

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

UNITED STATES OF AMERICA,

v.

THEODORE F. STEVENS,

Defendant.

Crim. No. 08-231 (EGS)

SENATOR STEVENS'S MOTION TO DISMISS INDICTMENT OR FOR A MISTRIAL

The defense believed that Rocky Williams was a key government witness. The government apparently thought so too. For the better part of the past two weeks, the government has had Mr. Williams in Washington, D.C., interviewing him and preparing him to testify. Apparently, government counsel did not like what they heard. They sent him back to Alaska last Thursday, the day of opening statements.

Shortly after indictment, defense counsel contacted Mr. Williams and requested an interview. Mr. Williams declined. But on Friday evening Mr. Williams called defense counsel, and today defense counsel were able to interview him for the first time. In three telephone conversations today, Mr. Williams disclosed highly exculpatory information to defense counsel that apparently has been known to the government for years. Among other things, Mr. Williams informed defense counsel that he spent nowhere near 8 hours per day, 6-7 days per week, on the Girdwood home renovation project – in direct contrast to the timesheets that the government has placed in evidence to support its central theory that the unpaid cost of the project to Veco was \$188,000. This new information gravely undercuts the government's case as described in its opening statement and as presented by government witnesses to date.

Yet the government never disclosed this information to defense counsel pursuant to its unquestionable *Brady* obligations. Worse yet, the government has presented evidence at trial that, in light of the information now disclosed to defense counsel by Mr. Williams, can charitably be described as grossly misleading.

The government's decision to withhold this information has prejudiced the defense. Had it been disclosed, the exculpatory evidence would have been a significant theme of defense counsel's opening statement, and it could have been used effectively to cross-examine the government's witnesses. In particular, this evidence was directly relevant to the testimony of government witness Cheryl Boomershine, who testified about Mr. Williams's billing entries on Veco timesheets, which inaccurately suggest that he worked full days, 6-7 days a week, with substantial overtime, on the Girdwood project. In addition, Williams's statements about his own billing practices could have been used to cross-examine other Veco workers who have already testified. The Court therefore should dismiss the indictment or, in the alternative, should declare a mistrial to remedy the prejudice caused by the government's conduct.

STATEMENT OF FACTS

1. As the Court is well aware, since the indictment in this case, defense counsel have sought diligently to enforce Senator Stevens's right to discovery from the government – including specifically his right to be informed of all exculpatory information pursuant to *Brady v. United States* and its progeny. Defense counsel wrote numerous letters to government counsel requesting *Brady* material and, when the government did not promptly provide it, filed two separate motions to compel production of this constitutionally-required discovery. *See* Motion To Compel Discovery Pursuant to *Brady v. Maryland* and Fed. R. Crim. P. 16 (Dkt. No. 60) (Sept. 2, 2008); Motion to Compel Emergency Relief and Discovery (Dkt.

No. 65) (Sept. 12, 2008). The Court took up *Brady* issues at 3 separate hearings, on September 10, 12, and 18. In sum, the defense's paramount interest in receiving *Brady* materials cannot have been clearer to the government. In response, the Court on September 10, 2008 ordered the government to comply with its *Brady* obligations as explained in *United States v. Safavian*, 233 F.R.D. 12 (D.D.C. 2005). At a subsequent hearing on September 12, the government represented that it had fully complied.¹

2. Robert "Rocky" Williams is a significant witness who defense counsel believed, until today, would have a prominent role in the government's case-in-chief. The government listed Mr. Williams on its witness list, and it moved on three occasions, both before and during trial, to exclude evidence potentially relevant to his cross-examination. During the first two days of trial, Mr. Williams was prominently mentioned by multiple government witnesses as a Veco employee who participated in supervising the Girdwood renovations. By eliciting these references, the government obviously wished to create the inference that Mr. Williams performed substantial work on behalf of Veco for which Senator Stevens never paid.

On Friday, September 26, the government called Cheryl Boomersshine, an employee in the accounting department of Veco Corporation (now employed by CH2M HILL). Trial Tr. (Sept. 26, 2008 p.m.) at 6-7 (attached hereto as Ex. B). Through Ms. Boomersshine, the

¹ See Hr'g Tr. (Sept. 12, 2008) at 40-41:

MR. CARY: And your Honor, one question the defense has, it is not clear to us whether the government believes that they're finished with their Brady and Giglio obligations. I understand it's ongoing, but at least as to what they know right now.

THE COURT: It's probably fair to ask you, if you had anything else you'd be producing it right now?

MS. MORRIS: That's absolutely right, Judge. We know that there's a continuing duty. If something else comes up we provide it.

government admitted numerous Veco invoices and a job cost detail report generated from Veco's accounting software. *See* GX 1058 - GX 1093; Sept. 26 p.m. Tr. (Ex. B) at 15. These documents reflect (among other things) a vast amount of time expended by Mr. Williams, purportedly on the Girdwood project. At the government's prompting, Ms. Boomershine specifically testified about Mr. Williams, explaining that he was a former employee of Veco Equipment, a subsidiary of Veco Corporation. Sept. 26 p.m. Tr. (Ex. B) at 21. She described an invoice from Veco Equipment (GX 1060) that shows numerous time entries for Mr. Williams that were billed from Veco Equipment to Veco Corporation. Sept. 26 p.m. Tr. (Ex. B) at 20-21. Ms. Boomershine testified that the total amount coded in Veco Corporation's records (under two separate codes) to the Girdwood project – including all of Mr. Williams's time – totaled \$188,928.82 between September 2000 and April 2001. *See* GX 177; Sept. 26 p.m. Tr. (Ex. B) at 43-45, 21-25.

The Veco accounting records introduced as exhibits through Ms. Boomershine reflect that Mr. Williams billed a prodigious amount of time to the Girdwood codes. They show that he regularly worked 6-7 full days per week, plus overtime, from September 2000 through February 2001. *See* GX 1058-1063; GX 1090. The chart attached hereto as Exhibit A depicts the number of hours that, according to the Veco timesheets, Mr. Williams supposedly billed to the Girdwood project. (Defense counsel prepared this chart based on those timesheets.)²

3. Shortly after the indictment in this case, defense counsel contacted Mr. Williams to request an interview. He declined. The government subsequently identified Mr. Williams as a government witness; it filed motions to exclude certain potential defense cross-

² As used in Ex. A, "St Time" means standard time, i.e., non-overtime hours worked. "OT" means overtime hours. The shaded dates are days when Mr. Williams billed no time to the

examination and impeachment evidence with regard to him. Defense counsel assumed that Mr. Williams would be a key government witness.

The government apparently thought so too. We now know that the government brought Mr. Williams from his home in Anchorage to Washington, D.C. on or about Monday, September 15. The defense succeeded in serving him with a trial subpoena in Anchorage on that day. After eleven days in Washington, during which time he worked with the government in preparation for his trial testimony, the government sent him home to Anchorage. Mr. Williams has been suffering from health issues, including coughing episodes, and the government explained to him that they had everything they needed without his testimony, and that he should return home to attend to his health. Mr. Williams flew back to Anchorage on Thursday, September 25.

After he got home, Mr. Williams contacted defense counsel by telephone to discuss his compliance with the subpoena they had served on him.³ Defense counsel first spoke with him this afternoon, Sunday, September 28, 2008. In three conversations today, Mr. Williams revealed information that casts the government's decision to send him home – on the eve of Bill Allen's testimony – in a very different light.

4. Among the information Mr. Williams provided to defense counsel today is the following, *see* Declaration of Simon A. Latcovich (attached hereto as Exhibit C):

Girdwood code. The government produced no March 2001 timesheets for Mr. Williams that we have located; accordingly, Ex. A ends in February 2001.

³ Mr. Williams recalls that he left a telephone message on a general after-hours Williams & Connolly LLP service while he was in D.C. Defense counsel did not receive the message. Mr. Williams then left a voicemail message for defense counsel on the evening of Friday, September 26, which counsel retrieved and returned today.

- Mr. Williams never worked a single full day on the Girdwood home renovations. Rather, he divided his time among a number of different projects, and Veco then billed the total to its Girdwood cost code for accounting purposes. Mr. Williams assumed that Veco would bill the proper percentage of his time to the appropriate cost codes.
- Mr. Williams worked on other projects even while he spent time at the Girdwood home renovation. He often spent time on his cellular phone coordinating other Veco activities, including personal tasks for Bill Allen.
- Mr. Williams advised Bill Allen that Veco should be involved as little as possible in the Girdwood home renovations. He believed that Veco – an oil services company specializing in part in constructing steel structures – was ill-suited to provide cost efficient residential renovations.
- Raising the Girdwood residence a full eight feet as opposed to creating a daylight basement was a break-even or only slightly more-expensive proposition. Contrary to the government's statements in opening, raising the chalet to create an entirely new first floor rather than a daylight basement was not substantially more expensive because of (1) differences in material costs and (2) concerns that groundwater intrusion could foster mold or other problems.
- Mr. Williams wrote a \$2,000 check to Catherine Stevens in January 2001 to purchase various household items for members of Bill Allen's family. Bill Allen instructed Mr. Williams to purchase from Catherine Stevens an electrical heater, bathtub, fireplace insert, cabinets, and old doors. In the opinion of Mr. Williams, the fair market value of these items was at least \$2,000. Mr. Williams wrote the check because Bill Allen does not carry a checkbook.

Bill Allen then gave these items to family members, and Mr. Williams was later reimbursed by Veco for the purchase.

- The only interest Senator Stevens showed in the renovation of the Girdwood residence was keeping his wife Catherine happy. Senator Stevens's concerns were more modest – he wanted a place where he could chop and then burn wood.

Importantly, Mr. Williams unequivocally stated that he informed the government of every one of these facts, either in his grand jury testimony or in personal interviews.

Latcovich Decl. ¶ 13. Yet none of the above information was revealed to defense counsel in the government's *Brady* submissions.⁴

5. After learning this information from Mr. Williams, defense counsel contacted counsel for the government and requested a copy of his grand jury testimony. After initially refusing, government counsel agreed to provide a copy of the transcript. It corroborates Mr. Williams's current recollections in significant respects, which clearly should have been provided to the defense long ago as *Brady* material:

- Billing time to the Girdwood account. Mr. Williams testified before the grand jury that he was at the Girdwood residence “at least three times a week if not more.” Tr. of Robert Williams Grand Jury Testimony at 29 (D. Alaska Nov. 7, 2006).⁵ He went on to testify that on average he spent “never less than 24 hours a week” on the project. *Id.* at 30. As

⁴ Prior to today, the government provided the defense with no excerpts of Mr. Williams's grand jury testimony. It provided one heavily redacted Form 302 and a letter detailing certain exculpatory information, but none of the information stated here.

⁵ The transcript is not attached to this filing, but defense counsel is prepared to provide a copy of the entire transcript to the Court upon request.

demonstrated by Ms. Boomershine's testimony last Friday, however, Veco billed on average between sixty and seventy hours a week of Mr. Williams' time to the Girdwood account.

- Veco was ill-suited for residential construction. Mr. Williams's grand jury testimony confirms what he told defense counsel on the telephone: "VECO's a very good oil field company, but they don't have housing carpenters, except for myself and maybe one other or two others, that were capable of doing this." *Id.* at 18.

- Raising the chalet a full eight feet would not cost much more than building a daylight basement. Just as above, Mr. Williams's grand jury testimony stands in direct contradiction to the government's opening statements: "Once we determined that it wouldn't cost that much more to jack it up to the eight feet from four feet, everything else just kind of moved along." *Id.* at 13.

- Bill Allen purchased household items from Catherine Stevens for his own family. Mr. Williams's grand jury testimony directly supports his statements earlier today, with the exception that he believed the \$2,000 price was "a little more than fair." *Id.* at 54. He noted in today's conversation, however, that he had underestimated the cost of the electric heater by approximately \$500 because he forgot that it had hardly ever been used.

- Senator Stevens's interest in the property. Finally, Mr. Williams also testified that Senator Stevens "mostly just wanted to chop wood or go fishing." *Id.* at 49.

In sum, the grand jury testimony is consistent with Mr. Williams's current recollections, and both are highly exculpatory.

6. Mr. Williams's information obviously is highly material to the defense. It directly and unequivocally undercuts the government's position that Veco incurred \$188,000 in unpaid labor and expenses on the Girdwood project. It destroys the reliability and probative

value of the Veco documents, which the government admitted through Cheryl Boomershine, that allegedly support the \$188,000 figure. *See* GX 1058 – GX 1093. Had the defense possessed this information prior to trial, it would have used the information in opening statement. The defense also could have used the information to cross-examine government witnesses who testified about Mr. Williams's significant role on the renovation project. *See* Trial Tr. (Sept. 25, 2008 p.m.) at 12 (John Hess testimony) (attached hereto as Exhibit D); Sept. 26 a.m. testimony of Roy Dettmer; Sept. 26 a.m. testimony of Mike Luther; Sept. 26 a.m. testimony of Daniel McBirney.⁶ It could have further questioned government witnesses who claimed to have worked herculean hours on the renovation project at Veco's expense. *See* Sept. 26 a.m. testimony of Roy Dettmer. And, the defense could have used the information from Mr. Williams to cross-examine Ms. Boomershine about the Veco accounting exhibits. In addition to the exhibits purporting to establish the \$188,000 figure, Mr. Williams's exculpatory account of the \$2,000 check he wrote to Catherine Stevens would have obliterated the government's insinuations that it was an improper, clandestine transaction, based on out-of-context notes decribed by Ms. Boomershine. *See* Sept. 26 p.m. Tr. (Ex. B) at 41-43; GX 1075.

But the government did not produce the information. Rather, government counsel sent Mr. Williams back to Alaska, on the first day of trial, apparently in the hope that he would continue his policy of declining to speak to defense counsel and that defense counsel would not have this critical exculpatory information in time to cross-examine Bill Allen or otherwise to use the information at trial. It then proceeded to offer the Veco accounting records as evidence in support of its \$188,000 theory.

⁶ As of the filing of this motion, the transcript of proceedings on Friday morning, September 26, 2008 was not yet available.

ARGUMENT

I. THE GOVERNMENT HAS VIOLATED *BRADY* AND HAS PROFFERED MISLEADING EVIDENCE AT TRIAL.

There can be no question that the information Mr. Williams revealed should have been produced long ago under the *Brady* doctrine. Under *Brady v. Maryland*, 373 U.S. 83 (1963), and successive cases, including *United States v. Agurs*, 427 U.S. 97 (1976), and *Giglio v. United States*, 405 U.S. 150 (1972), the government is required to produce exculpatory information to the defense. As Judge Friedman explained in *Safavian*, this duty exists regardless of whether the prosecution may believe the information could affect the result at trial:

[T]he government must always produce any potentially exculpatory or otherwise favorable evidence without regard to how the withholding of such evidence might be viewed—with the benefit of hindsight—as affecting the outcome of the trial. The question before trial is not whether the government thinks that disclosure of the information or evidence . . . might change the outcome of the trial going forward, but whether the evidence is favorable and therefore must be disclosed. Because the definition of ‘materiality’ discussed in *Strickler* and other appellate cases is a standard articulated in the post-conviction process for appellate review, it is not the appropriate one for prosecutors to apply during the pretrial discovery phase. The only question before (and even during) trial is whether the evidence at issue may be ‘favorable to the accused’; if so, it must be disclosed without regard to whether the failure to disclose it likely would affect the outcome of the upcoming trial.

233 F.R.D. at 16.

The undisclosed information here unquestionably is exculpatory and producible under *Brady*. Indeed, it directly undercuts the government’s theory of the case and provides highly significant ammunition for cross-examining government witnesses. Mr. Williams has informed defense counsel in no uncertain terms that he provided all of this information to the government, which interviewed him on multiple occasions over a two-year period between September 1, 2006 and last week. And indeed, much of the same exculpatory information

appears in Mr. Williams's grand jury transcript. But the government never informed defense counsel of any of it. Instead, government counsel decided not to call Mr. Williams as a trial witness and sent him from D.C. back to Alaska on the first day of trial.

Mr. Williams therefore was 3,300 miles away from Washington when the government proffered Ms. Boomershine's testimony, and the Veco accounting exhibits, purporting to show – falsely – that Mr. Williams worked 6-7 full days a week, plus overtime, on the Girdwood renovations. If Mr. Williams told the government that he did not work all (or even close to all) of those hours on the Stevens home renovations, then the evidence the government adduced last Friday, and foreshadowed in its opening statement on Thursday, was grossly misleading to say the least. Similarly, Mr. Williams was 3,300 miles away when Ms. Boomershine offered a "Mission Impossible"-style "reversible document" story about his \$2,000 check to Catherine Stevens – an insinuation Mr. Williams now rebuts based on personal knowledge.

The government has a duty to refrain from putting on evidence that is inaccurate or misleading. This duty stems both from the ethics rules, *see* D.C. R. Prof. Cond. 3.3, 3.4, and from the Fifth Amendment's Due Process Clause, which is violated by prosecutorial conduct that "shocks the conscience" of the court, *see United States v. Elmardoudi*, No. 06-CR-112-LRR, 2007 WL 2002066, at *2 (N.D. Iowa July 5, 2007) ("If the court finds that the government has engaged in conduct that "shocks the conscience," the court may utilize the "outrageous government conduct" rule and dismiss criminal charges to avoid a Fifth Amendment due process violation.") (*citing United States v. Boone*, 437 F.3d 829 (8th Cir. 2006)). As discussed below, the government's violations of its duty to provide *Brady* material to the defense, and of its duty of candor to the Court, warrant a substantial sanction.

II. THE INDICTMENT SHOULD BE DISMISSED.

“Brady violations are just like other constitutional violations. Although the appropriate remedy will usually be a new trial, a district court may dismiss the indictment when the prosecution’s actions rise . . . to the level of flagrant prosecutorial misconduct.” *United States v. Chapman*, 524 F.3d 1073, 1086 (9th Cir. 2008). The dismissal remedy is further warranted here, where the facts show more than ordinary *Brady* violations; they also show that the government has presented fundamentally misleading evidence at trial while failing to disclose to defense counsel the very information needed to understand and rebut that evidence.

Courts have not hesitated to dismiss indictments when faced with similarly severe constitutional violations. For example, in *United States v. Wang*, No. 98 CR 199(DAB), 1999 WL 138930, at *37 (S.D.N.Y. Mar. 15, 1999), the court found a due process violation and dismissed an indictment due to the government’s failure to provide defense counsel with “material information” until the “eve of trial,” and its delay in disclosing that its key witness was unavailable and would not be called to testify. Similarly, in *United States v. Lyons*, 352 F. Supp. 2d 1231, 1251-52 (M.D. Fla. 2004), the court dismissed an indictment due to the government’s multiple and flagrant *Brady* and *Giglio* violations. *See also United States v. Sabri*, 973 F. Supp. 134, 147 (W.D.N.Y. 1996) (finding due process violation and dismissing one count of indictment based on government’s outrageous conduct in engaging defendant’s civil attorney to accumulate evidence for use against him in criminal prosecution); *United States v. Marshank*, 777 F. Supp. 1507, 1524 (N.D. Cal. 1991) (finding due process violation and dismissing indictment where government interfered in the defendant’s attorney-client relationship by using his former attorney to obtain incriminating information upon which indictment was based).

The defense respectfully submits that the above facts demonstrate an egregious constitutional violation that warrants dismissal of the indictment. Particularly in combination

with the government's pattern of failures to provide timely *Brady* disclosures throughout this case, and the government's delays and obfuscations in providing witness and exhibit information to the defense and to the Court during trial, the sanction of dismissal is appropriate.

III. IN THE ALTERNATIVE, THE COURT SHOULD DECLARE A MISTRIAL.

At the very least, a mistrial is necessary. It is axiomatic that when the defendant has established a *Brady* violation, the district court should declare a mistrial. *See, e.g., Giglio v. United States*, 405 U.S. 150, 153 (1972) (noting that “*Brady v. Maryland*, 373 U.S. at 87, held that suppression of material evidence justifies a new trial irrespective of the good faith or bad faith of the prosecution.” (internal quotations omitted)); *United States v. Andrews*, 532 F.3d 900, 905 (D.C. Cir. 2008) (“If the undisclosed evidence is material, a new trial is required.”) (*citing Kyles v. Whitley*, 514 U.S. 419 (1995)); *Government of Virgin Islands v. Fahie*, 419 F.3d 249, 252 (3d Cir. 2005) (“[T]he Court has assumed that *Brady* violations that have affected the judgment of a jury normally will be remedied by a new trial”); *United States v. Evans*, 888 F.2d 891, 897 n.5 (D.C. Cir. 1989) (appropriate relief for a *Brady* violation is a mistrial).

A mistrial is essential in this case because the defense has proceeded with its opening statement, and cross-examination of seven government witnesses, without the critical information from Mr. Williams. Had the defense possessed this information, it would have used the information in opening statement to rebut the government's emphasis, in its opening, on Veco's alleged \$188,000 cost figure. Had the defense possessed this information, it could have cross-examined Ms. Boomershine's testimony about the Veco accounting documents. Indeed, the government likely would not have offered Ms. Boomershine to vouch for the accuracy and reliability of those accounting records if it had known the defense was in possession of information from Mr. Williams that directly undermined those records. Had the defense possessed this information, moreover, it could have cross-examined other government witnesses

who testified about Mr. Williams's significant role in the renovation project on behalf of Veco, and who testified that they expended extraordinary time on the renovation project. And, had the defense possessed this information, it would have prepared differently for Mr. Allen's cross-examination, which is now only one day away.

CONCLUSION

The damage to the just presentation of evidence in this trial cannot be undone. If the indictment is not dismissed altogether, the Court should declare a mistrial.

Dated: September 28, 2008

Respectfully submitted,

WILLIAMS & CONNOLLY LLP

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Exhibit A

September 2000

<i>Sun</i>	<i>Mon</i>	<i>Tue</i>	<i>Wed</i>	<i>Thu</i>	<i>Fri</i>	<i>Sat</i>
					1 St Time: 8 OT: 2	2 St Time: 0 OT: 0
3 St Time: 0 OT: 6.5	4 St Time: 0 OT: 0	5 St Time: 8 OT: 3	6 St Time: 8 OT: 3	7 St Time: 8 OT: 4	8 St Time: 8 OT: 0	9 St Time: 0 OT: 8
10 St Time: 0 OT: 0	11 St Time: 8 OT: 2	12 St Time: 8 OT: 2	13 St Time: 8 OT: 2	14 St Time: 8 OT: 2	15 St Time: 8 OT: 2	16 St Time: 0 OT: 10
17 St Time: 0 OT: 0	18 St Time: 8 OT: 2	19 St Time: 8 OT: 2	20 St Time: 8 OT: 2	21 St Time: 8 OT: 2	22 St Time: 8 OT: 2	23 St Time: 0 OT: 10
24 St Time: 0 OT: 0	25 St Time: 8 OT: 2	26 St Time: 8 OT: 2	27 St Time: 8 OT: 2	28 St Time: 8 OT: 2	29 St Time: 8 OT: 2	30 St Time: 0 OT: 10

Total hours worked: 246.5

October 2000

<i>Sun</i>	<i>Mon</i>	<i>Tue</i>	<i>Wed</i>	<i>Thu</i>	<i>Fri</i>	<i>Sat</i>
1 St Time: 0 St Time: 0 OT: 10	2 St Time: 8 OT: 2	3 St Time: 0 OT: 0	4 St Time: 8 OT: 2	5 St Time: 8 OT: 2	6 St Time: 8 OT: 2	7 St Time: 0 OT: 10
8 St Time: 0 OT: 8	9 St Time: 8 OT: 2	10 St Time: 8 OT: 2	11 St Time: 8 OT: 2	12 St Time: 8 OT: 4	13 St Time: 8 OT: 2	14 St Time: 0 OT: 11
15 St Time: 0 OT: 10	16 St Time: 8 OT: 2	17 St Time: 8 OT: 2	18 St Time: 8 OT: 2	19 St Time: 8 OT: 2	20 St Time: 8 OT: 3	21 St Time: 0 OT: 8
22 St OT: 0 Time: 0	23 St Time: 8 OT: 2	24 St Time: 8 OT: 2	25 St Time: 8 OT: 2	26 St Time: 8 OT: 2	27 St Time: 8 OT: 2	28 St Time: 0 OT: 10
29 St Time: 0 OT: 4	30 St Time: 8 OT: 2	31 St Time: 8 OT: 2				

Total hours worked: 284

November 2000

<i>Sun</i>	<i>Mon</i>	<i>Tue</i>	<i>Wed</i>	<i>Thu</i>	<i>Fri</i>	<i>Sat</i>
			1 St Time: 8 OT: 2	2 St Time: 8 OT: 2	3 St Time: 8 OT: 2	4 St Time: 0 OT: 10
5 St Time: 0 OT: 6	6 St Time: 8 OT: 2	7 St Time: 8 OT: 2	8 St Time: 8 OT: 2	9 St Time: 8 OT: 2	10 St Time: 8 OT: 2	11 St Time: 0 OT: 10
12 St Time: 0 OT: 7	13 St Time: 8 OT: 2	14 St Time: 8 OT: 2	15 St Time: 8 OT: 3.5	16 St Time: 8 OT: 2	17 St Time: 8 OT: 3	18 St Time: 0 OT: 10
19 St Time: 0 OT: 10	20 St Time: 8 OT: 2	21 St Time: 8 OT: 2	22 St Time: 8 OT: 2	23 St Time: 0 OT: 0	24 St Time: 8 OT: 2	25 St Time: 0 OT: 10
26 St Time: 0 OT: 6	27 St Time: 8 OT: 2	28 St Time: 8 OT: 2	29 St Time: 8 OT: 2	30 St Time: 8 OT: 2		

Total hours worked: 281.5

December 2000

<i>Sun</i>	<i>Mon</i>	<i>Tue</i>	<i>Wed</i>	<i>Thu</i>	<i>Fri</i>	<i>Sat</i>
					1 St Time: 8 OT: 2	2 St Time: 0 OT: 8
3 St Time: 0 OT: 7	4 St Time: 8 OT: 2	5 St Time: 8 OT: 2	6 St Time: 8 OT: 2	7 St Time: 8 OT: 2	8 St Time: 8 OT: 2	9 St Time: 0 OT: 10
10 St Time: 0 OT: 8	11 St Time: 8 OT: 4	12 St Time: 8 OT: 2	13 St Time: 8 OT: 1	14 St Time: 8 OT: 2	15 St Time: 8 OT: 1	16 St Time: 0 OT: 10
17 St Time: 0 OT: 10	18 St Time: 8 OT: 2	19 St Time: 8 OT: 2	20 St Time: 8 OT: 1	21 St Time: 8 OT: 2	22 St Time: 8 OT: 1	23 St Time: 0 OT: 9
24 St Time: 0 OT: 9	25 St Time: 0 OT: 0	26 St Time: 8 OT: 2	27 St Time: 8 OT: 2	28 St Time: 8 OT: 2	29 St Time: 8 OT: 2	30 St Time: 0 OT: 9
31 St Time: 0 OT: 0						

Total hours worked: 278

January 2001

<i>Sun</i>	<i>Mon</i>	<i>Tue</i>	<i>Wed</i>	<i>Thu</i>	<i>Fri</i>	<i>Sat</i>
	1 St Time: 0 OT: 0	2 St Time: 8 OT: 2	3 St Time: 8 OT: 2	4 St Time: 8 OT: 2	5 St Time: 8 OT: 2	6 St Time: 0 OT: 10
7 St Time: 0 OT: 0	8 St Time: 8 OT: 2	9 St Time: 8 OT: 2	10 St Time: 8 OT: 2	11 St Time: 8 OT: 2	12 St Time: 8 OT: 2	13 St Time: 0 OT: 10
14 St Time: 0 OT: 0	15 St Time: 8 OT: 2	16 St Time: 8 OT: 2	17 St Time: 8 OT: 2	18 St Time: 8 OT: 2	19 St Time: 8 OT: 2	20 St Time: 0 OT: 8
21 St Time: 0 OT: 0	22 St Time: 8 OT: 2	23 St Time: 8 OT: 2	24 St Time: 8 OT: 2	25 St Time: 8 OT: 4	26 St Time: 8 OT: 2	27 St Time: 0 OT: 0
28 St Time: 0 OT: 0	29 St Time: 8 OT: 2	30 St Time: 8 OT: 2	31 St Time: 8 OT: 2			

Total hours worked: 250

February 2001

<i>Sun</i>	<i>Mon</i>	<i>Tue</i>	<i>Wed</i>	<i>Thu</i>	<i>Fri</i>	<i>Sat</i>
				1 St Time: 8 OT: 2	2 St Time: 8 OT: 2	3 St Time: 0 OT: 8
4 St Time: 0 OT: 0	5 St Time: 8 OT: 1	6 St Time: 8 OT: 2	7 St Time: 8 OT: 2	8 St Time: 8 OT: 3	9 St Time: 8 OT: 1.5	10 St Time: 0 OT: 4
11 St Time: 0 OT: 0	12 St Time: 8 OT: 2	13 St Time: 8 OT: 2	14 St Time: 8 OT: 2	15 St Time: 8 OT: 2	16 St Time: 8 OT: 2	17 St Time: 0 OT: 10
18 St Time: 0 OT: 0	19 St Time: 8 OT: 2	20 St Time: 8 OT: 2	21 St Time: 8 OT: 2	22 St Time: 8 OT: 2	23 St Time: 8 OT: 2	24 St Time: 0 OT: 8
25 St Time: 0 OT: 8	26	27	28			

Total hours worked: 207.5

Exhibit B

9-26-08.txt

1 APPEARANCES, con't.

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3

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11 Court Reporter: JACQUELINE M. SULLIVAN, RPR
12 Official Court Reporter
13 U.S. Courthouse, Room 6720
14 333 Constitution Avenue, NW
15 Washington, D.C. 20001
16 202-354-3187

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16 Proceedings reported by machine shorthand, transcript produced
17 by computer-aided transcription.

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4 come up with a way to put the burden on the parties to download
5 their own exhibits. I don't know. We can talk about it and you
6 can think about it.

7 MR. CARY: I do want to say, and I think I can speak
8 with Mr. Sullivan's forty years and my seventeen or eighteen
9 years, we don't hand things out to the media. We absolutely
10 don't have a reputation for doing that. That's not the way we
11 practice law.

12 MS. MORRIS: It's providing it. It's not the defense.
13 It's providing to the court personnel and the court personnel --

14 THE COURT: Keep talking about it. I just can't
15 burden court personnel because they have enough burdens already.
16 Let's proceed.

17 (Jury enters courtroom at about 2:14 p.m.)

18 THE COURT: Good afternoon. Have a seat.
19 Call your next witness.

20 MR. MARSH: Thank you, your Honor. The government
21 calls Cheryl Boomersshine.

22 THE COURT: All right.

23 COURTROOM DEPUTY: Please raise your right hand.

24 Do you solemnly swear or affirm that the testimony you
25 shall give the Court and jury on the case now on trial will be

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1 the truth, the whole truth, and nothing but the truth?

2 MS. BOOMERSHINE: I do.

3 COURTROOM DEPUTY: Have a seat.

4 THE COURT: Good afternoon.

5 THE WITNESS: Hi.

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6 CHERYL BOOMERSHINE, WITNESS FOR THE GOVERNMENT, SWORN

7 DIRECT EXAMINATION

8 BY MR. MARSH:

9 Q. Good afternoon. Ma'am, can you please state and spell your
10 name for the record?

11 A. It's Cheryl Boomershine, C-h-e-r-y-l, last name is
12 Boomershine, B-o-o-m-e-r-s-h-i-n-e.

13 THE COURT: You're going to have to keep your voice
14 up, and you're going to have to speak into that microphone.
15 There's another courtroom where people are seated and they're
16 trying to listen.

17 THE WITNESS: Okay.

18 BY MR. MARSH:

19 Q. Ms. Boomershine, you may want to pull it closer to you just
20 a little bit further.

21 Ms. Boomershine, where do you live?

22 A. Anchorage, Alaska.

23 Q. Are you currently employed?

24 A. Yes.

25 Q. Where do you work?

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1 A. CH2M Hill.

2 Q. And you're aware, are you not, that about a year ago CH2M
3 Hill purchased a company called VECO Corporation?

4 A. Yes.

5 Q. Prior to that transaction where did you work?

6 A. VECO Corporation.

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7 Q. Ms. Boomershine, I'd like to ask you some questions today
8 about some things that you did at VECO Corporation, but first
9 I'd like for you to tell us a little bit about yourself, where
10 you grew up, and your professional background up to today.

11 A. I was a military dependent so we moved around a lot. I've
12 worked for VECO or its subsidiaries since 1981 in the accounting
13 department.

14 Q. Before you came to -- can you tell us a little bit about
15 your educational background?

16 A. High school, with some college.

17 Q. And where were those?

18 A. High school?

19 Q. Yes.

20 A. In Germany and in Arizona, and college was in Alaska.

21 Q. When did you first move to Alaska?

22 A. In '78.

23 Q. And you said you started working at VECO in 1981?

24 A. Yes.

25 Q. Tell us some of the different types of jobs you've had at

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1 VECO between now and then.

2 A. I started in accounts payable, then moved on and did
3 payroll and accounts receivable and general ledger. I then
4 moved into strictly the accounting for one of the major
5 subsidiaries, VECO Inc. at the time, which is now VECO Alaska,
6 then moved over to the corporate office and did the financials
7 for the corporate books, and then also did treasury management
8 for the Alaska region.

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18 such records?

19 A. Yes.

20 Q. When you reviewed those documents did you recognize in fact
21 your handwriting on many of them?

22 A. Yes.

23 MR. MARSH: Your Honor, at this time the government
24 moves to admit 1058 through 1093.

25 THE COURT: Any objection?

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1 MR. CARY: No objection, your Honor.

2 THE COURT: Admitted.

3 (Government Exhibit Nos. 1058-1093 admitted into
4 evidence at about 2:32 p.m.)

5 BY MR. MARSH:

6 Q. Ms. Boomershine, if you could please turn to Government's
7 Exhibit 1060. I think it's the third one in your stack. Ma'am,
8 could you walk us through what we see on the first page here?

9 A. This is an invoice prepared by our subsidiary VECO
10 Equipment to VECO Corporation.

11 Q. And Ms. Boomershine, if you can just pull the microphone a
12 little closer to you.

13 A. Sorry.

14 Q. That's okay. Could you repeat your answer, please?

15 A. It's an invoice prepared by VECO Equipment to VECO
16 Corporation.

17 Q. Do you see a date on that invoice?

18 A. I do. It's dated 1/8, 2001.

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- 1 to compare them to what you got at 177. Let's start with --
2 let's go back to Government's 1060. I'd like for you to look at
3 the last three pages of that document. What are these?
4 A. These are time sheets.
5 Q. Do you know for what employee?
6 A. Rocky Williams.
7 Q. It says here Robert Williams. Do you know him as Rocky?
8 A. Yes. I think his nickname was Rocky.
9 Q. Who was Rocky?
10 A. He was an employee of VECO Equipment.
11 Q. Now, Ms. Boomershire, if you could switch to Government's
12 Exhibit 1063, please, and take a look at that and let me know if
13 you -- I'm sorry. Please take a look at that. I'd like to draw
14 your attention to the first page. Again, can you describe what
15 the first page represents?
16 A. Again, it's another invoice from VECO Equipment to VECO
17 Corporation.
18 Q. Is there any information on this document that tells you
19 the date of the invoice and whether or not it relates to work
20 done in a certain time frame?
21 A. The invoice date is March 6th, 2001, and it's for the
22 period of February based on work ending 2/28. They billed
23 monthly, so it would be all the work done in February of 2001.
24 Q. Just one moment.
25 Ms. Boomershire, if you can, would you please take a

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1 look at the remainder of the pages in here and let me know if
2 you know what generally these relate to?

3 A. I'm sorry, what was the last?

4 Q. If you could take a look at the remainder of the things in
5 here and let me know what they relate to.

6 A. Oh. Do you want to go through each document?

7 Q. Well, I'd like for you to just take a look through and let
8 me know, my question is: what, if any, types of expenses are
9 reflected in the attached documentation?

10 A. Oh, okay. Well, the first document just shows the
11 equipment ownership that VECO Corporation had charged from VECO
12 Equipment.

13 Q. Let me maybe say it a little differently.

14 A. Okay.

15 Q. Ms. Boomershine, at the bottom of this page there is some
16 handwriting.

17 A. Okay.

18 Q. The bottom left-hand corner?

19 A. Um-hmm.

20 Q. Do you recognize that handwriting?

21 A. I do. It's my handwriting.

22 Q. Is it fair to say these are cost codes that are broken up?

23 A. Yes.

24 Q. And can you tell us whether or not these amounts show up on
25 the job cost detail that's set forth at Government's 177?

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- 1 A. They do, the 099, for \$6,823.67 --
- 2 Q. Okay.
- 3 A. -- shows up. It's the third line from the bottom in that
- 4 same category.
- 5 Q. Okay. And if we can go back to Government's 177. If we
- 6 can blow up on --
- 7 A. The next section.
- 8 Q. We can go right here (indicating).
- 9 Now, the number on the document we just looked at is
- 10 \$6,823.67; is that correct?
- 11 A. Correct.
- 12 Q. What is the invoice date on that document?
- 13 A. The invoice date is March 6th, 2001.
- 14 Q. And is that the corresponding amounts?
- 15 A. It is.
- 16 Q. And, Grace, if we could just expand back out a little bit
- 17 larger to cover the last four columns. If we can go a little
- 18 bit larger than that.
- 19 So again, this is the \$6,823, and what is this number
- 20 over here?
- 21 A. That's the invoice date, and then next to it is the invoice
- 22 number.
- 23 Q. And I note that there is also another number right here
- 24 (indicating)?
- 25 A. Right.

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1 Q. What does that number mean to you?

2 A. That's the invoice number.

3 Q. And how does that correspond to the invoice number on 1063?

4 A. It is one in the same.

5 Q. Now, if we can go back to 1063 and go to the third page.

6 And if we can blow up the text on that.

7 Now, Ms. Boomershine, do you recognize this

8 information on the third page of document 1063?

9 A. This is my handwriting where I was just splitting out what
10 these costs were on the invoice.

11 Q. Now, the top line is what?

12 A. It's Rocky Williams', or Robert Williams', wages.

13 Q. And that amount, \$6,823.67, how does that correspond to the
14 amount that's reflected on the cost report at 177?

15 A. It's the same.

16 Q. So would it be fair to say that out of this entire invoice
17 at 1063 what got coded to that number was Rocky Williams' wages?

18 A. Correct.

19 Q. And this was for the period work ending February 28th,
20 2001?

21 A. Correct.

22 Q. What, if anything, does that tell you about what this
23 number, \$6,823.67, relates to?

24 A. That Rocky Williams -- if I understand correctly, what I
25 was doing?

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1 Q. Do you happen to know what he was doing at the time?

2 A. I don't, I don't. But based on this information, he was
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3 working on, it states Girdwood, so he was working on the
4 Girdwood.

5 Q. Let's go back to 177, if we can, if we can focus up here.
6 Now, you said Girdwood. Would it be fair to say that the --
7 customarily in VECO are job codes associated with names of
8 projects?

9 A. Customarily, no.

10 Q. Right here we've got the, on this left-hand side here,
11 we've got the cost code number that we've talked about in some
12 detail today?

13 A. Correct.

14 Q. And next to it is a number, Girdwood Consultants; is that
15 correct?

16 A. That's correct.

17 Q. What, if anything, does the phrase "Girdwood Consultants"
18 mean in connection with the job code that's to the left of it?

19 A. It was just a description assigned to that coding in our
20 software system.

21 Q. Ms. Boomersshine, are you aware of any VECO plants or
22 facilities located in Girdwood, Alaska?

23 A. No.

24 Q. Are you aware of any oil services work that VECO did during
25 this time in Girdwood, Alaska?

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1 A. No.

2 Q. Now, ma'am, if you could turn to Government's Exhibit 1065,
3 please. Can you tell us what this is?

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- 1 A. This is the summary page of the expense report.
- 2 Q. Do you see an entry on there for \$2,000?
- 3 A. I do.
- 4 Q. Is there anything on this page that lets you know who
- 5 incurred that expense?
- 6 A. It says R.B. Williams. So that would be Rocky Williams.
- 7 Q. Can you please go two more pages into that document? There
- 8 appears to be something at the very top, the top third of that
- 9 page?
- 10 A. Correct.
- 11 Q. What is that?
- 12 A. It looks like a handwritten itemized list.
- 13 Q. Do you recognize that handwriting?
- 14 A. I don't.
- 15 Q. Ms. Boomersshine, in your original copy, how is that
- 16 attached to the page?
- 17 A. It's just taped to a document.
- 18 Q. Now, do you have any idea what these materials -- what, if
- 19 anything, do you know what these materials relate to?
- 20 A. I don't know of anything that they relate to.
- 21 Q. Could you take that receipt off and --
- 22 A. Untape it from the page?
- 23 Q. Yes, please. I'm going to come get it from you.
- 24 Ms. Boomersshine, does this appear to be the receipt
- 25 that we were just discussing?

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1 A. Yes.

2 Q. I'd like to flip it over to the backside. How many
3 different types of handwriting to you appear to be on this page?

4 A. Two.

5 Q. Would it be fair to say there's some ink on the left and
6 pencil on the right?

7 A. I didn't flip it over so I can't tell. Sorry.

8 Q. Does there appear to be a different type of writing on the
9 left?

10 A. There is different handwriting, yes.

11 Q. With respect to the handwriting on the left, do you
12 recognize that?

13 A. That's my handwriting.

14 Q. And do you recognize the handwriting on the right?

15 A. It appears to be Billy Hill, the accounts payable.

16 Q. And can you read it for us, please?

17 A. It states, my question was, who? And she wrote, No "who"
18 per Bill. "When" was August 2000. "Where" was Girdwood.
19 "Why?" No paper trail per Bill Allen per Rocky.

20 Q. Ma'am, I'd like to turn your attention back to Government's
21 Exhibit 177. This is an expanded view of the very right-hand
22 column; is that correct?

23 A. Yes.

24 Q. And would it be fair to say that these amounts reflected
25 here are amounts that you've been able to correspond -- you've

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- 1 been able to confirm correspond to amounts of invoices that are
2 in 1058 to 1093 next to you?
- 3 A. Correct.
- 4 Q. Grace, you can just go down a little bit.
5 what is the total amount of those invoices under this
6 cost code 99250?
- 7 A. \$181,699.12.
- 8 Q. Now, I believe we've discussed the cost code of
9 00699-92-340.
- 10 A. Correct.
- 11 Q. And would that be the Girdwood Consumables?
- 12 A. Correct.
- 13 Q. What is the total balance of the costs that were associated
14 with that code?
- 15 A. \$6,430.94.
- 16 Q. Can we go to the next page, please? Totaling up all the
17 costs on this page, can you tell what that total amount was?
- 18 A. \$188,928.82.
- 19 Q. Is that the number that we see in the lower right-hand
20 corner of the screen reflected here?
- 21 A. Correct.
- 22 Q. Now, Ms. Boomershine, could you take a look at and let us
23 know when the first invoice or bill date is of the information
24 contained in this document?
- 25 A. It looks like October 1st. It's on the second page.

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1 Q. Okay. And if you could, if I could return your attention
2 to the first page again, what, if any, are there any additional
3 invoices prior to that date reflected under this cost code 92340
4 for consumables?

5 A. Oh, sorry. Yes. September 12th, 2000.

6 Q. Would it be fair to say, Ms. Boomershine, that generally
7 speaking, the material in here started in the summer to fall of
8 2000 and continued through --

9 MR. CARY: Your Honor, I have to object to leading.

10 MR. MARSH: I apologize, your Honor. I'll go through
11 in more detail.

12 THE COURT: Rephrase it.

13 BY MR. MARSH:

14 Q. Ms. Boomershine, can you take a look at, if we can go to
15 the very top of your screen. There appear to be some invoices
16 in April of 2001.

17 A. Yes.

18 Q. If you can just take a minute and look through this and
19 determine whether or not there are any invoices reflected in
20 this spreadsheet, in this job cost detail, that have an invoice
21 date of after April 9, 2001.

22 A. No, I don't see any.

23 Q. Ms. Boomershine, I've handed you what's been marked for
24 purposes of identification as Government's Exhibit 180. Did
25 there come a point in time in which you became involved with a

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1 search for VECO Corporation records for checks for
2 reimbursements to VECO from Ted Stevens and/or Catherine
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Exhibit C

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

UNITED STATES OF AMERICA,

v.

THEODORE F. STEVENS,

Defendant.

Crim. No. 08-231 (EGS)

DECLARATION OF SIMON A. LATCOVICH

I, Simon A. Latcovich, upon personal knowledge, assert the following:

1. I have personal knowledge of the facts set forth in this Declaration.
2. I participated in a telephone conversation on September 28, 2008 at approximately 3:00 P.M. in which Robert "Rocky" Williams ("Williams") disclosed the facts set forth in this Declaration.
3. Williams was an employee of VECO, an oil services company, during 2000 and 2001.
4. Although he worked full days for VECO in 2000 and 2001, Williams rarely if ever spent a full work day working on renovations to the Girdwood residence.
5. Williams also worked on other tasks during this time period of the renovation such as (1) servicing Bill Allen's camper, boats, snow machines, and fishing lodge equipment kept at his "Toy Box"; or (2) keeping inventory at VECO's long-term file and desk storage.
6. Even while he was at the Girdwood residence, Williams often spent time on his cellular phone coordinating other activities unrelated to the renovations.

7. Williams submitted his total time to VECO with the expectation that it would bill the proper percentage of his time to the appropriate cost codes.

8. When the renovation of the Girdwood residence began, Williams advised Bill Allen that VECO should be involved as little as possible in the project.

9. Williams also advised Bill Allen that raising the Girdwood residence a full eight feet as opposed to creating a daylight basement was a break-even proposition or only slightly more expensive because of concerns that groundwater intrusion could foster mold or other problems.

10. In January of 2001, Williams wrote a \$2,000 check to Catherine Stevens at the direction of Bill Allen for an electrical heater, bathtub, fireplace insert, cabinets, and old doors. He wrote this check because Bill Allen did not carry a checkbook. In his opinion, the fair market value of these items was at least \$2,000. Bill Allen purchased these items and gave them to family members. Williams was later reimbursed by VECO.

11. The only interest Senator Stevens showed in the renovation of the Girdwood residence was keeping his wife Catherine happy. He wanted a place where he could chop and then burn wood.

12. Williams was in Washington, D.C. from approximately September 15, 2008 to September 25, 2008 for government interviews and trial preparation. The government sent him back to Alaska on September 25, 2008.

13. Williams has informed the government of all facts set forth in this Declaration either through personal interviews or grand jury testimony.

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

September 28, 2008



Simon A. Latcovich

Exhibit D

SEPT2508STEVENSOCR.TXT

1

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF COLUMBIA
3 UNITED STATES DISTRICT COURT CRIMINAL ACTION NO. 08-0231
4 WASHINGTON, D.C.
5 VERSUS THURSDAY, SEPTEMBER 25, 2008
6
7 THEODORE F. STEVENS 2:00 P.M.
8

9 JURY TRIAL (DAY 4 - PM SESSION)
10 BEFORE THE HONORABLE EMMET G. SULLIVAN
11 UNITED STATES DISTRICT COURT JUDGE
12

13 A P P E A R A N C E S :

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1 FOR THE DEFENDANT, BRENDAN SULLIVAN, ESQ.
2 ROBERT MADISON CARY, ESQ.
3 ALEX G. ROMAIN, ESQ.
4 CRAIG D. SINGER, ESQ.
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11 Proceedings recorded by mechanical stenography.

12 Transcript produced by computer-aided transcription.

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25 Q. And what did you mean by "STS"?

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12

1 A. That would be Senator Ted Stevens.

2 Q. I'd like to go to inside, Mr. Hess. I'd like to start
3 at the top of this folder and work our way down. The first
4 name on here appears to be Rocky(Phonetic) Williams.

5 A. Correct.

6 Q. Now, can you see the handwriting that's on the screen in
7 front of you?

8 A. Yes, I can.

9 Q. Do you recognize that handwriting to be yours?

10 A. I believe it's mine.

11 Q. Who was Rocky Williams in the context of this remodel of
12 the defendant's house?

13 A. I would call him the site superintendent or general
14 foreman. He seemed to be for the most part in charge of the
15 construction.

16 Q. During your involvement with this project at the
17 senator's house, did you have occasion to go down to the house
18 as construction was going on?

19 A. A couple of times, yes.

20 Q. Did you ever see Rocky Williams down there?

21 A. Yes, I did.

22 Q. Do you recall having any conversations with Rocky
23 Williams about the renovation during the time the renovations