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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

UNITED STATES OF AMERICA,
Plaintiff,

v.

JAMES PARKER, et. al,
Defendants.

No. 10-CR-757-PHX-ROS

**DEFENDANTS’ JOINT MOTION TO
COMPEL OR EXCLUDE DISCOVERY**

Defendants James R. Parker and Jacqueline L. Parker (jointly “Defendants” or “Parkers”) hereby move this Court to compel the production of discovery, or alternatively, exclude the testimony of Government witnesses through whom such discovery could be presented at trial.

BACKGROUND

On September 13, 2010, this Court issued a Scheduling Order. (*See* Docket No. 39). Pursuant to that Order, by October 8, 2010, the Government was to have complied with Rule 16 discovery and produce “Jencks material and witness impeachment material, if not produced sooner.” The Order further specifies that this is the “close of the Government’s discovery,” except for designation of “rebuttal expert witnesses, if any.” In addition, pursuant to the Government’s request, Defense counsel also submitted a letter outlining the types of discovery

1 that it was seeking. (*See* Exhibit 1). Defendants complied with this request, even though they
2 did not have any legal obligation to do so.

3 The Government has not met the discovery obligations set forth in the Court's
4 Scheduling Order. This is particularly notable given that the Scheduling Order was ***based upon***
5 ***the Government's recommendations***. (*See* Docket No. 18).

6 Instead of meeting its discovery obligations, the Government produced 15,756 pages of
7 documents, which were laden with duplicates. For example, at least nine copies of the Power of
8 Attorney by Greg Robinson and Timothy Ligget for the Parkers (dated 2/13/04) were provided¹.
9 Consequently, defense counsel spent a great deal of time wading through large quantities of
10 repetitive production. Meanwhile, as explained in this motion, critical Jencks Act, Rule 16, and
11 other impeachment materials that pertain to key Government witnesses were not provided.²

12 Defense counsel subsequently requested that the Government amend its production. (*See*
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15 ¹ The Government's bates numbers for these documents are listed here: (IRS Audit files; Misc IRS Collection files
16 009052-53);(IRS Collection files 012273-74); (IRS Collection; US Tax Court; Misc files 004935-36); (IRS
17 Collection; US Tax Court; Misc files 004946-47); (IRS Collection; US Tax Court; Misc files 004460-61); (IRS
18 Collection; US Tax Court; Misc files 004468-69); (Timothy Ligget CPA 001067-68); (Timothy Ligget CPA
19 001099-100). However, one of these (Timothy Ligget CPA 001102-03) does not have Robinson's signature on it.

20 ² It is conceivable that the Government is confused about the timing of its Jencks Act and *Brady/Giglio* disclosure
21 obligations. In the Ninth Circuit, "[w]hen the defense seeks evidence which qualifies as Jencks Act and *Brady*
22 material, the Jencks Act standards control." *United States v. Jones*, 612 F.2d 452, 455 (9th Cir. 1979). Here,
23 however, pursuant to the Government's request, the Court has ordered that Jencks Act materials be provided to the
24 Defendants by October 8, 2010, which is well ahead of trial. Consequently, the Government is bound by that
25 deadline.
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1 Exhibits 2 & 3).

2 The Government's primary response was that, since it has not yet determined its
3 witnesses, it cannot provide complete discovery. *See id.* However, this response is insufficient
4 for four reasons. First, the Government proposed this discovery order, so the Government
5 should be held to it. Rule 16 discovery and exculpatory evidence production are due *prior* to the
6 designation of witnesses. Now, however, the Government is trying to backpedal on its
7 obligations.

8 Second, the Government apparently knew its witnesses well enough early last summer to
9 present sufficient evidence to obtain an Indictment, which was filed on June 8, 2010. (*See*
10 Docket No. 1). It is difficult to believe that the Government's case has changed so radically
11 since then that it will not be using most of the same witnesses at trial. (*See* Government's list of
12 grand jury witnesses, which is labeled as bates SAR Exhibits – List of Witnesses and Exhibits
13 015478-84).

14 Third, the Government has the burden of proof in this case. It has been investigating the
15 Defendants since at least 1999.³ Consequently, it seems strange that, after all of this time, the
16 Government now professes to not know its principal witnesses.

17 Fourth, in accordance with the Discovery Order, the Defendants have reciprocal
18 discovery obligations on January 31, 2011. With the lack of clarity about the Government's
19 case, it will be particularly difficult for the Defendants to determine which documents they
20 should produce. To this end, the Defendants also are filing a joint motion for particulars.

21 The Government's other main response in October and November was that it would
22 continue to review discovery thoroughly with regard to its discovery obligations. (*See* Exhibit
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3). However, the Government has not produced any further documents. Again, considering that the Court adopted the scheduling order drafted by the Government, this conduct is unacceptable.

CATEGORIES OF INADEQUATE PRODUCTION

This Court ordered the Government to provide discovery in accordance with Rule 16 and “Jencks material and witness impeachment material” by October 8, 2010. The Government has not done so. Below are the specific categories of missing documents:

I. Special Agent’s Report

The Parkers object to the Government’s refusal to provide the Special Agent Report (“SAR”) of the IRS Special Agent in charge of this investigation, presumably Ms. Lisa Giovanelli (f/k/a Lisa Engel).

The Report of the Special Agent in charge of a criminal tax investigation is critical to the defense in these cases. The assigned Special Agent is the IRS employee that provides most of the evidence (either directly or through investigation or in a supervisory capacity) on behalf of the Government. In addition, the SAR is created in connection with the investigation by IRS Special Agents, who directly rely on it. Further, the Revenue Agent uses the SAR in computing an alleged tax deficiency amount, which relates to one of the elements that the Government must prove in this type of criminal tax case. The SAR also discusses the factors and deductive processes, which were utilized in arriving at conclusions about the defendants’ assets, liabilities, and expenditures. Further, cross-examination using the SAR can be structured to challenge not

³ This is the date that the Government initiated an examination of the Parkers’ 1997 Form 1040 tax return.

1 only the factual determinations made by the agent, but the very sufficiency of the investigation.

2 The Government's experts may also review the SAR.⁴

3 Here, the case agent, Ms. Giovanelli was extensively involved in managing and shaping
4 the investigation of the Parkers. Since the SAR is her primary report, it is essential for showing
5 if there were any improprieties in the handling of the investigation or her motivations during the
6 same. For instance, of the memorandums of interview that the Government produced, Ms.
7 Giovanelli conducted more interviews than any other individual. Indeed, this is the type of
8 document is so relevant that it is often used as evidence during trial/sentencing by the defendant,
9 Government, or both.

10 ***1. Case Law Supporting Disclosure of the SAR***

11
12 As previously discussed, the Government's production was due on October 8, 2010.
13 Consequently, the SAR should have been produced at that time. Below is some of the case law
14 on production of the SAR:

15 The Special Agent's Report is a "statement" that is discoverable under the Jencks Act.
16 *See, e.g., United States v. Dynavac, Inc.*, 6 F.3d 1407, 1410 (9th Cir. 1993) (trial court ordered
17 Government to produce grand jury transcripts and SAR in civil tax case); *United States v.*
18 *Sorrentino*, 726 F.2d 876, 887-88 (1st Cir. 1984) ("[An IRS special agent] had prepared a 'special
19 agent's report' summarizing his pretrial investigation. The report is clearly a 'statement' under
20 [the Jencks Act]."); *United States v. Koskerides*, 877 F.2d 1129 (2nd Cir. 1989) (in tax evasion
21 case, redacted SAR constituted Jencks material); *United States v. O'Connor*, 273 F.2d 358, 60-

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24 ⁴ *See, e.g., United States v. O'Keefe*, 825 F.2d 314 (11th Cir. 1987) (IRS agent admitted on cross-examination that he
25 relied upon the SAR. The Court examined it *in camera* and ordered a redacted version produced.).
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1 61 (2nd Cir. 1959) (in tax evasion case, SAR “clearly fell within the scope of the Jencks Act”);
2 *United States v. Cleveland*, 477 F.2d 310, 7301 (7th Cir. 1973) (in a tax evasion prosecution, a
3 written report by the special agent is Jencks material — it was reversible error when the SAR
4 was not produced); *Burke v. United States*, 279 F.2d 824, 60-2 (8th Cir. 1960)(trial court
5 committed reversible error in tax evasion and fraud case by refusing requests for written reports,
6 even though they were not necessarily done contemporaneously with the investigation, and
7 statements from two special agents who were government witnesses); *United States v. Higgins*,
8 2 F.3d 1094, 1095 (10th Cir. 1993) (noting that SAR was provided to defendant in tax evasion
9 case); *United States v. Williams*, 875 F.2d 846, 853 (11th Cir. 1989) (criminal tax evasion case
10 where court ordered production of redacted SAR).

11 In fact, in the Ninth Circuit, it can be reversible error for the SAR not to be produced in a
12 criminal tax case. *See, e.g., Lenske v. United States*, 383 F.2d 20 (9th Cir. 1967) (criminal tax
13 conviction was reversed based upon, in part, a Court-redacted version of the SAR).⁵

14 **2. Government’s Argument Against Disclosure of the SAR**

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16 The Government refuses to provide a copy of the SAR, maintaining that it has not yet
17 determined whether it will name Ms. Giovanelli as a witness. (*See Exhibit 3*).⁶ This is pure
18 gamesmanship. Ms. Giovanelli was the Special Agent in charge of the investigation against the
19 Parkers.

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22 ⁵ If redactions are made to the SAR, then they should be done sparingly. The Jencks Act requires that the
23 Government produce statements “which relate to the subject matter as to which the witness has testified. . . . The
24 statement need relate only generally to the events and activities testified to by the witness to come within its sweep.”
United States v. Alvarez, 86 F.3d 901, 906-07 (9th Cir. 1996).

25 ⁶ The Government also indicated that it would not provide the SAR under Rule 16 disclosure requirements. This is
26 not relevant. It is our position that the SAR is primarily discoverable under Jencks and as exculpatory evidence,
both of which the Court has already ordered the Government to disclose.

1 The Defense can think of only two possible motives for the Government's refusal to turn
2 over evidence that it already committed to releasing. First, the Government might be trying to
3 delay its production by waiting until closer to trial to admit that Ms. Giovanelli will testify.
4 Here, however, the Government's self-imposed deadline to submit Jencks Act and other forms of
5 exculpatory evidence has passed. Consequently, this is not an acceptable reason for delaying
6 production of the SAR. Second, the Government might actually want to keep Ms. Giovanelli
7 from testifying, in order to avoid disclosing improper acts during this investigation or evidence
8 that would be helpful to the defense. Such a motive underscores the need for the SAR's release.

9 The Government cannot circumvent the release of Ms. Giovanelli's SAR (and cross
10 examination of her, based upon the material contained in it) by relying upon individuals such as
11 records custodians or her subordinates to essentially introduce this evidence. Therefore, even if
12 Ms. Giovanelli does not testify, as previously discussed, then SAR should still be produced on
13 other grounds.

14 **A. Disciplinary Records for the lead Special Agent**

15 The Defendants have also requested the disciplinary records for the Special Agent in
16 charge, presumably Ms. Giovanelli. Under *Brady/Giglio*, the prosecution should provide
17 exculpatory material relevant to each witness. *Brady v. Maryland*, 373 U.S. 83 (1963); *Giglio v.*
18 *U.S.*, 405 U.S. 150 (1972). Materials that would assist in cross examination of the witness, such
19 as disciplinary records and prior statements from the witness, should be provided to the
20 defendant. Such records can provide critical impeachment material in these types of criminal tax
21 cases in which the jury's verdict can turn on credibility. *See, e.g., United States v. Kisqewski*,
22 877 F.2d 210, 215-216 (2nd Cir. 1989) (circuit found that it was error for the trial court to refuse
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1 to compel disclosure of Special Agent's personnel file, which included a letter of reprimand for
2 taking a bribe ten years earlier).

3 **B. Grand Jury Testimony by Trial Witnesses**

4 The Parkers request that this Court compel the Government to produce copies of the
5 grand jury testimony of any witnesses that the Government may use at trial. Alternatively,
6 Defendants request that the Government be precluded from designating any witness that it used
7 before the grand jury, unless it provides the Defendants with a copy of the grand jury testimony
8 within three business days of this Court's grant of this Motion. The Defendants do not seek all
9 grand jury testimony—just the testimony of the witnesses that the Government might call at
10 trial.⁷ The Parkers are merely asking for transcripts for whichever of the 34 individuals listed⁸
11 might testify at trial. In fact, the lack of production of the grand jury transcript can be grounds
12 for striking the testimony of a witness at trial. *See, e.g., United States v. Cardenas-Mendoza,*
13 *579 F.3d 1024, 1027-28 (9th Cir. 2009)* (it was an abuse of discretion for the trial court not to
14 strike the testimony of a government agent whose grand jury testimony transcript could not be
15 produced). The grand jury testimony for these requested witnesses is producible for several
16 reasons, as discussed in the following sections.
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20 ⁷ The Ninth Circuit distinguishes between grand jury transcripts of witnesses who are not called or to be called at
21 trial, and those that do or are likely to be called at trial. Only transcripts of witnesses in the second category tend to
22 be covered by the Jencks Act. *See, e.g., United States v. Daras, 462 F.2d 1972 (9th Cir. 1972).*

23 ⁸ *See* List of Witnesses and Exhibits by Lisa Giovannelli (bates SAR Exhibits – List of Witnesses and Exhibits
24 015478-84). The document further states “This page contains secret grand jury information. Disseminate only
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I. Jencks Act

“The Jencks Act requires that the Government produce any ‘statement’ in its possession of a witness it has called in which relates to the subject matter which the witness has testified. This would include a transcript of a witness’s testimony before a grand jury.” *United States v. Knowles*, 594 F.2d 753, 755 (9th Cir. 1979) (conviction was reversed because the government failed to provide the grand jury transcript of a witness); *United States v. Shelton*, 588 F.2d 1242, 1247 (9th Cir. 1978) (criminal tax case in which defense failed to show prejudice by delay in providing grand jury transcript under Jencks Act until day before trial); *United States v. Sterling*, 742 F.2d 521, 524 (9th Cir. 1984) (government conceded that grand jury transcript was discoverable under Jencks); *see also United States v. Miller*, 771 F.2d 1219, 1229-30 (9th Cir. 1985) (harmless error for trial court not to hold *in camera* review of redacted sections of the grand jury transcript because the Government correctly claimed they were irrelevant), *see also Dennis v. United States*, 384 U.S. 855 (1966).

Transcripts for testifying witnesses are needed to impeach, refresh recollections and test credibility. *See, e.g., Petrol Stops Northwest v. Continental Oil Co.*, 647 F.2d 1005 (9th Cir. 1981)(not an abuse of discretion for the trial court to order disclosure of grand jury transcripts in a civil case when the “compelling and particularized need” was “to impeach, refresh recollections and test credibility”); *United States v. Shields*, 571 F.2d 1115, 1120 (9th Cir. 1978) (the IRS was allowed to use a transcript from the Idaho grand jury to establish the appellant’s civil tax liability).

pursuant to Rule 6(e), Fed. R. Crim. P.” For the purposes of this motion, we are assuming that this was the list used before the grand jury in the present case.

1 If there are issues over the disclosure of the testimony for particular witnesses, then the
2 transcripts should be reviewed *in camera*. See, e.g., *United States v. Crowson*, 828 F.2d 1427,
3 1429 (9th Cir. 1987).

4 **2. Fed. R. Crim. Pro. 6(e)**

5 The grant of a request for a grand jury transcript is discretionary. *United States v.*
6 *Murray*, 751 F.2d 1528, 1533 (9th Cir. 1985). Under Fed. R. Crim. Pro. 6(e), the district court
7 may permit disclosure of grand jury transcripts when the moving party shows (1) that the request
8 is preliminary to or in conjunction with a judicial proceeding and (2) his or her “particularized
9 need” for the transcripts. See *United States v. Sells Engineering, Inc.*, 463 U.S. 418, 443 (1983).
10 The need for disclosure must be greater than the need for continued secrecy—the party seeking
11 the discovery must structure his or her request to cover only material needed. *Douglas Oil Co. v.*
12 *Petrol Stopps Northwest*, 441 U.S. 211, 222-23 (1979); *United States v. Ferreboeuf*, 632 F.2d
13 832, 835 (9th Cir. 1980), *cert. denied*, 450 U.S. 934 (1981); see also *United States v. Williams*, 504
14 U.S. 36, 39 (1992) (*dicta* in criminal tax decision states that the district court granted the defendant’s motion for
15 disclosure of all exculpatory grand jury transcripts under *Brady*).

16 The Parkers can make such a showing in this case. The grand jury testimony is vital for
17 witnesses that the Government uses in trial in order to impeach, refresh the recollections, and
18 test the credibility of witnesses when cross examining them. The disclosure is particularly
19 important in this case, because the Government has made such broad and ill-defined allegations
20 in the indictment. It is nearly impossible to formulate a defense, when the counts in the
21 indictment are so unclear. Further, if the Defendants are thus at a loss in forming their defense, it
22 is absurd to think that the Government will have the ability to identify segments from the grand
23 jury testimony of witnesses that may contain exculpatory/*Brady*/*Giglio*/*Jencks* evidence.
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1 There is little need for continued secrecy in this case. The Government has already
2 provided lists of witnesses that it used before the grand jury and the documents that it presented
3 before those witnesses. (*See* bates SAR Exhibits—List of Witnesses and Exhibits 015478-84.)
4 Consequently, there is no secrecy about the identity of these individuals or the documents that
5 the Government used before them. Further, unlike other kinds of criminal cases, in which there
6 could be concerns about the safety of the witnesses or victims, this is a tax case in which the
7 alleged crime occurred on paper. In addition, ***based upon the Government's own proposed***
8 ***discovery schedule***, the Government's deadline to produce all Rule 16 discovery and exculpatory
9 material, has passed. Thus, it is inexcusable for the Government to now balk at providing the
10 transcripts for any of these individuals who testified before the grand jury that the Government
11 might use at trial. If the Government did not want to provide such evidence this far in advance
12 of trial, then the Government should not have proposed such an order. Consequently, the
13 Government should be excluded from presenting any witness at trial that presented before the
14 grand jury if it fails to immediately produce the transcript of that witness' grand jury testimony.
15

16 ***3. Equal Access***

17 Finally, if any of the Government's witnesses or experts have reviewed the grand jury
18 transcripts, then the Parkers should be given the same access to them.

19 **C. Witness Interview Notes**

20 The Defendants ask this Court to order the Government to confirm that it has produced
21 all of the notes from its investigative witness interviews. The Ninth Circuit has stated that
22 “[r]ecords of witness interviews are Jencks Act statements.” *United States v. Bobadilla-Lopez*,
23 954 F.2d 519, 523 (9th Cir. 1992). In this case, the Government's production appears
24 incomplete. To date, the Government has provided sixteen witness interview memos for twenty
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1 individuals.⁹ Meanwhile, the Government has served at least 34 subpoenas¹⁰ and had grand jury
2 witness lists containing 34 individuals¹¹.

3 Further, the IRS has provided discovery materials that span a period of sixteen years¹² in
4 an investigation that involved at least eighteen IRS employees¹³. It seems strange that there were
5

6 ⁹ These individuals are as follows: These individuals are as follows: Tim Barnes, bank president (bates MOI
7 010784-90); Cerita Walker, bank cashier/secretary(bates MOI 010784-90); Walter Cave, businessman (bates MOI
8 010813-85); Charles DeMore, businessman (bates MOI 010813-15) ; Bill Graves, contractor (bates MOI 010813-
9 15); Dave Clark, private investigator (bates GJ Subpoenas, Belize Research, Misc. 013694); Eugene Galant, CPA
10 (bates IRS Audit Files; misc IRS Collection files 009808-13); Paul Gougen, records custodian and president of real
11 estate development company (bates MOI 010791-92); Robert Gross, home seller (bates MOI 010793-95); David
12 Hunt, revenue agent (bates MOI 010796-98); Patricia Iverson, bookkeeper (bates MOI 010799-801); Keith
13 Kuhlman, Oklahoma Commissioners of the Land Office (bates MOI 010802-04); Timothy Liggett, CPA (bates MOI
14 010805-09); James and Jacqueline Parker, Defendants (bates MOI 010782-83 and MOI 012067-68); Connie Taylor,
15 realtor (bates MOI 010810-12); Jerry Young, revenue officer (bates MOI 010820-23); Paul Chase, revenue officer
16 (bates MOI 010820-23); Roy Young, rancher (bates MOI 10816-19); and Jesse Parker (bates MOI 010782-83).

17 ¹⁰ This information comes from a subpoena log provided by the Government. (bates GJ Subpoenas, Belize
18 Research, Misc. 013693). However, given that the title on the bates says "Belize Research" rather than noting that it
19 deals with the Parkers generally, we suspect that this is only a partial list of the subpoenas.

20 ¹¹ See bates SAR Exhibits – List of Witnesses and Exhibits 015478-84.

21 ¹² The documents provided by the Government range from 1994 (see bates IRS Collection Files 012459-51) to 2010
22 (see bates GJ Subpoenas, Belize Research, Misc 013594-013595), which is 16 years.

23 ¹³ These are the IRS employees of whom we are aware: Jackie Czarzasty, David Hunt, Jeff Allen, Lisa Giovanelli
24 f/k/a Engel, Elizabeth Marriaga, Paul Chase, Jerry Young, Christina Saldate, Paul Wedepohl, Ollie Johnson, Mr.
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1 so few witness interviews compared to the number of IRS employees involved and the number
2 of individuals listed on the Government's grand jury list. Does the Government's not have
3 witness memos for these other individuals? Alternatively, does the Government's position have
4 witness memos, but is refusing to produce?

5 Since the Government's deadline for providing discovery material has already passed, the
6 Parkers seek confirmation that the Government has provided all of the relevant witness
7 interviews. The Government cannot circumvent this deadline, by alleging that it has not yet
8 selected its witnesses. If the Government has not provided these records, then the Parkers
9 request that the Government be precluded from including such individuals on its witness list.

10 **D. Full Response to the Defendants' Production Requests**

11 In addition to the Scheduling Order, the Government requested that the Defendants
12 provide letters to list some of the other materials that they were seeking from the Government.
13 In the spirit of cooperation, the Defendants did so. (See attached Exhibits 1-3). In relevant part,
14 the Defendants requested the following:
15

- 16 • **Personnel files of Government employees who will testify against the**
17 **Parkers:** Under Rule 16(a)(1)(C), a defendant can obtain copies of personnel
18 files. For this, a defendant must make a prima facie showing of materiality. See
19 *United States v. Cadet*, 727 F.2d 1453, 1468 (9th Cir. 1984) ("It is not necessary
20 for them to make as strong a showing of materiality to uphold a trial court's
21 discretionary granting of discovery as it would to overturn a trial court's denial of
22 discovery"). In addition, the personnel files should also be produced as
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24 _____
25 Sorenson, Cheryl Brunner, Jose Contreras, Douglas McClain, Jerry Carter, Dennis Herrington, Cindy Smith, and
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1 potentially *Brady/Giglio* impeachment material. The Defendants suspect that
2 certain Government employees, such as Ms. Lisa Giovanelli (f/k/a Lisa Engel),
3 who was the lead IRS Special Agent involved in the investigation of the Parkers,
4 have histories of bad acts, such as bullying or violating IRS policies and
5 procedures.

- 6 • **Witness information:** The Defendants requested copies of the following which
7 pertain to the Government’s witnesses: criminal investigation and records;
8 histories of alcohol or drug abuse, promises and inducements by the Government;
9 statements/bad acts; impeachment/contradiction and exculpatory material¹⁴;
10 evidence of bias or motives to lie; and medical or psychiatric evaluation that
11 would affect perception, recollection, and the ability to communicate or tell the
12 truth; statements relevant to the defense. (*See further* Exhibits 1-2, which
13 describes these types of information in further detail). The Government has
14 refused to complete its production on the basis that it has not yet determined its
15 witnesses. Given the Scheduling Order, this is inexcusable. The Government
16 proposed an early exchange of such information in its proposed scheduling
17 order—the Parkers and the Court agreed. Now, however, the Government is
18 trying to avoid its obligations.
19

20 To date, the Government has not stated whether it will or will not provide those items. This is
21 troublesome because it does not allow the defense to know what the Government is and is not
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23
24 Brenna Howard.

25 ¹⁴ The *Brady* rule “encompasses impeachment evidence as well as exculpatory evidence. ... Prior statements of
26 witnesses that are both material and inconsistent with his anticipated testimony fall within the *Brady* rule.” *United States v. Hanna*, 55 F.3d 1456, 1459-60 (9th Cir. 1995).

1 producing. Thus, it is difficult to ask this Court to compel the production of documents when the
2 Defendants are unaware of the existence of such documents. Consequently, the Defendants'
3 request that the Court compel the Government to produce such documents.

4 **III. PRAYER**

5 Defendants request that this Court compel the Government to provide the aforementioned
6 documents within three business days of the Court's grant of this Motion. Alternatively,
7 Defendants request that the Government be precluded from presenting witnesses that it used
8 before the grand jury if the Government has not fully complied with the production deadlines in
9 the Scheduling Order. This exclusion should not be one that the Government simply
10 circumvents. For instance, if the Special Agent in charge is excluded, then the Government
11 should not be permitted to circumvent this discovery sanction by having another expert, lay
12 witness, or records custodian present her materials or the information contained in them.
13

14
15 Respectfully submitted on December 23, 2010.

16 */s/ Rain Minns*

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- AND -

/s/ John McBee

John McBee
Arizona State Bar No.

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Comment: Add in

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CERTIFICATE OF CONFERENCE

I conferred with the Government’s counsel to attempt to resolve the discovery issues discussed in this motion. The parties reached an impasse when the Government essentially asked for Defendants’ case theory and work product to determine whether to reconsider its refusal to produce. These discussions are outlined in the attached Exhibits 1-3. We were unable to reach agreements.

/s/Rain Minns
Rain Minns
Attorney for Defendant James Parker

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CERTIFICATE OF SERVICE

On December 23, 2010, I, Joy Bertrand, attorney for the Defendant Jacqueline Parker, filed this motion with the Arizona District Court’s electronic filing system. Based on my training and experience with electronic filing in the federal courts, it is my understanding that a copy of this request will be electronically served upon the parties upon its submission to the Court.

/s/Joy Bertrand
Joy Bertrand
Attorney for Defendant Jacqueline Parker

EXHIBIT 1

United States v. Parker

10C757

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Scottsdale, AZ 85252-2734

4227 West Forest Home Avenue
Milwaukee, WI 53215-3540

September 1, 2010

AUSA Peter Sexton
United States Attorney's Office
2 Renaissance Square
40 N. Central, Ste. 1200
Phoenix, AZ 85004-4408
via fax – 602-514-7693

Re: *United States v. Jacqueline Parker*
10-CR-757

Dear Mr. Sexton:

This letter demands discovery from the Government in the above-named matter, as further set forth, below.

I. Witness Information

Pursuant to *Brady v. Maryland*, 373 U.S. 82 (1963), *Giglio v. United States*, 405 U.S. 150 (1977) and *United State v. Agurs*, 427 U.S. 97 (1976), please provide me with all of the following information within the possession, custody or control of either the government or cooperating federal, state or local law enforcement agencies:

A. *Criminal Records*

The criminal record if any, of any witnesses whom the government intends to rely upon at trial;

B. *Addictions*

Any information concerning any government witnesses' history of alcohol or drug abuse;

C. *Promises*

All promises and inducements, formal or informal, written or oral, made by attorneys and/or agents of federal, state or local government to any witness or other person with respect to cooperating, providing information and/or testifying in any proceeding related to this case, (grand jury or trial):



- rewards, monetary or otherwise;
- employment;
- protection and relocation;
- admission in the United States and any additional immigration benefit;
- the rejection, dismissal, immunization from prosecution or reduction of any federal, state or local charge in the past, present or future;
- reduction of sentence, improvements of custody status or leniency at sentencing by making the witnesses' cooperation known to the prosecution, Court, probation or parole office, or other federal, state or local agency or jurisdiction.

D. Other Cases

Information concerning other cases in which a witness has cooperated with the government in return for any of the above forms of consideration or compensation.

E. Statement/Bad Acts

Any information concerning any prior statements and bad acts reflecting on any government witness' character for truthfulness or untruthfulness.

F. Impeachment/Contradiction

Any evidence or testimony gathered during the investigation of this case, or during the investigation of other matters involving witnesses for the government in this case, that impeaches or contradicts the testimony and evidence to be offered against the defendant. For example, the defendant requests discovery of conflicting statements of witnesses given to law enforcement and prosecutorial officials, statements and grand jury testimony of individuals that he government does not intend to call that contradicts or impeaches information provided by government witnesses;

G. *Psychiatric*

Any information concerning any government witness' history of emotional disorders and psychiatric or psychological counseling, which may bear on his or her ability to perceive or relate events accurately and truthfully.

II. Additionally, pursuant to cited Federal Rules of Criminal Procedure and other applicable authority, the Defendant demands the following items of discovery:

A. *The Defendant's Statements*

Any and all written or recorded statements made by the Defendant; the substance of any statement which the government intends to offer in evidence at trial; any response by the Defendant to interrogation; the substance of any oral statements which the government intends to introduce at trial; and any written summaries of the Defendant's oral statements contained in the handwritten notes of any government agent; any response to any Miranda warnings which may have been given to the Defendant; see *United States v. McElroy*, 697 F.2d 459 (2d Cir. 1982); and any other statements by the Defendant that are discoverable under Fed. R. Crim. P. 16(a)(1)(A).

B. *Arrest Reports, Notes, and Dispatch Tapes*

All arrest reports, notes and dispatch tape or any other tapes that relate to the circumstances surrounding his arrest or any questioning be turned over. This request includes, but is not limited to, any rough notes, records, reports, transcripts or other documents in which statements of the Defendant or any other discoverable material is contained. See Fed. R. Crim. P. 16(a)(1)(A) and *Brady v. Maryland*, 373 U.S. 83 (1963). See also *Loux v. United States*, 389 F.2d 911 (9th Cir 1968); *United States v. Johnson* 525 F.2d 999 (2nd Cir. 1975); *U.S. v. Lewis*, 511 F.2d 798 (D.C. Cir. 1975); *United States v. Pilnick* 267 F.Supp. 791 (SDNY 1967). Arrest reports, investigator's notes, memos from arresting officers, dispatch tapes, sworn statements, and prosecution reports pertaining to the Defendant are discoverable under Fed. R. Crim. P. 16(a)(1)(B) and (C) Fed. R. Crim. P. 26.2 and 12(I).

Preservation of rough notes is specifically requested, whether or not the government deems them discoverable at this time.

C. *Reports of Scientific Tests or Examinations*

Pursuant to Fed. R. Crim. P. 16(a)(1)(D), defendant requests the reports of all tests and examinations conducted upon the evidence in this case, including but not limited to any fingerprint analysis, that is within the possession, custody, or control of the government, the existence of which is known, or by the exercise of the due diligence may become known, to the attorney for the government, and which are material to the preparation of

the defense or which are intended for use by the government as evidence-in-chief at trial.

D. The Defendant's Prior Record

The Defendant requests under Fed. R. Crim. P. 16(a)(1)(B) that the government provide a copy of the defendant's prior criminal record, if any, that is within the possession, custody or control of the government; the Defendant additionally requests that the government provide defendant with copies of any police reports that pertain to the defendant's criminal record, especially if the government intends to use any aspect of Defendant's criminal record in any manner, including but not limited to Fed. R. Evid. 404(b), use of the criminal record at any pre-trial hearings, including detention hearing and motions to suppress.

E. Brady Material

The Defendant requests all documents, statements, agents' reports or tangible evidence favorable to the Defendant on the issue of guilt and/or which affects the credibility of the government's case. Impeachment as well as exculpatory evidence falls within Brady's definition of evidence favorable to the accused. *United States v. Bagley* 473 U.S. 667 (1985), *United State v. Agurs*, 427 U.S. 97 (1976). Defendant additionally requests any information or material, which depicts or describes the alleged role, or lack of role, in the direction or planning of the offenses charged in the indictment. Such information is relevant and discoverable, as it is relevant to the issue of punishment, which is covered by *Brady* and its progeny.

F. Evidence Seized

Evidence seized as a result of any search, either warrantless or with a warrant is discoverable under Fed. R. Crim. P. 16(a)(1)(C) and is hereby requested.

G. Request for Preservation of Evidence

The Defendant specifically requests that all videotapes, dispatch tapes or any other physical evidence that may be destroyed, lost, or otherwise put out of possession, custody or care of the government which relate to the arrest or the events leading to the arrest in this case be preserved; additionally, if there has already been destruction of evidence which the government knows about, or which the government should, with reasonable diligence, know about, defendant requests that the government notify the defendant as to what items were destroyed, when they were destroyed and under what circumstances the items were destroyed.

H. Tangible Objects

The Defendant requests under Fed. R. Crim. P. (a)(2)(C), the opportunity to inspect and copy as well as test, if necessary, all other documents and tangible objects including alleged contraband, photographs, books, papers, documents, buildings, automobiles, or places, or copies, depictions, or portions thereof which are material to the defense or which are intended for use in the government's case and chief, or obtained for or belong to the Defendant.

I. Information Regarding Informants and Cooperating Witnesses

The Defendant request under Fed. R.Crim. P. (a)(2)(C), the opportunity to inspect and copy as well as test, if necessary, all other documents and tangible objects including alleged contraband, photographs, books, papers, documents, buildings, automobiles, or places, or copies, depictions, or portions thereof which are material to the defense or which are intended for use in the government's case and chief, or obtained for or belonging to the defendant.

J. Evidence of Bias or Motive to Lie

The Defendant requests any evidence that any prospective government witnesses are biased or prejudices against the defendant, or have a motive to falsify or distort his or her testimony. *Pennsylvania v. Ritchie*, 480 U.S. 39 (1987); *United States v. Strifler*, 851 F.2d 1197 (9th Cir. 1988).

K. Impeachment Evidence

The defendant request any evidence that any prospective government witness has engaged in any criminal act, whether or not resulting a conviction, and whether any witness has made a statement favorable to the Defendant. See Fed. R. Evid. 608, 609 and 613. This type of evidence is discoverable under Brady and its progeny, without the need for specific requests. 373 U.S. at 83. See *United States v. Strifler*, 851 F.2d 1197 (9th Cir. 1988); *Thomas v. United States*, 343 F.2d 49 (9th Cir. 1965).

L. Evidence of Criminal Investigation of Any Government Witness

The defendant requests any evidence that any prospective witnesses are under investigation by federal, state or local authorities for any criminal conduct. *United States v. Chitty*, 760 F.2d 425 (2nd Cir.) cert. denied 474 U.S. 945 (1985).

M. Evidence Affecting Perception, Recollection, and the Ability to Communicate or Tell the Truth

The defense requests any evidence, including any medical or psychiatric report or valuation, tending to show that any prospective witness' ability to perceive, remember, communicate, or tell the truth is impaired, and any evidence that a witness has ever used

narcotics or other controlled substances, or has ever been an alcoholic. *United States v. Strifler*, 851 F.2d 11977 (9th Cir. 1988); *Chavis v. North Carolina*, 637 F.2d 213, 224 (4th Cir. 1980). In addition, the defendant also request any evidence or information which would tend to show that any witnesses for the government were involved with narcotics, controlled substances or alcohol at the time of any observation made in this case.

N. Names of Witnesses Favorable to the Defendant

The Defendant requests the name(s) of any witness(es) who made arguably favorable statements concerning the Defendant. *Jackson v. Wainwright*, 390 F.2d 288 (5th Cir. 1968); *Chavis v. North Carolina*, 637 F.2d 213, 224 (4th Cir. 1980); *Jones v. Jago*, 575 F.2d 1164, 1168 (6th Cir.) *cert. denied* 439 U.S. 883 (1978); *Hudson v. Blackburn*, 601 F.2d 785 (5th Cir. 1979) *cert. denied* 444 U.S. 1086 (1980). This request also includes any statements by those witnesses where the defendant is not mentioned or implicated, and where Defendant would be expected to be implicated or named, as it pertains to the allegations in the incitement. Additionally, any co-conspirator statements that do not name or mention the Defendant, made by a witness, other than those who may testify at trial, and which would be covered by the *Jencks Act*, are also requested. These statements, which do not implicate or mention the defendant, are favorable, and under Brady should be disclosed.

O. Statements Relevant to the Defense:

The Defendant requests disclosure of any statement that may be “relevant to any possible defense or contention” that he might assert. This includes in particular any statements by any percipient witnesses. *United States v. Bailleauz*, 685 F.2d 1105 (9th Cir. 1982).

P. Jencks Act Material

The defense requests all material to which he is entitled pursuant to the Jencks Act, 18 U.S.C. § 3500, and the Fed. R. Crim. P. 26.2. The Defendant specifically request pretrial production of those statements so that the court may avoid unnecessary recesses and delays for defense counsel to properly use any Jencks Act statements and prepare for cross-examination.

Q. Giglio Information

Pursuant to *Giglio vs. United States*, 405 U.S. 150 (1972), the Defendant requests all statements and promises, express or implied, made to any government witnesses in exchange for their testimony in this case, and all other information which can arguably be used for the impeachment of any government witnesses.

R. Government Examination of Law Enforcement Personnel Files

The Defendant requests that the Government examine the personnel files and any other files within its custody, care or control, or which can be obtained by the government, for all testifying witnesses, including testifying officers and agents who may have been controlling or contracting the confidential informant(s), if any, in this case. The Defendant requests these files be reviewed by the government attorney for evidence of perjurious conduct or other like dishonesty, or any other material relevant to impeachment, or any information that is exculpatory, pursuant to its duty under *United States v. Henthorn*, 931 F.2d 29 (9th Cir. 1991); See also *United States v. Jennings*, 960 F.2d 1488, 1492 (9th Cir. 1992).

S. *Expert Witnesses*

Pursuant to Fed. R. Crim. P. 16(a)(1)(E), the Defendant requests disclosure of the identities, qualifications and testimony of any expert witnesses the Government intends to call at trial, including any written or recorded statement of their conclusions, opinions and matters they may have tested or experienced about which they will testify at trial. In addition, the Defendant request copies of any resume, *curriculum vitae* or other summary of the qualifications in advance of trial so that Defendant may better prepare cross-examination and avoid a waste of trial resources in *voir dire*.

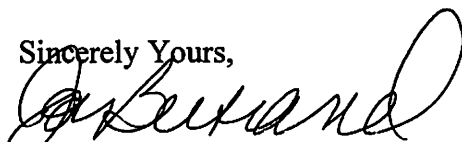
III. Other Pre-Trial Matters

The Defendant further requests that the Government timely notify the defendant and counsel of any changes or developments during the pendency of the above captioned case that affects any of the discovery issues or material in the foregoing, or which would affect the substantive rights of the defendant.

Defendant further requests that the Government stamp all discovery in sequential order to avoid any disputes in the future regarding exactly what discovery has been provided. If additional discovery becomes necessary, the Defendant also requests that the Government sequentially stamp that material starting with the next number that follows previously disclosed materials.

If there are any other matters that should arise, or if you wish to discuss any aspect of the case, please call or email.

Sincerely Yours,



Joy Bertrand

Attorney for Jacqueline Parker

HP LaserJet 3050

Fax Call Report

BERTRAND LAW
4803614694
Sep-1-2010 2:16PM

Job	Date	Time	Type	Identification	Duration	Pages	Result
3872	9/ 1/2010	2:13:07PM	Send	5147693	3:21	7	OK


 JOY BERTRAND, ESQ., L.L.C.
 Scottsdale, Arizona ~~ Milwaukee, Wisconsin

P.O. Box 2734
Scottsdale, AZ 85252-2734

4227 West Forest Home Avenue
Milwaukee, WI 53215-3540

September 1, 2010

AUSA Peter Sexton
United States Attorney's Office
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10-CR-757

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B. *Addictions*

Any information concerning any government witnesses' history of alcohol or drug abuse;

C. *Promises*

All promises and inducements, formal or informal, written or oral, made by attorneys and/or agents of federal, state or local government to any witness or other person with respect to cooperating, providing information and/or testifying in any proceeding related to this case, (grand jury or trial):

office - 602-374-5321 fax - 602-374-2712
joyous@mailbag.com www.joybertrandlaw.com



EXHIBIT 2

United States v. Parker

10C757

Rain Minns

From: Sexton, Peter (USAAZ) [Peter.Sexton@usdoj.gov]
Sent: Monday, November 01, 2010 6:14 PM
To: Rain Minns
Cc: Perkel, Walter (USAAZ); Lisa M. Giovannelli; Joy Bertrand; Lopez, John (USAAZ)
Subject: RE: U.S. v. Parker et al.

Rain,

Unless you prefer to address Walter and me by our last names, please feel free to use our first names in communications.

Let me address the issues you raised in the two emails you wrote below.

1. **Special Agent's Report (SAR).** The SAR report, and other internal memorandum and reports, are not being produced pursuant to Rule 16(a)(2). Since we have not determined whether we will need to call the Special Agent as a witness, no Jencks determination has arisen. We have reviewed the internal reports and documents for Brady information, and do not believe any items need to be reported on that basis. Walter intends to review any withheld documents again to confirm his original thoughts in that regard. The cases support the government's approach and viewpoint. See *United States v. Fort*, 472 F.3d 1106 (9th Cir. 2007); *United States v. Robinson*, 439 F.3d 777, 779 (8th Cir. 2006) (withheld computations for gross income and gross receipts in tax evasion prosecution); *United States v. Mann*, 61 F.3d 326, 331 (5th Cir. 1995) (finding that Rule 16(a)(2) applied to the IRS Special Agent Report); *United States v. Koskerides*, 877 F.2d 1129, 1133-34 (2nd Cir 1989) (net worth computation in SAR). Therefore, at this time, we do not believe a full or redacted versions of any SAR's or other internal memorandum are discoverable under Rule 16(a)(2). If you have legal authority to the contrary, please provide that to us as soon as possible for our consideration. We will review the legal authority you provide and let you know quickly whether we are persuaded to change our position. You also mentioned that you have gotten many courts to order such production. If you would, please provide the last five cases you have obtained orders of this nature, we will review the circumstances underlying those orders. If you would just provide the docketing numbers, we can search each docket for the appropriate pleadings and orders.

2. **Notes from Special Agent.** We assume you are referring to the notes any agent might have made during an interview of a witness. Those notes will be preserved as required by law (*United States v. Harris*, 543 F.2d 1247 (9th Cir. 1976)), and will be reviewed to determine whether the notes contain material evidence (*Brady/Giglio*) contrary to the typed summaries of those interviews. The notes themselves are not Jencks under Section 3500 or Rule 26.2 because the notes were: (1) not "made by" or "otherwise adopted" by the interviewee under Section 3500(e)(1); (2) not a "substantially verbatim" recital of an oral statement by an interviewee under Section 3500(e)(2); and (3) not a recorded statement by the interviewee before the Grand Jury. If you have legal authority to the contrary, please provide it to us for our review.

3. **Copies of Personnel Files/Resumes.** In the Ninth Circuit, we will comply with the requirements of *United States v. Henthorn*, 931 F.2d 29 (9th Cir. 1991) and *United States v. Herring*, 83 F.3d 1120, 1121-22 (9th Cir. 1996) in regard to the personnel files of government witnesses. As to any government witness the United States intends to call to testify at trial, we will request that the personnel file for each government witness be reviewed according to the dictates of those cases. If any discoverable information arises from that review, the information will be provided before trial. You mentioned you have gotten courts to require the production of redacted personnel files. Could you please provide the case numbers for some of the recent cases you have received such orders so that can review the pleadings in those dockets to understand the circumstances that lead to such an order. If you have any other legal authority you think we should consider, please provide it to us as soon as possible.

4. **Grand Jury Testimony.** A court may permit disclosure of grand jury materials under Rule 6(e)(3)(E)(i) and (ii) only when the requesting party has demonstrated a "particularized need" for the material. *Douglas Oil, Co., v.*

Petrol Stops Northwest, 441 U.S. 211 (1979). The party seeking disclosure has the burden of proof with regard to establishing particularized need. *Id.* at 223. Disclosure will not be allowed upon a mere showing of relevance, nor for general discovery. *United States v. Procter & Gamble*, 356 U.S. 677 (1958). Would you please set forth the particularized need for our consideration. If your basis is *Jencks*/Section 3500/Rule 26.2, when we have determined a witness who appeared before the Grand Jury is to be used in the government's case at trial, we will produce his or her Grand Jury testimony as required by that law.

I think I have addressed the issues raised in your two emails. Please get back to us soon with any information you would like us to consider. Thank you.

Peter

From: Rain Minns [mailto:rain@minnslaw.com]
Sent: Saturday, October 30, 2010 2:58 PM
To: 'Rain Minns'; Sexton, Peter (USAAZ); Perkel, Walter (USAAZ)
Cc: Trandicosta, Rose Marie (USAAZ); 'Lisa M. Giovannelli'; 'Joy Bertrand'; 'Michael Minns'; 'Ashley Arnett'
Subject: RE: U.S. v. Parker et al.

Dear Mr. Perkel and Mr. Sexton,

Also of particular importance, your production does not appear to include transcripts of the Grand Jury testimony from any of the witnesses. You have provided lists of names of these witnesses, but not the transcripts. (See, e.g., SAR Exhibits – List of Witnesses and Exhibits 015478-84 and Supplemental SAR Exhibits – List of Witnesses and Exhibits 01584-87). These are discoverable under *Brady / Jencks / Fed. R. Civ. P. 26.2 / 18 U.S.C. 3500*.

It is our position that you should have produced transcripts of the Grand Jury testimony for any of these witnesses that you might use in your case in chief at trial. Please advise us of your position.

Thanks,
Rain Minns

From: Rain Minns [mailto:rain@minnslaw.com]
Sent: Friday, October 29, 2010 1:17 PM
To: 'Sexton, Peter (USAAZ)'; 'Perkel, Walter (USAAZ)'
Cc: 'Trandicosta, Rose Marie (USAAZ)'; 'Lisa M. Giovannelli'; 'Joy Bertrand'; 'Michael Minns'; 'Ashley Arnett'
Subject: RE: U.S. v. Parker et al.

Dear Mr. Sexton and Mr. Perkel,

According to the Court's scheduling order on September 13th, the Government was to provide *Jencks* and witness impeachment materials by October 8th "if not sooner." In addition, the Government was to complete its compliance with Rule 16 by September 24th. It is now October 29th.

Although we are still in the process of reviewing your production, it has become apparent that some of the key materials are missing. For instance, we do not have the lead Special Agent's Report (SAR), notes from Special Agents, or resumes from the Special Agents who may testify. Since Ms. Giovannelli is copied on your emails, would it be fair for us to assume that she is the Special Agent in charge?

It is our firm's experience from specializing in criminal tax defense that, if we need to challenge your production on these points, the courts almost unanimously order the Government to provide these materials with appropriate redactions. The more controversial issue is whether the Court will order the Government to turn over redacted copies of the personnel files for these individuals.

On September 1, 2010, per your request, Ms. Bertrand sent a discovery demand letter on behalf of both defendants. Please let us know by next Friday (November 5th), the extent to which you intend to supplement your disclosures and if there are items in that letter which you are refusing to produce. I apologize for the short time period, but these materials are critical to our ability to prepare the defense and additional deadlines are approaching. However, it is important that we know which disagreements, if any, will need to be brought before the Court.

Thanks,
Rain Minns

From: Sexton, Peter (USAAZ) [mailto:Peter.Sexton@usdoj.gov]
Sent: Friday, October 29, 2010 11:47 AM
To: Rain Minns
Cc: Perkel, Walter (USAAZ); Trandicosta, Rose Marie (USAAZ); Lisa M. Giovannelli
Subject: FW: U.S. v. Parker et al.

Rain,

You faxed a letter on October 28, 2010, joining in Ms. Bertrand's October 21, 2010 request. Below is Mr. Perkel's response to Ms. Bertrand. You are likewise invited to provide authority for your request, which we will consider and respond accordingly. On this issue, please include Mr. Perkel on your communications as he is taking the lead on discovery matters in this case. Thank you.

Peter

From: Perkel, Walter (USAAZ)
Sent: Wednesday, October 27, 2010 4:40 PM
To: Joy Bertrand
Cc: Giovannelli Lisa M; Sexton, Peter (USAAZ); Trandicosta, Rose Marie (USAAZ); Karmgard, Melody (USAAZ)
Subject: U.S. v. Parker et al.

Ms. Bertrand,

As you know, I am assisting Peter Sexton with the matter of Parker et al., and am in receipt of your letter dated October 21, 2010 requesting additional discovery.

In your request for the "arrest reports, notes ... or any other discoverable material is contained," I do not believe that Fed. R. Crim. P. 16(a)(1)(A) or 16(a)(1)(B) entitles you to documents that are considered work product or internal government reports or documents. See Fed. R. Crim. P. 16(a)(2).

I am aware of my obligation to disclose exculpatory information under Brady, and will continue to review all discovery thoroughly.

Please let me know if you believe that the government's position is in error, and whether you have any additional legal support to obtain the items sought in your letter.

Also, please refer to previously disclosed bates stamped pages 10782-10823 for copies of the IRS's Memorandum of Activity/Interviews for statements from potential witnesses.

Thanks,

Walter Perkel

EXHIBIT 3

United States v. Parker

10C757

JOY BERTRAND, ESQ., L.L.C.
Scottsdale, Arizona ~~ Milwaukee, Wisconsin

P.O. Box 2734
Scottsdale, AZ 85252-2734

4227 West Forest Home Avenue
Milwaukee, WI 53215-3540

October 21, 2010

AUSA Peter Sexton
United States Attorney's Office
2 Renaissance Square
40 N. Central, Ste. 1200
Phoenix, AZ 85004-4408
via fax – 602-514-7693

Re: *United States v. Jacqueline Parker*
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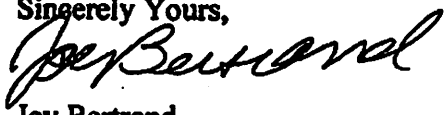
Dear Mr. Sexton:

In an initial review of the Rule 16 disclosure from you, it does not appear that any reports from any of the investigators assigned to this case were included. As you may recall, Ms. Parker's discovery demand, submitted to you on or about September 1, 2010, specifically Section II.B, which demands:

All arrest reports, notes and dispatch tape or any other tapes that relate to the circumstances surrounding his arrest or any questioning be turned over. This request includes, but is not limited to, any rough notes, records, reports, transcripts or other documents in which statements of the Defendant or any other discoverable material is contained. See Fed. R. Crim. P. 16(a)(1)(A) and *Brady v. Maryland*, 373 U.S. 83 (1963). See also *Loux v. United States*, 389 F.2d 911 (9th Cir 1968); *United States v. Johnson* 525 F.2d 999 (2nd Cir. 1975); *U.S. v. Lewis*, 511 F.2d 798 (D.C. Cir. 1975); *United States v. Pilnick* 267 F.Supp. 791 (SDNY 1967). Arrest reports, investigator's notes, memos from arresting officers, dispatch tapes, sworn statements, and prosecution reports pertaining to the Defendant are discoverable under Fed. R. Crim. P. 16(a)(1)(B) and (C) Fed. R. Crim. P. 26.2 and 12(I).

Kindly advise either where these documents are in the Government's discovery, or when they will be disclosed to the Defense.

Sincerely Yours,



Joy Bertrand
Attorney for Jacqueline Parker