided substantial discovery to the defense. This Court was lulled into the belief that the prosecution was appropriately exercising its constitutional duties and, in the face of several initial defense requests, the Court merely reminded government prosecutors of their duty to produce *Brady* and Rule 16 material. The Court trusted prosecutors to identify and timely produce materials relevant to the defense and capable of impeaching government trial witnesses. As the discovery battles wore on, however, the Court became concerned and believed it necessary to order prosecutors to physically review all evidence to prevent incorrect, snap judgments by prosecutors.

Ms. Hendrickson obscured the prosecution's failure to obtain and review the documents from the Court, making false and misleading statements numerous times. What is of greatest concern to the Court is that while the criminal case agent perceived the documents as significant enough to permit the defense to create "smoke and mirrors" at trial, the lead prosecutor resolutely refused to obtain the documents from TIGTA and present them for *in camera* review. Instead, she

chose to ignore the law, ignore two specific Court orders, and make significant misrepresentations to the Court and defense.

Prosecutors Randall and Russo exercised reckless disregard of their constitutional duties related to discovery following this Court's December 11 order. Given the number of false and misleading statements made by lead prosecutor Hendrickson, as well as her refusal to order the retrieval of the records for review, the Court can only conclude that her failure to provide discovery was willful and intentional. This was flagrant prosecutorial misconduct which substantially prejudiced the defendant.

The government asserts that the defense suffered no prejudice because the defense eventually did learn of Williamson's misconduct, and did so "well in advance of trial" (Doc. 423 at 20). This Court must disagree.

First, continuing this case to trial "would [have] advantage[d] the government [by] allowing it to salvage" shortfalls that surfaced during the May and August hearings. *Chapman*, 524 F.3d at 1087. The hearings constituted at least, in part, "a chance [for the government] to try out its case, identify any problem areas, and then correct those problems" at trial, which is "an advantage the government should not be permitted to enjoy," *Chapman* at 1087 (parentheses omitted), especially after its flagrant misconduct. *See Chapman*, 524 F.3d at 1087.

Court action also is warranted by the government's unwillingness "to own up to" its violations. *United States v. Kojayan*, 8 F.3d 1315, 1318 (9th Cir. 1993) ("Anyone can make a mistake . . . . In determining the proper remedy, [the court] must consider the government's willfulness in committing the misconduct and its willingness to own up to it").

In January, the prosecution team's supervisors "attempt[ed] to [downplay] the extent of the prosecutorial misconduct." *Chapman* at 1088. The problem was recognized only as an inadvertent

Rule 16 violation. The government claimed that Hendrickson's "conduct at issue was *narrowly* confined to [only the] conflict of interest issue, not committed in *bad faith*, and not part of a *pattern* of discovery shortcomings" (Doc. 436 at 3) (parentheses omitted, emphases added).

This language reflects the government's "complete disregard [of the government's] repeated misrepresentations" already established by this time. *Chapman* at 1088. Such a tactic only shows that the government "still has failed to grasp the *severity* of [its] misconduct[s] involved here." *Chapman* at 1088 (emphasis added).

The Department of Justice's Office of Professional Responsibility ("OPR") is charged with receiving, reviewing, investigating, and referring for appropriate action allegations of misconduct involving Department of Justice ("DOJ") attorneys. 28 C.F.R. § 0.39a. The head of each DOJ office and division is responsible for reporting to the OPR any judicial statement indicating that a DOJ attorney has engaged in professional misconduct. 28 C.F.R. § 0.39c(b). Additionally, Department employees have a duty to self-report allegations of misconduct. 28 C.F.R. § 45.12. Where the OPR makes findings of attorney professional misconduct, the findings are then referred to the Department's Professional Misconduct Review Unit ("PMRU"). *See* DOJ JUSTICE MANUAL, Title 1 section 4.320. At the conclusion of the disciplinary process, OPR will notify state bar authorities of misconduct findings that involve the violation of a bar rule. 28 C.F.R. § 0.39a(a)(6); *see also* DOJ JUSTICE MANUAL, Title 1 section 4.320.

The Internal Revenue Service ("IRS") likewise has published its internal procedures for handling allegations of misconduct by its employees. *See* I.R.M. 39.1.1. These procedures apply to allegations of misconduct alleged by a judicial body. *See* I.R.M. 39.1.1.2. The Internal Revenue Manual ("IRM") provides for allegations to be referred to the Treasury Inspector General for Tax Administration ("TIGTA"). *See* I.R.M. 39.1.1.2.1. These referrals should be made by managers,

up through the management chain, to the Deputy Chief Counsel (Operations). *See id.* The Deputy Chief Counsel (Operations) is responsible for determining the appropriate action to be taken with respect to referrals. *See* I.R.M. 39.1.1.2.3.[23]

The three main interests here are: (1) the interest of the government to collect outstanding taxes from Lawson and punish Lawson for tax fraud, if appropriate; (2) the interest of justice to deter criminal conduct; and (3) the interest of justice to deter government misconduct.

The misconduct by Agent Williamson, and the faulty and inadequate TIGTA investigation by Agent Siegel, made it difficult to fully assess the impact Williamson's actions had on the investigation and prosecution of the defendant. The obfuscation and misrepresentations by Ms. Hendrickson greatly compounded the problem.

The Court hereby directs that the conduct of Agents Williamson and Siegel be referred to the Treasury Inspector General for Tax Administration and the Internal Revenue Service's Internal Affairs Division for review and appropriate disciplinary action.

The Court also directs that the conduct of Prosecutors Lori Hendrickson, Timothy Russo, and Retta Randall be referred to the Office of Professional Responsibility for review and appropriate disciplinary action. The Court requests that the findings of the Office of Professional Responsibility be filed under seal with this Court upon completion.

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[23] Additionally, the IRS's Internal Affairs Division is responsible for investigating allegations made against TIGTA employees. *See* TIGTA Operations Manual (400)-330.1, (400)-280.5.2. For TIGTA employees who do not belong to the Inspector General's office or the Internal Affairs Division, allegations or complaints should be reported to Internal Affairs via telephone or at the following address:

Treasury Inspector General for Tax Administration
Internal Affairs Division
Special Agent-in-Charge
1401 H Street, NW, Suite 469
Washington, DC 20005

See TIGTA Operations Manual (200)-60.1.1.

IT IS SO ORDERED this 15th day of May, 2019.

/s/ Deborah M. Smith
CHIEF U.S. MAGISTRATE JUDGE

APPENDIX 1—Timeline of Significant Events

Date	Event
2008-2009	Dr. Lawson treated [redacted] for cancer (Doc. 257 at ¶ 3). [redacted] worked at the same hospital as Lawson, but not directly with him (Doc. 399 at 192–93).
2009-2011	Williamson divorced (Docs. 256 at ¶ 13; 398 at 216–17).
Fall 2009	Williamson met [redacted] online, subsequently developed a friendship (Doc. 398 at 127–28).
Feb. 2010	Williamson dated [redacted] (Doc. 257 at ¶ 4; Def. Ex. F at ¶ 10). [redacted] mentioned to Williamson her previous relationship with Lawson and the "fancy . . . trips" Lawson took her on (Doc. 398 at 29–31).
Feb.-Oct. 2010	Williamson saw a sexually explicit phone text exchange between [redacted] and someone whom he believed to be Lawson during this time (Doc. 398 at 93–97, 129–30), which shocked and upset him (Doc. 398 at 97). He confronted [redacted] about it (Doc. 398 at 99). Williamson also noticed that someone (whom he believed to be Lawson) had been calling [redacted] via a smiley face emoji and special ring tone on [redacted]'s phone (Doc. 398 at 130–31, 163–64, 166–67).
Oct. 2010	[redacted] broke up with Williamson, but maintained contact with him (Def. Ex. F at ¶¶ 12–13).
Oct. 19, 2010	Lawson filed Form 1040 for tax year 2009, reporting unpaid individual income tax of $1,765,565 (Doc. 317 at ¶ 2).
Dec. 25, 2010	[redacted] visited Williamson (Doc. 398 at 41; Def. Ex. F at ¶ 13).
Spring 2011	Williamson and [redacted] rekindled their relationship (Doc. 257 at ¶ 5). [redacted] was "look[ing] for a . . . place to live" at the time; she ran into Lawson and was invited to move into his hangar apartment (Doc. 257 at ¶¶ 5–6). When Williamson found out, he told her that Lawson was under "really bad" IRS investigation, and that he "knew everything that was going on." (Docs. 257 at ¶ 7; 399 at 191, 195–96). [redacted] moved into Williamson's home, rather than Lawson's hangar apartment (Doc. 257 at ¶ 8).
March 5, 2011	**Williamson opened collection case on Lawson and assigned it to [redacted] (Docs. 256 at ¶¶ 5–6; 398 at 261; 399 at 53; Gov. Ex. 33 at RA0021).** Concurrently, Williamson started talking to [redacted] about his relationship with [redacted] (Doc. 398 at 218). Williamson is [redacted]'s direct supervisor and worked near her desk (Docs. 256 at ¶ 5; 398 at 57). Williamson "selected [taxpayer] files he wanted to manage from a 'cue' [sic], and assigned them to ROs that he supervised" (Doc. 256 at ¶ 5). It is unclear whether it was mandatory to open the Lawson case (Doc. 399 at 202–03). Supervisor Harris did not get to see whether cases are mandatory, just the Group Manager selecting a case for collection sees it (Doc. 399

Date	Event
	at 211, 221–22). **There is no record whether the case was listed as mandatory to open, or whether Williamson exercised discretion, choosing Lawson for collection action.**
March 8, 2011	**At the time the case was opened, Williamson reported a conflict to Harris; Harris reassigned Lawson case to GM Hartford (Docs. 399 at 200–01, 203; 423 at 4).**
March 8, 2011	IRS informed Lawson of collection proceeding on his unpaid 2009 individual income taxes (Doc. 317 at ¶ 4).
March 2011	[redacted] contacted Lawson, who was cooperative (Doc. 256 at ¶ 7).
May 2011	[redacted] moved into the home of Williamson, who repeatedly inquired whether she dated Lawson and whether Lawson ever bought her anything expensive (Docs. 257 at ¶ 8; 398 at 45; Def. Ex. F at ¶ 16).
Summer 2011	Lawson's return preparer corresponded with IRS concerning 2009 collection (Doc. 78 at 6).
Aug.-Sept. 2011	[redacted] left Williamson's home, stayed with friends until she moved into Lawson's hangar apartment, accessing the hangar with either a pin code or a garage opener. This upset Williamson, who contacted her repeatedly (Doc. 257 at ¶¶ 9–15). Williamson told his colleagues Lawson was dating [redacted] and bought her expensive gifts (Doc. 256 at ¶ 13). At various points, Williamson asked [redacted] about "who owned a . . . vehicle parked in the hangar" (Doc. 257 at ¶ 19). This surprised [redacted] because she never invited Williamson inside the hangar (Doc. 257 at ¶¶ 19, 21). She only allowed Williamson into her apartment via an outside door, on the back of the hangar, and recalls only one occasion when she met Williamson at the hangar entrance (Doc. 399 at 194–95).
Aug. 2011	First electronic record of Williamson's removal from the case (Docs. 113-1 at 2; 417-1 at 2); Williamson continued supervising [redacted] on other cases (Doc, 399 at 223). Williamson mentioned to [redacted] more than once, in front of other IRS colleagues, that Lawson was taking [redacted] on trips and buying her expensive gifts (Doc. 256 at ¶ 13). These comments about Lawson's assets were made after Williamson was recused from the case due to his conflict of interest, according to [redacted].
Sept. 6, 2011	[redacted] referred case to Examination Group Manager Sonia Oen due to her concerns about Lawson's questionable charitable donations (Doc. 224 at 24–27; Gov. Ex. 3; Doc. 185-3). Oen initially assigned case to RA Dixon. (Doc. 224 at 29-30).
Oct. 3, 2011	**Lawson's outstanding tax from his 2009 return was fully paid; an overpayment of $68,199.32 was withheld in anticipation of "additional balance" on Lawson's 2010 return (Doc. 185-3).**

Date	Event
Oct. 24, 2011	**Lawson filed 1040 for 2010, reporting unpaid individual income taxes of $2,020,384 (Doc. 317 at ¶ 6).**
Nov. 2011	Williamson and [redacted] traveled to Fairbanks together (Doc. 398 at 50–51), and maintained a "fair amount of contact" (Doc. 398 at 136).
Circa Dec. 20, 2011	Williamson dropped off groceries to [redacted]'s apartment using a key provided by her on that day, before returning the key to her on the same day (Doc. 399 at 188–89). Although Williamson had been inside the hangar on occasion with [redacted] present, the grocery drop-off was the only time when [redacted] gave Williamson permission to go into her apartment without her presence (Doc. 399 at 188–89). The key she gave Williamson on that occasion allowed entrance into the apt from an outside door without first entering hangar (Doc. 399 at 193–94). [redacted] does not recall ever giving Williamson the pin pad code to the hangar's entrance (Doc. 399 at 193–94). Williamson said she did provide it.
Dec. 25, 2011	Williamson comes to the hangar at midnight unannounced, despite previously admitting to [redacted] he wasn't supposed to be there "because of the IRS investigation"; Williamson told "it was okay as long as no one saw him there" (Docs. 257 at ¶ 16; 399 at 196).
Jan. 25, 2012	**IRS Examination opens audit on Little Wing (Gov. Ex. 4 at RA1767).**
Jan. 26, 2012	IRS informed Lawson of audit on Little Wing (Doc. 317 at ¶ 7).
Feb. 13, 2012	After declining a few invitations from [redacted] (Doc. 399 at 187-188), Williamson went to the hangar unannounced in mid-February interacted with [redacted] and left upset (Doc. 257 at ¶ 17).
Feb. 2012	Williamson went to the hangar, dropped off something inside the hangar, and left before [redacted] came to the door (Doc. 257 at ¶ 18).
March 9, 2012	**TIGTA starts investigating Kalanges (Doc. 246-1 at 1).**
April 4, 2012	**Williamson accompanied [redacted] to unrelated field calls (Doc. 256 at ¶ 16). En route, Williamson drove with [redacted] to [redacted]'s workplace to drop off lunch and mail (Doc. 256 at ¶ 17). On the way back, Williamson "steered off the route" and headed to the hangar, saying that he needed "to check something out" and that he thought "[redacted] is still seeing [Lawson]" (Doc. 256 at ¶ 19). Arriving at hangar visibly angry, Williamson first looked in the windows to make sure that [redacted] "didn't have a roommate as [redacted] had] told him"; he then warned [redacted] not to tell anyone, entered the hangar "using a push pad code on the front," spent "several minutes" inside,**

Date	Event
	and came out saying "it looked like two people had slept in [redacted]'s bed" (Docs. 256 at ¶¶ 20–21; 236-1 at 5). Williamson remained upset en route back to office, "talking about [redacted] and another woman [he dated] and express[ing] his dislike for Lawson," according to [redacted] (Doc. 256 at ¶ 22).
April 4, 2012	**[redacted] consulted ethics guidelines, reported the incident to TIGTA, and spoke to TIGTA SA Siegel (Docs. 256 at ¶ 23; 398 at 235).**
April 5, 2012	[redacted] emailed Siegel expressing her concern about retaliation if Williamson found out she reported him (Doc. 419 at ¶ 21). Siegel said she would investigate (Docs. 256 at ¶ 24; 236-1 at 4; 398 at 235).
April 5, 2012	Oen decides to reassign Lawson case to another RA due to RA Dixon's relocation (Gov. Ex. 4 at RA1768).
April 6, 2012	[redacted] detailed the break-in to Siegel in another email (Def. Ex. XX).
April 2012	Oen reassigns Lawson case to Examination RA Zeznock (Doc. 224 at 60).
April 8, 2012	Williamson dropped off a gift outside the hangar unannounced (Doc. 257 at ¶ 20).
April-May 2012	**[redacted] says she informed Zeznock of the break-in within a month to two of the event (Doc. 398 at 240–41).**
June 7, 2012	**Zeznock's first recorded activity in Lawson case, which is on the Little Wing audit (Doc. 224 at 217; Gov. Ex. 4). Zeznock reached out to FTA Kalanges for assistance in assessing indicators of fraud (Doc. 224 at 62).**
Mid-June 2012	FTA Kalanges assigned to Lawson case (Doc. 224 at 138-139). Kalanges starts making recommendations of things to do in examination for fraud (Doc. 224 at 140).
June 18, 2012	**Zeznock issues Information Document Request to Lawson, requesting certificates for two *specifically identified* airplanes in addition to a plane on the depreciation schedule, and requesting a tour of the Little Wing hangar [which is the hangar Williamson entered on April 4. (Def. Ex. 9 at RA1875).**
June 19, 2012	**Kalanges sent FTA memo to Zeznock; notes questionable elements with Lawson's tax situation, recommends moving case to status 17 (fraud development), recommends third-party contact with Lawson's former preparer, recommends interview with Lawson to get Lawson's statement on why he changed preparer among other things, recommends summoning all bank accounts (Gov. Ex. 9). Before Kalanges drafted the memo at Gov. Ex. 9, the case is still premature for criminal (Doc. 224 at 145). In a**

Date	Event
	2/4/13 email to Zeznock, Oen says Zeznock should have placed Lawson into Status 17 at this point (Def. Ex. 37 at OEN0007).
July 6, 2012	Siegel discovered that Williamson had a poor work performance problem due to family issues in 2008 (Doc. 236-1 at 8)
July 9-10, 2012	**Zeznock expanded examination to include Lawson's 2009 and 2010 personal returns (Gov. Ex. 7), due to Lawson's "large, unusual, questionable" (LUQ) cash contributions (Doc. 224 at 229).**
July 10, 2012	**Probe Lead Sheet states "FTA informed RA to stop requesting information and refer the case to CI. [Criminal Investigation]" (Doc. 186-12). Zeznock explained that the entry was made in 2013. It reflected the July 2012 date because he forgot to update the date on the document (Doc. 224 at 255–56).**
July 12, 2012	IRS informs Lawson of the audit on his 2009 and 2010 personal returns (Doc. 185-13).
July 18, 2012	Siegel contacted [redacted] for additional information (Doc. 242-1 at 3).
Aug. 7-22, 2012	**Zeznock expanded examination to include Midnight Sun Oncology (Gov. Ex. 8 at RA1591), because he determined Midnight Sun "to be the donating party for the [large, cash] contributions" (Doc. 225 at 11).**
Aug. 14, 2012	Siegel contacted [redacted] again (Doc. 242-1 at 3).
Aug. 17, 2012	**Zeznock interviewed Lawson alongside PoA Janet Bolvin (Gov. Ex. 4 at RA1769; Doc. 185-15), in regard to both Little Wing, Midnight Sun, and Lawson personally (Doc. 224 at 235). Lawson stated that he didn't receive anything in return for his donations to Pilgram Walk (Docs. 7 at 3; 85 at 3; 225 at 63). Zeznock does not inform Lawson of Williamson's entry to the hangar on April 4.**
Aug. 21, 2012	**Zeznock toured Little Wing hangar with Lawson and Bolvin, noticed the existence of a potential tenant in hangar, took special notice of a vehicle inside the hangar, identified the vehicle owner as [redacted] via car license plate, and planned to "make third party contact" with [redacted] (Gov. Ex. 4 at RA1769). No additional personal interviews of Lawson (Doc. 225 at 19, 21).**
Aug. 21, 2012	Zeznock interviewed Lawson's previous bookkeeper (Gov. Ex. 8 at RA1591).
Aug. 22, 2012	Zeznock issues Information Document Request to Lawson, requesting Little Wing's bank statements, plane log books, and records of repairs and depreciation (Def. Ex. 9 at RA1874).

Date	Event
Aug. 23, 2012	Zeznock discusses Lawson case with Kalanges (Gov. Ex. 7 at RA1398). Kalanges emails Zeznock that Lawson is a strong case, says interview would be critical for fraud development (Gov. Ex. 10). Attached FTA Memo states: -Taxpayer cooperative, but Bolvin interrupts -Recommends interviewing third-party "hangar resident" without mentioning the necessity for prior notice to Lawson. Says it is critical evidence for rebutting Lawson. -Already made third-party contact with a bookkeeper before this.
Aug. 24, 2012	Zeznock interviews [redacted] (Gov. Ex. 4 at RA1769). Zeznock does not inform [redacted] of the April 4 entry to the hangar by Williamson.
Aug. 30, 2012	Siegel contacted [redacted] again (Doc. 242-1 at 3).
Aug. 30, 2012	Siegel interviewed Williamson about the break-in; Williamson gave inconsistent statements (Doc. 236-1 at 9–12).
Aug. 31, 2012	**Zeznock informs [redacted] and Oen of the TIGTA investigation of Williamson, involving his entry to the Lawson hangar. [redacted] recommends Zeznock suspend investigation "until a related issue has been settled" (Gov. Ex. 7 at RA1398), and asks Zeznock to prepare a memo in order to protect "case evidence" (Def. Ex. 47). [redacted] described the situation as a "type" that "has not [been] encountered . . . before" (Def. Ex. 46; Doc. 317 at ¶¶ 29–30; Def. Ex. 46; Doc. 225 at 86–89).**
Sept. 10, 2012	Siegel discussed Williamson's matter with supervisor Harris (Doc. 242-1 at 3).
Sept. 26, 2012	Siegel notes in her "case review" that "all leads complete [and] no evidence" (Doc. 242-1 at 3).
Oct. 30, 2012	Zeznock went to Midnight Sun to interview Lawson, but only his PoA showed up (Def. Ex. 12 at RA1592; Gov. Ex. 11; Doc. 224 at 239).
Oct. 31, 2012	Zeznock discusses Lawson with [redacted] (Gov. Ex. 7 at RA1398). [redacted] suggests follow up interview with list of questions (Gov. Ex. 11).
Nov. 14, 2012	**TIGTA finished Williamson investigation and designated his violation as "misuse" of government vehicle (Doc. 236-1 at 1).**
Dec. 18, 2012	**Siegel processed the Williamson report to IRS for action on account of misuse of government vehicle (Doc. 242-1 at 3, 7).**

Date	Event
Dec. 2012 or Jan. 2013	**Kalanges recommends criminal referral for Lawson (Doc. 224 at 159; Gov. Exs. 4 at RA1770; 7 at RA1399; 8 at RA1592). Advises agents to stop requesting info from taxpayer (Doc. 224 at 159–60).**
Feb. 4, 2013	**Oen states to Zeznock that he should have moved the case to Status 17 in June 2012 following his discussion with Kalanges (Def. Ex. 37 at OEN0007), since "there were enough indicators of fraud [for IRS] to pursue it" (Doc. 224 at 62–63). The decision for criminal referral has already been made at this point (Doc. 224 at 103–04; Def. Ex. 37 at OEN0007).**
Feb. 11, 2013	**Zeznock moved case to Status 17 and simultaneously started CI referral process (Gov. Exs. 4 at RA1770; 7 at RA1399; 8 at RA1592).**
Feb. 19, 2013	Zeznock referred Lawson to CI; Kalanges had significant input in the referral process (Doc. 224 at 163–65, 207). Zeznock provided civil audit file to SA Rhame (Doc. 85 at 9).
Feb. 20, 2013	SA Rhame is assigned to Zeznock's CI referral; Kalanges finds it "very cool to see [Zeznock's] referral move so quickly and get assigned like this" (Def. Ex. 36).
Feb. 20, 2013	Kalanges emails Zeznock, reminding him not to contact Lawson or take Lawson's calls, to avoid tipping off Lawson about criminal referral (Gov. Ex. 15).
Feb. 28, 2013	**Kalanges interviewed by TIGTA agents; interview transcribed (Doc. 415-1). He was evasive after being confronted with names of his victims (Doc. 414 at 3–4).**
Feb. 28, 2013	**30-days suspension letter (for misusing government vehicle) sent to Williamson (Doc. 242-1 at 11).**
March 20, 2013	**CI accepts criminal referral (Gov. Ex. 7 at RA1399). Case assigned to RA Rhame (Doc. 423 at 6).**
March 2013	**Rhame met [redacted] regarding Lawson; [redacted] informed Rhame about the break-in with similar detail as her notification to TIGTA earlier, and informed Rhame of the Williamson TIGTA investigation (Docs. 256 at 25; 383 at 3; 398 at 241, 243–45; 399 at 136). Rhame made the written note "[redacted] dated Dr. Lawson" (Doc. 423 at 6).**
April 1, 2013	Zeznock worked on Status 18 referral (Gov. Ex. 7 at RA1399).
April 9, 2013	Zeznock "closed [civil] case" (Gov. Ex. 4 at RA1770).

Date	Event
May 2013	Williamson went on leave for 30 days for his misconduct, characterized by TIGTA as "just having a bad day" (Docs. 242-1 at 11; 256 at ¶ 24). [redacted] placed on a Performance Improvement Plan (PIP) (Def. Ex. F at ¶ 42).
June 13, 2013	TIGTA investigation of Kalanges concludes (Doc. 246-1 at 1).
2013	IRS CI referred Lawson to DOJ Tax for criminal investigation (Doc. 423 at 7).
July 2013	**Grand jury investigation initiated against Lawson for tax fraud (Doc. 317 at ¶ 8).**
Sept. 9, 2013	**Rhame pressured [redacted] to meet her; [redacted] agreed to do so at a restaurant (Docs. 257 at ¶ 23; 399 at 144). Rhame and Zeznock interviewed [redacted]; they asked [redacted] "what types of things . . . Lawson kept in the hangar along with other questions"; they steered away when [redacted] asked about Williamson and explained their "failed relationship" (Doc. 257 at ¶ 23). In their interview notes, Rhame and Zeznock do not mention Williamson, but merely that [redacted] had a "bad relationship with . . . an IRS employee" before moving into the hangar (Def. Ex. CC at ¶ 3). Neither Rhame or Zeznock inform [redacted] of Williamson's entry into the hangar and apartment on April 4. They do not inquire if she gave him permission to enter.**
Sept. 30, 2013	[redacted]
March 2014	Hendrickson gets assigned to Lawson investigation to assist AUSA Bradley (Doc. 317 at ¶ 9).
2014	**Rhame informed Hendrickson of Williamson's break-in of Lawson's hangar and the existence of a TIGTA investigation (Docs. 399 at 146–47, 151–52, 154–55; 322 at ¶ 8; 423 at 7). Hendrickson at least understood it as a "supervisor['s] inappropriate behavior" but disregarded (Doc. 317 at ¶ 10).**
July 2014	Williamson left his Collections GM position and became an administrative officer at IRS Senior Commissioner's FDICR team (Doc. 398 at 102–03).
Sept. 2015	IRS-CI referred Lawson to DOJ Tax for prosecution (Doc. 317 at ¶ 12). Hendrickson becomes lead attorney on Lawson investigation (Doc. 317 at ¶ 11).
Jan. 2016	**DOJ Tax authorized prosecution of Lawson (Doc. 317 at ¶ 13).**
Fall 2016	**Hendrickson discussed the Williamson issue with Rhame during grand jury preparation, but disregarded it again (Doc. 317 at ¶ 14).**
Oct. 18, 2016	**Indictment charging Lawson on one count of 2009 tax evasion (Doc. 2).**

Date	Event
Nov. 16, 2016	**Superseding indictment adding three counts for 2010-12 tax evasion and one count for impeding or obstructing administration of revenue laws (Doc. 7).**
Nov. 29-30, 2016	Hendrickson and Russo enter appearance as DOJ Tax attorneys to appear alongside AKD AUSA Randall (Docs. 13; 14).
Dec. 13, 2016	**Court ordered *Brady* and *Giglio* disclosure (Doc. 21).**
Dec. 29, 2016	Court declared case complex (Doc. 35).
Dec. 2016	**Government produced its first discovery, which contained a transcript mentioning "ROGM 41" removed from Lawson case due to conflict of interest (Doc. 423 at 8).**
Dec. 2016 - May 2017	**Government produced discovery including all grand jury transcripts, which included Rhame's testimony (Doc. 317 at ¶¶ 19–20). Rhame did not disclose the allegation Williamson broke into Lawson's hangar.**
Jan. 10, 2017	**Court again ordered *Brady* and *Giglio* disclosure (Doc. 38).**
May 1, 2017	**Government told defense that SA Rhame won't be a witness (Doc. 83-2 at 3).**
May 2, 2017	Defense admits erroneous deduction of donation, but contends no willfulness (Doc. 41 at 4–6).
May 2017	**Defense points out that notes relating to the initial civil audit of Lawson were not produced (Doc. 82 at 9).**
May 9, 2017	**Defense letter to government requesting *Brady/Giglio* and *Henthorn* material (Doc. 83-2). Hendrickson refused claiming she has already produced all documents "that form part of the . . . indictment" (Doc. 83-5 at 6). Hendrickson promised to produce *Brady/Giglio* and *Henthorn* materials if discovered (Doc. 83-3).**
May-June 2017	**Parties met regarding defense's request for additional discovery including *Brady/Giglio,* much of which the government declined. (Doc. 82 at 9).**
June 28, 2017	Government intends to call RA Zeznock as expert witness and promises to provide relevant material (Doc. 83-5 at 6–7).
Aug. 17, 2017	**Defense discovery motion pursuant to Rule 16 sought among other things IRS documents and government correspondence relating to Lawson investigation, stating the reason for the request is to obtain material relevant to witness credibility and impeachment (Doc. 82 at 5).**

Date	Event
Aug. 31, 2017	**Hendrickson opposed discovery motion on grounds that the requested material is either non-discoverable or not in government control, and that government already provided more than required (Doc. 85 at 3–4); she also argued that "information on file with IRS" doesn't equate to "possession [by] the prosecution team" (Doc. 85 at 10).**
Sept. 1, 2017	Government expert disclosure on Zeznock (Doc. 86).
Sept. 13, 2017	**Defense again requested *Henthorn* materials about testifying witnesses (Doc. 415-4 at 3).**
Sept. 29, 2017	Argument on Discovery Motion. **Defense points out lack of production on Little Wing and other civil audits related to Lawson (Doc. 107 at 16, 18).**
Oct. 2017	**Hendrickson knew the "conflict" caused by Williamson's relationship with [redacted], who was a tenant of Lawson (Doc. 317 at ¶ 18).**
Oct. 6, 2017	**Defense requested info on ROGM 41's removal on "conflict of interest" (Doc. 317-1).**
Oct. 16, 2017	Government changes expert to RA Byrd, in order to allow Zeznock to testify on the facts (Doc. 105).
Oct. 25, 2017	**Hendrickson declined Lawson's request for discovery on the ROGM 41 removal (Doc. 317-2).**
Oct. 26, 2017	**Government produced several hundred pages of additional discovery material (Doc. 117 at 9–10).**
Nov. 3, 2017	**Defense's second discovery motion on ROGM 41's conflict of interest (Doc. 112).**
Nov. 17, 2017	**Hendrickson opposed second discovery motion, arguing IRS personnel files are not discoverable under Rule 16, and arguing there is nothing to be disclosed under *Brady/Giglio* (Docs. 117 at 6; 317 at ¶ 21).**
Dec. 11, 2017	**Court ordered government to review and produce all *Brady/Giglio* and Rule 16 documents pertaining to the reasons for ROGM 41's removal (Doc. 157 at 14).**
Dec. 2017	**Hendrickson continued arguing that Rule 16 doesn't apply based on government's knowledge at the time (Doc. 317 at ¶ 22).**
Dec. 2017	[redacted] leaves IRS (Doc. 256 at ¶ 26).
Feb. 13, 2018	**Government produced additional material pursuant to Court order (Doc. 423 at 10).**

Date	Event
Feb. 16, 2018	**Defense emailed government stating they "do not believe [they] received any documents pertaining to ROGM 41's removal" (Def. Ex. GG).**
Feb. 26, 2018	**Hendrickson drafted a reply, which Rhame thought revealed too much detail and was inaccurate and hence offered a "more general and accurate description" (Doc. 317 at ¶ 25; Def. Ex. Z; Doc. 423 at 11). Hendrickson made new edits in order to satisfy government's "purpose . . . to give the defense and Judge Smith enough information to know there is nothing else [the government is] obliged to provide"; all three government attorneys and Rhame were copied in these exchanges, which incorrectly put Williamson's break-in in Aug 2011—i.e. the first electronic record of ROGM 41's removal (Def. Ex. JJ). Final letter fails to disclose Williamson break-in to Lawson property.**
Feb. 26, 2018	**Hendrickson emailed defense claiming no discoverable material relating to ROGM 41's removal, dismissing the "conflict issue" as Williamson's previous "personal relationship with tenant [redacted] who was living at Lawson's hangar" (Doc. 255-11). Hendrickson claimed that to her "understanding . . . at that time," Williamson "did not participate in . . . IRS collections proceedings," and believed the break-in to be "completely unrelated" to IRS proceeding (Doc. 317 at ¶¶ 26–27).**
March 9, 2018	Defense's Motion to Suppress Lawson's statements to Zeznock at audit interview (Doc. 185).
March 21, 2018	**Defense emailed Hendrickson about disclosure of Williamson-[redacted] relationship, pointing out bias issue (Doc. 317-5 at 3).**
March 30, 2018	Government's Response to Lawson's Motion to Suppress (Doc. 204).
March 30, 2018	**Defense filed Motion requesting disclosure of materials "regarding Williamson's removal . . . due to [his] personal relationship with [redacted]" (Doc. 202 at 13). Government claims this is "the first time the prosecutors had heard that Williamson believed [redacted] had a personal relationship with Lawson" (Doc. 423 at 12).**
April 13, 2018	**Hendrickson filed response claiming to "not understand the basis of" defense's position that the "romantic relationship" would spur discoverable material (Doc. 209 at 12–13).**
April 2018	**Rhame told [redacted] of a subpoena to testify; when [redacted] inquired how to address the break-in, Rhame said: "hopefully that doesn't come out" (Docs. 256 at ¶ 27; 398 at 245–46). Rhame believed it "could create a smoke-and-mirror effect" (Doc. 399 at 177).**
May 15, 2018	**[redacted] tells defense about the break-in (Docs. 255 at ¶ 16; 398 at 13, 246).**
May 15, 2018	**Government met [redacted] to prepare testimony (Doc. 402 at 3).**

Date	Event
May 15, 2018	**Russo told defense there was nothing discoverable relating to ROGM 41 (Def. Ex. KK at 2).**
May 16, 2018	**Hendrickson claims to have first learned of Williamson's suspension from Zeznock when preparing for the Court hearing (Doc. 317 at ¶¶ 17, 30).**
May 17-18, 2018	**Court hearing on Motion to Suppress (Docs. 219–20).**
May 25, 2018	**Defense wrote letter to DOJ Western Section Chief Wszalek outlining government's suppression of Williamson's information (Doc. 420 at 2).**
May 29, 2018	**Court ordered government to provide ROGM 41's removal records for *in camera* review by 6/5/18 (Doc. 227 at 15).**
May 30, 2018	**Defense filed motion setting forth allegations of government misconduct (Doc. 231).**
June 4, 2018	**Government provided Williamson records to Court for *in camera* review (Doc. 423 at 13).**
June 5, 2018	**Defense notified government its intention to call Vicki Boos (Kalanges' IRS manager) as witness (Doc. 402 at 5).**
June 6, 2018	**Rhame spoke to Boos for the first time, and was informed of Kalanges' TIGTA investigation (Doc. 402 at 5).**
June 7, 2018	**Government filed motion to obtain Kalanges' TIGTA report, and obtained the report on the same day (Doc. 402 at 5).**
June 12, 2018	**Government disclosed Kalanges' TIGTA report to Court for *in camera* review (Doc. 402 at 5).**
June 15, 2018	**Government interviews Williamson for the first time; Williamson describes the relationship between himself-[redacted]-Lawson (Doc. 317 at ¶ 34; Def. Ex. F).**
June 19, 2018	A second superseding indictment is filed, modifying the alleged acts of obstruction in response to the Motion to Dismiss Count 5 filed earlier.
June 20, 2018	**Defense filed Motion to Dismiss Indictment (Doc. 254).**

Date	Event
June 21, 2018	**"In light of [government's] recently learned . . . IRS employee misconduct," defense requested *Henthorn* materials for a list of government witnesses including Kalanges (Doc. 415-4 at 3–4).**
June 21, 2018	Government informed defense that the *Henthorn* materials will be provided to Court for *in camera* review (Doc. 415-4 at 2).
July 6, 2018	Defense asked government to accept service of a subpoena on behalf of Kalanges for the August hearing (Doc. 402 at 5).
July 12, 2018	**Government produced [redacted] TIGTA report to defense as ordered by the Court (Doc. 402 at 6).**
Aug. 3, 2018	**Rhame discovered her written notes (containing "[redacted] dated Dr. Lawson 2008/2009") from the March 2013 meeting with [redacted]; government disclosed it to defense on the same day (Docs. 423 at 14; 383 at 3).**
Aug. 5, 2018	Defense informed government that it decided not to call [redacted] as witness in August (Doc. 402 at 6).
Aug. 6, 2018	Defense states it has concluded with the "motion to suppress" and will focus on "motion to dismiss and knowledge of the disclosure issue" (Doc. 398 at 6–7).
Aug. 6-8, 2018	Evidentiary hearing on Motion to Dismiss Indictment (Doc. 388–94).
Aug. 22, 2018	Government's submission regarding [redacted] May testimony in light of post-May revelation of his misconduct (Doc. 402).
Sept. 5, 2018	Defense's Position regarding Kalanges testimony, asking Court to: -"Weigh Kalanges' testimony with suspicion" -Allow Kalanges' TIGTA report to impeach the Kalanges May testimony, despite defense not recalling him in August (Doc. 414 at 9-10).
Sept. 5, 2018	Defendant's Closing Brief (Doc. 416).
Sept. 5, 2018	Steven Skrocki, Deputy Criminal Chief in Anchorage, enters appearance (Doc. 410).
Sept. 5, 2018	Larry Wszalek, Chief of DOJ Tax Western Criminal Section, files affidavit to request two weeks extension for government's filings due to alleged misconduct.
Sept. 19, 2018	**Government's Closing Brief (Doc. 423).**

Date	Event
Oct. 3, 2018	Defendant's reply to Government's Response (Doc. 426).
Dec. 26, 2018	**Court finds government misconduct and orders briefing on appropriate remedies (Doc. 435).**
Jan. 7, 2019	**Government Response to Court Order, denying existence of "bad faith" and "pattern of discovery shortcomings," and stating that all 3 prosecutors (Hendrickson, Randall, Russo) have self-reported their conduct to the DOJ Office of Professional Responsibility (OPR) (Doc. 436 at 3).**
Jan. 7, 2019	Defense Response to Court Order, asking indictment dismissal (Doc. 437).
Jan. 8, 2019	Randall's Errata sheet denying OPR self-reporting and disassociating herself from the prosecution misconduct (Doc. 438).
Jan. 8, 2019	Hendrickson's Clarification to Errata challenging Randall's claim (Doc. 440).
Jan. 9-10, 2019	Hendrickson and Russo withdraw appearance (Docs. 442; 443).
Jan. 10, 2019	USAO's "Notice Regarding Recent Filings" asserting that Docs. 438–441 were made by DOJ attys "not authorized to make the respective filings on behalf of" United States (Doc. 444).
Jan. 14, 2019	Appearance entries of Corso, Cortada, and Kluge for the government (Docs. 445–446, 449).
Jan. 16, 2019	Status Conference; defense rejected recent plea offer, but both parties still open to negotiation; defense objects to further continuance of trial (Docs. 452; 458).
Feb. 7, 2019	Notice to the Court of Recently Discovered Rule 16 evidence. The new prosecution team gave notice that a box of documents provided by PoA Bolvin during a civil audit were not provided earlier and had recently been provided to defense counsel. Government counsel said many of the documents had individually been produced to defense from other sources (Doc. 461).
Feb. 11, 2019	Supplemental Declaration of Ariana Seldman Hawbecker in support of Motion to Suppress filed. Defense counsel reported new discovery received February 6, 2019, which included "Agent Notes". Handwritten agent notes record a meeting February 26, 2012 between Zeznock, Oen, Kelly, Rhame, and Key. Counsel argues this is evidence government improperly used the Civil Division through Zeznock to obtain information for use in criminal case and failed to warn Lawson before his interview.