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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. AARON J. SCHOCK, Defendant.	)	Case No. 16-cr-30061

DEFENDANT SCHOCK'S MEMORANDUM IN SUPPORT OF MOTION FOR DISCOVERY REGARDING USE OF CONFIDENTIAL INFORMANT

COMES NOW Defendant Aaron J. Schock, by and through counsel, and respectfully submits this Memorandum in Support of his Motion for Discovery Regarding Use of Confidential Informant. For the reasons given herein, Mr. Schock respectfully submits that the Motion should be granted.

INTRODUCTION

Mr. Schock has learned that while he was a sitting member of Congress the government enlisted one of his staffers as a confidential informant ("CI"), whom it utilized to: (a) covertly record private conversations with and between Mr. Schock and his staff, including conversations where attorney-client privileged communications were discussed, (b) steal physical Congressional Office records that were Mr. Schock's personal property, (c) download and deliver to the prosecution team electronic Office records stored on house.gov accounts, and (d) attempt to obtain records that were attorney work product. Discovery thus far provided by the government has yielded this limited information, which discloses *prima facie* violations by the government of Fourth and Fifth Amendment rights. The government has declined to produce additional requested information relevant to these violations and the remedies that may be available to redress them.

This information is also relevant to the government's violations of separation of powers principles, including those embodied in Speech or Debate jurisprudence, thus necessitating this motion for further discovery.[1] The government has stated that it intends to use the recordings at trial, and, although it now states it will not use certain of the purloined material at any trial in the case, it has remained silent about whether it intends to use other documents it illegally obtained. In spite of these efforts, there is no indication that the government's use of the CI produced the "smoking gun" it no doubt sought by using him. The government, however, cannot run away from what was produced: a trail of improper – if not outright illegal – acts by the CI that remain not fully known to the defense in this case.

Among what is unknown to Mr. Schock, and what the government has refused to disclose, is the full extent to which the prosecutor and the investigating agents directed the CI to engage in illegal and/or improper activities, *and* what use the government made of the ill-gotten fruits of the CI's efforts. Further discovery is required because a predicate has been established that the CI engaged in constitutional violations and other illegal acts, which are relevant to pretrial motions and trial defense. These include, but are not limited to, a motion to dismiss the indictment for prosecutorial misconduct, motions to suppress, and impeachment at trial of the CI. The Court possesses the authority to order this discovery pursuant to its inherent authority to order discovery in criminal cases, Federal Rule of Criminal Procedure 16, and pursuant to the government's *Brady* and *Giglio* obligations. While the CI's actions provide a basis for such motions, this further

[1] In accordance with Local Criminal Rule 16.1(C), on March 1, 2017, the defense submitted a written request to the government requesting discovery relating to this and other issues. The parties subsequently conferred. On March 17, 2017, the government represented that it had identified two additional reports from the CI's source file that it determined were pertinent and would be Jencks material of an agent. Upon our request, the government provided the defense with these two reports on March 24, 2017.

discovery will inform the degree to which the CI's actions, in violation of Mr. Schock's constitutional rights, were affirmatively directed or tacitly approved by the government.

FACTUAL BACKGROUND

In mid-March 2015, the U.S. Attorney's Office in the Central District of Illinois ("USAO") opened a criminal investigation of Representative Schock. According to the discovery provided by the government, the very first witness the government interviewed was the individual who would become the CI, a fairly junior staffer in then-Congressman Schock's District Office in Peoria, which was located in the United States Federal Courthouse.[2] The government apparently enlisted this individual as a CI and, for at least the next several months, the CI, while acting under the direction and control of the government:

- Covertly tape recorded conversations with Mr. Schock, a sitting Member of Congress, in his District Office and elsewhere;
- Covertly tape recorded conversations of several of Mr. Schock's District staff members – most of whom were represented by counsel;
- Edited and removed a staff roster from Mr. Schock's District Office;

[2] In this case, the government has provided the defense with a large volume of discovery. While the government has yet to provide us with all the discovery it has promised, the government had informed the defense before our request for additional discovery on March 1, 2017, that it had provided us with all the reports by the various investigating agents involved in the case (there are numerous agents involved in the case from several federal agencies and from at least one Illinois State agency) and with all the statements and testimony by all the witnesses interviewed by the government. Nevertheless, after making this representation, the government informed the defense on March 17, 2017, that it had reviewed its records based on our request for additional documents and (a) had discovered two agent reports related to instructions provided to the CI that were Jencks materials, and (b) had discovered notes of two additional interviews of witnesses and was now preparing memoranda of those interviews. The defense has received the two agent reports, but we have not received the memoranda of the two interviews. This summary is based on the information in the discovery received to date. Because of the voluminous nature of the discovery, Mr. Schock has cited to the relevant portions of the investigative and grand jury record. Mr. Schock stands ready to make these documents available to the Court to the extent it would find the review of these documents necessary or helpful.

- Attempted – at the government's direction – to steal privileged work product documents, believed to be in the files of the Office of the 18th Congressional District of Illinois, that were created by Mr. Schock's attorneys and related to documents gathered by those attorneys in connection with their work for Mr. Schock;

- Searched through and stole travel-related receipts in the District Office from the desk drawer of a staffer and provided those receipts to the government;

- Searched through and stole thousands of emails from the house.gov email account of a staffer in the District Office and provided those emails to investigators;

- Stole a spreadsheet from the District Office containing information regarding the leave taken by staffers.

These activities are addressed in more detail below.

I. CI Recordings Infringing on the Attorney-Client and Speech or Debate Privileges

On March 17, 2015, Mr. Schock announced his resignation from Congress.[3] One of the government's first investigative steps was to serve Mr. Schock's District Office in Peoria with a subpoena for documents.[4] The evening of the day after Mr. Schock announced his resignation, government agents went to Mr. Schock's District Office after it had closed. Upon arriving, they met for the first time with the CI, who served as the office manager.[5] The CI told investigators that he was simultaneously not aware of any of the misconduct alleged in the media and only knew of what the media reported.[6] The CI never saw any "red flags" with staff mileage reports.[7] Nevertheless, the CI opined that he believed several members of Mr. Schock's staff had been improperly paid from both Mr. Schock's campaign funds and his House Members'

[3] Alex Moe and Andrew Rafferty, *Rep. Aaron Schock Announces Resignation*, NBC News, Mar. 18, 2015.
[4] *See* Memorandum of Interview, Inspector S. Rowe, Mar. 19, 2015 (AGENT_RPT_00000812).
[5] IL State Police Investigative Report, Mar. 18, 2015 at 2 (AGENT_RPT_00000791-93).
[6] *Id.*
[7] *Id.*

Representational Allowance.[8] The CI, who had confessed his lack of firsthand knowledge, nevertheless made veiled accusations – and was dead wrong.[9]

The government signed up the CI to, among other things, wear a hidden device to record conversations with a sitting member of Congress (Mr. Schock) and several staff members. The CI's job would be to supply investigators with documents from Mr. Schock's District Office, to provide information about the staff and operations of the District Office, and to monitor and record conversations with Mr. Schock and the members of his staff. Beginning that day, the government met with their new CI almost daily to provide instructions, receive documents or other items the CI seized, discuss "scenarios," equip him with the recording device, and debrief him after completion of a monitoring and recording session.[10]

The USAO selected five people whose communications would be monitored and recorded by the informant, including Mr. Schock and several members of his staff.[11] All five were represented by counsel. It was widely reported in the news media that Mr. Schock was represented by the Jones Day LLP law firm.[12] The other four individuals were all represented by William

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[8] *Id.*

[9] The House Ethics Manual specifically provides that congressional staffers may be paid for their work on a Member's campaign, provided they do so on their own time, which is determined by the personnel policies of the employing office, and which does not necessarily have to correspond to evenings and weekends. Committee on Standards of Official Conduct, House Ethics Manual 135-36 (2008). The government has not charged any violations concerning allegedly improper campaign work by Mr. Schock's staff.

[10] *See* Basil Demczak, Grand Jury Testimony, Apr. 9, 2015 at 13 (GJ_TRANSCRIPT_00000041). The CI was "handled" by FBI Special Agent Greg Spencer with assistance from Basil Demczak and Shari Rowe of the U.S. Postal Inspection Service.

[11] The government selected Mr. Schock, Karen Haney, Mr. Schock's campaign manager, Dayne LaHood, Mr. Schock's district chief of staff, Shea Ledford, a staffer, and Jonathon Link, Mr. Schock's digital media director.

[12] *See, e.g.*, Kia Makarechi, *More Troubles For Congressman Who Decorated His Office to Look Like Downton Abbey*, Vanity Fair, Feb. 25, 2015 (noting that Mr. Schock had hired Jones Day to represent him).

Coffield, an attorney in Washington, D.C., who offered to represent anyone on Mr. Schock's staff who wanted to be represented by counsel. In the days following March 18, Mr. Schock's staffers and others were served with subpoenas by investigators.[13] At that time, those who were represented by Mr. Coffield informed the investigators they were represented by him in the matter.[14] In addition, Mr. Coffield informed the prosecutor that he represented all of those individuals.[15]

Notwithstanding the fact that all five were represented by counsel relating to the matter under investigation, the CI initiated and then monitored and recorded conversations with each of them, including conversations relating to the subjects about which they were being represented.[16] The CI, while under the direction and control of the government, and acting in furtherance of his role as a CI, undertook this monitoring of the attorney's clients.[17] The government instructed the CI to turn his recording device off at certain times, such as when recording conversations with an

[13] *See* Form FD-302, Agents D. Harmon and M. Ranck, Mar. 25, 2015 (AGENT_RPT_00000041); Subpoena to Testify Before a Grand Jury, Mar. 19, 2015 (AGENT_RPT_00000029); Memorandum of Interview, Inspector S. Rowe, Mar. 19, 2015 (AGENT_RPT_00000812); Form FD-302, Agents D. Harmon and M. Ranck, Mar. 27, 2015 (AGENT_RPT_00000042); IL State Police Investigative Report, Agent T. Deeder, Mar. 20, 2015 (AGENT_RPT_00000795).

[14] *See* Form FD-302, Agents D. Harmon and M. Ranck, Mar. 27, 2015 (AGENT_RPT_00000040); Form FD-302, Agents D. Harmon and M. Ranck, Mar. 27, 2015 (AGENT_RPT_00000039).

[15] *See* Form FD-302, Agents D. Harmon and M. Ranck, Mar. 27, 2015 (AGENT_RPT_00000042).

[16] *See, e.g.*, Transcript of Confidential Source Recording 3/20/15 - #1 and #2 at 1-4 (CI recorded meeting where Mr. Schock addressed his staff and spoke to the issues that have been raised in the media and where the CI approached Mr. Schock alone and specifically asked him to explain the mileage issue); Transcript of Confidential Source Recording 03/25/15 at 5-8 (CI asked Mr. LaHood what Mr. Schock has said to him about the car the campaign paid for and about Mr. Ledford's campaign versus official time); Transcript of Confidential Source Recording 03/26/15 at 13-20 (CI asked Mr. Ledford about his campaign versus official time and about the mileage issue); Transcript of Confidential Source Recording of Lunch, Mar. 30, 2015 at 23-34 (CI asked Mr. Schock about Mr. Ledford splitting campaign and official time, about the campaign car purchased for Mr. LaHood's use, mileage, and flights); Transcript of Confidential Source Recording 4/16/15 at 3-7 (CI talked to Mr. Ledford regarding rules for flights).

[17] *See* SA G. Spencer, FBI Form FD-1040a, CHS Admonishments (March 16, 2016); SA G. Spencer, FBI Form FD-1040a, CHS Admonishments (March 25, 2016).

attorney.[18] At various points during the recorded conversations, the CI made statements that falsely suggested that he too was also represented by Mr. Coffield.[19] Additionally, the CI appears to have been a part of one or more conversations with Mr. Coffield and one or more staff members represented by Mr. Coffield during which time he falsely purported to be a client of Mr. Coffield as well.[20] Moreover, at other times, the CI *sought to deliberately elicit* attorney-client privileged

[18] *See, e.g.*, SA G. Spencer, FBI Form FD-1023 CHS Reporting Document, March 27, 2015 (AGENT_RPT_00000043); SA G. Spencer, FBI Form FD-1023 CHS Reporting Document, March 29, 2015 (AGENT_RPT_00000045).

[19] *See, e.g.*, Transcript of Confidential Source Recording 3/25/15 at 3 (CI informed Mr. LaHood that when the agents approached him and started to question him, he informed them that he was represented and when agents asked for the name of the attorney, the CI went to get Mr. LaHood); *id.* at 4 (CI questioned Mr. LaHood about what the government asked him about, to which Mr. LaHood responded that Mr. Coffield would go "over it with ya," to which the CI responded affirmatively); *id.* at 16 (CI claimed to be concerned that "something's gonna get twisted into something that it's not," to which Mr. LaHood replied "we got an attorney" and suggested that the CI "ask all the questions you want so [when] we're on the phone with him we can knock it out," prompting the CI to respond "Yeah."); *id*. at 18-19 (CI tells Karen Haney, Mr. Schock's campaign manager, and Mr. LaHood that when the agents came to the Office earlier that day to deliver a subpoena and ask him questions, the CI "didn't entertain any of that" and "just told them, look, you know I'm represented. I'm not gonna talk to you."); Transcript of Confidential Source Recording 3/26/15 at 15-20 (Mr. Ledford spoke at length about what Mr. Coffield had discussed about the case, and the CI asked "But do you think Bill Coffield guy really knows his stuff?"); Transcript of Confidential Source Recording of Lunch, Mar. 30, 2015 at 14-16 (CI tells Mr. Schock that he is now considering potentially retaining a separate attorney other than Mr. Coffield and discusses the prospect with him at length.).

[20] *See* Transcript of Confidential Source Recording 3/25/15 at 11-12 (Mr. Coffield appeared to call the CI, who was present with Mr. LaHood, who appeared to be talking to Mr. Coffield on the phone); *id.* at 17 (Ms. Haney asked the CI about the purpose for which Mr. LaHood wanted to "meet to compare notes," to which the CI responded that Mr. LaHood was worried "that everybody's kinda freaked out" and that "he was gonna have Bill call in."); Transcript of Confidential Source Recording of Dayne LaHood, Mar. 26, 2015, at 8 (the CI asked Mr. LaHood if they were "still on for talking to Bill [Coffield]?" Mr. LaHood replied yes.); *id*. at 13-20 (CI recorded Mr. Ledford, who discussed conversations with Mr. Coffield in which Mr. Coffield explained the intent element); *id*. at 23 (CI told Mr. LaHood "Thanks for setting up that call" and informs Mr. LaHood that he "feel[s] so much better talking to him."); Transcript of Confidential Source Recording 3/27/15 at 16 (CI asked Mr. LaHood "is he [apparently referring to Mr. Schock] guilty of anything? Or do you think this is hundred percent unfair?" The CI continued to prod Mr. LaHood to discuss the case, eventually prompting Mr. LaHood to respond "I don't know, I don't know, I mean, you heard Bill, we're not supposed to talk about it," to which the CI replied "Yeah.").

information from other represented individuals, including Mr. Schock. For instance, on March 30, 2015, the CI said to Mr. Schock, "So, I mean, Jones Day [representing Mr. Schock] got all of our records are they like, when they completed that review, are we ever gonna announce the results of that? Or is kinda like."[21] It is unclear the extent to which the government directed the CI to pretend to be represented, and what, if any, instructions the government gave him to protect the attorney-client relationship of these individuals.[22]

In addition to the threat to the attorney-client privilege, the CI presented a direct threat to Mr. Schock's Speech or Debate privilege. The government sent the CI, who was an employee of the House of Representatives, to monitor and record conversations of a sitting member of Congress and his congressional staff without making any apparent arrangements to address the likelihood – or even the possibility – that communications between a member of Congress and his staff might include material protected by the Speech or Debate Clause of the Constitution. For example, the FBI "CHS [confidential human source] Admonishment reports that purportedly reflect instructions provided to the CI do not mention or reflect in any way that the CI was instructed in any fashion

[21] Transcript of Confidential Source Recording of Lunch Meeting, Mar. 30, 2015 at 35. Similar examples can be found in the other footnotes in this section detailing the CI's contacts with represented parties.

[22] On March 24, 2017, the government provided the defense with two FBI "CHS [confidential human source] Admonishments" reports that purportedly reflect admonishments provided to the CI on March 23, 2015, and March 16, 2016 ("Admonishments Reports"). The Admonishments Reports are boiler-plate, form reports, and both indicate "yes" to the issue of whether the CI was "advised not to interfere with an attorney-client relationship." Given the attorney-client intrusions that occurred in this case and the vague, generic admonishment that may have been provided by the government, we nonetheless request all reports and notes reflecting how this CI was actually instructed. We note that the Admonishments Reports also state, for example, that the CI was admonished that he was "not authorized to engage in any criminal activity," yet, as more fully described below, over the course of several weeks, the CI stole several documents from the District Office and provided those documents to the government, which accepted the documents and continued to formally maintain the CI as a confidential source.

with regard to Speech or Debate issues.[23] Not surprisingly, Speech or Debate material arose during the meetings that the CI monitored and/or recorded. For example, on March 30, 2015, the CI recorded a dinner meeting with Mr. Schock and his District staff during which the group discussed how they were able to get a bill included in a piece of legislation, including how various industry groups felt about the bill.[24] There is no record of anyone instructing the CI regarding the Speech or Debate privilege enjoyed by Members of Congress, and such instructions are absent from the instructions that the government has disclosed.[25] Finally, although the government appears to have utilized a so-called taint or filter team, there is no indication in the discovery the government provided the defense that this team reviewed the CI's recordings for Speech or Debate material.

II. CI Seizures of Documents Belonging to Mr. Schock

The CI also improperly seized or attempted to seize five separate categories of documents belonging to Mr. Schock. Mr. Schock owned those documents in a personal capacity, as is established by the law of the case in this very matter and 200 years of House precedent and practice.[26]

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[23] FBI "CHS Admonishments" reports, SA G. Spencer, Mar. 25, 2015, and Mar. 16, 2016.

[24] Transcript of Confidential Source Recording of Dinner Meeting, Mar. 30, 2015, at 5, ln. 94 through 6, ln. 117.

[25] *See* SA G. Spencer, FBI Form FD-1040a, CHS Admonishments (March 16, 2016); SA G. Spencer, FBI Form FD-1040a, CHS Admonishments (March 25, 2016)

[26] It may now be obvious that the government attempted to contest that determination because it knew its possession of some of those records would be the proceeds of a crime or crimes as the records were unlawfully taken from Mr. Schock's possession by the CI. In the litigation of the ownership issues, Mr. Schock produced evidence showing that every holder of what is now the 18th District seat since Everett Dirksen had conveyed his office records by personal deed of transfer of ownership to an archive in Illinois. Hr'g on Court's Order to Show Cause Why Def. Should not be Held in Contempt, 80, 87, Ex. 6-9, *In re Grand Jury Subpoena*, No. 3:15-mc-03005-SEM (C.D. Ill. July 28, 2015); Show Cause Hearing Br., Ex. 15 (Declaration of Frank Mackaman), Ex. B-E, *In re Grand Jury Subpoena*, No. 3:15-mc-03005-SEM (C.D. Ill. July 27, 2015). Following litigation on a grand jury subpoena seeking production of documents from Mr. Schock, this Court adopted Mr. Schock's position and the position of the House of Representatives that Mr. Schock could assert a constitutional privilege over the documents in his Office because he

A. Theft of "Confidential" Staff Roster and Search of Mr. Schock's Private Office

One of the first things the CI did was to steal two versions of a "Confidential" roster of Mr. Schock's D.C. and District staff.[27] On or about March 20, 2015, the CI accessed and modified the roster, before emailing it to investigators.[28] Among other things, the rosters included the names, personal email addresses and cell phone numbers, and emergency contact information for the staff.[29]

B. The CI's Attempted Theft of Work Product of Mr. Schock's Attorneys

In February and March 2015, *before* any grand jury subpoenas were issued to Mr. Schock or his offices, his attorneys from Jones Day LLP gathered certain records from his Office pursuant to their representation of Mr. Schock. Jones Day lawyers selected the documents to be gathered, had them photocopied and, later, returned them to the District Office. As the documents were selected and gathered, Jones Day prepared and left at the District Office an inventory of the documents they had selected and left those inventories at the District Office.

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owned them. Hr'g on Court's Order to Show Cause Why Def. Should not be Held in Contempt at 9. As Mr. Schock and the House had made clear, the House of Representatives has long held that the records in a Member of Congress's office belong to the Member. *See, e.g.*, H. Con. Res. 307, 110th Cong. (2008) ("Whereas by custom, these papers are considered the personal property of the Member who receives and creates them, and it is therefore the Member who is responsible to decide on their ultimate disposition."); H. Res. 5, 115th Cong. (2017) (adopting rule that records created, generated, or received by the congressional office of a Member belong to the Member, who has control over their disposition).

[27] Confidential Source Contact Report, Inspector B. Demczak, Mar. 20, 2015 (AGENT_RPT_00000817-23).

[28] *Id.*

[29] *Id.*

The prosecutor had long sought to obtain this work product prepared by Jones Day.[30] After the prosecutor first raised questions about Jones Day's collection of documents during a hearing on April 9, 2015, counsel for Mr. Schock declined to discuss what Jones Day had selected and why, because that analysis constituted attorney work product.[31] The Court stated it did not disagree with counsel's analysis.[32] The prosecutor thereafter represented to the Court that the government was not requesting that Jones Day produce anything; rather, the government represented that it only wanted Jones Day to confer with the government to confirm that they no longer possessed any original documents of Mr. Schock's.[33] The Court ordered just that, and the following day, Jones Day confirmed by letter that all original documents, to the extent they had been removed at all, had been returned to the Office from which they were collected.[34]

Despite Mr. Schock's attorneys having asserted that Jones Day's collection of records was protected work product, and despite the government's having received assurances, under judicial direction, from Jones Day that all the documents had been returned (which was the government's claimed concern), on or about May 20, 2015, the government directed the CI to go to the District Office, locate the inventories of what Jones Day collected – which would reveal what they had determined to be of interest to their representation of Mr. Schock, and "provide copies" to the

[30] We note that at the very time when the government was litigating issues concerning its access to the 18th District Office records before Judge Myerscough, it had already obtained some of the records it was seeking. The government failed to disclose this fact to both Mr. Schock and the Court.
[31] Reply to Gov't's Resp. to Mot. for Clarification or Modification and Resp. to Gov't's Mot. for Order to Show Cause Why Aaron Shock Should not be Held in Civil Contempt of Court, No. 3:15-mc-03005-SEM at 34 (June 16, 2015).
[32] *Id.*
[33] *Id.*
[34] *Id.*

government.[35] The text message conversation between the CI and Inspector Rowe is chilling in its brazenness:

> Insp. Rowe: Do you have the receipt or copy of the receipt Aaron's attorney left when they returned documents to the office?
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> CI: Yes. There were lots of them for individual boxes.
>
> Insp. Rowe: Ok, so they are easily accessible to you, then?
>
> CI: Yes.
>
> Insp. Rowe: Ok. Thank you.
>
> …
>
> Insp. Rowe: Hi, sorry to bother you again. Is it possible for you to send us those receipts?
>
> CI: Sure. Email ok?
>
> …
>
> CI: Call me. I have something way better than that.[36]

After Inspector Rowe's request, the CI searched the Office for the documents but was unable to locate and produce the Jones Day work product to the government.[37] However, as discussed below, the CI found and seized other documents.

[35] Confidential Source Contact Report, Inspector S. Rowe, May 20, 2015 (AGENT_RPT_00000952) ("CI was previously asked if he could locate the receipts for boxes of the documents which were returned from the lawyer or auditor. CI previously said those receipts were easily accessible to CI. CI was asked if it was possible to provide copies of those receipts.").
[36] Confidential Source Contact Report, Inspector S. Rowe, Mar. 20, 2015 through June 22, 2015 (AGENT_RPT_00000839-40).
[37] Confidential Source Contact Report, Inspector S. Rowe, May 20, 2015 (AGENT_RPT_00000952).

C. Theft of Documents from Mr. Schock's District Office

While searching the District Office for the Jones Day work product, the CI looked through the desk of District Chief of Staff Dayne LaHood.[38] Mr. LaHood's desk did not contain the documents the government had directed the CI to obtain, but the CI instead saw fuel receipts, invoices, and a credit card statement in the desk that related to Mr. LaHood's official work.[39] The CI sent Inspector Rowe twenty-seven pages of official documents belonging to Mr. Schock that he seized from Mr. LaHood's desk.[40] The documents the CI seized from Mr. LaHood's desk and provided to the government included receipts for fuel and other items, invoices and summaries of office purchases, and a credit card statement for Mr. Schock's personal American Express account.[41]

After the CI emailed the documents to Inspector Rowe, Inspector Rowe texted the CI, stating that she would like to talk to him.[42] Later, when the CI checked with Inspector Rowe about when they would talk, Inspector Rowe responded that she "will check with AUSA Bass and get back with you."[43] It is unclear whether the conversation with the CI, AUSA Bass, and Inspector Rowe occurred as planned.

Acknowledging the obvious impropriety of the seizure of these documents, the USAO informed defense counsel on February 1, 2017, that the documents were "not reviewed by the

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[38] *Id.*
[39] *Id.*
[40] Confidential Source Contact Report, Inspector S. Rowe, May 20, 2015 (AGENT_RPT_00000919-51).
[41] Mr. Schock's personal American Express account included cards for several members of his staff. The statement seized by the CI shows charges by Mark Roman and Dayne LaHood. Confidential Source Contact Report, Inspector S. Rowe, May 20, 2015 (AGENT_RPT_00000946-47).
[42] Confidential Source Contact Report, Inspector S. Rowe, Mar. 20, 2015 through June 22, 2015 at 12 (AGENT_RPT_00000841).
[43] *Id.* at 13 (AGENT_RPT_00000842).

prosecution team, except for identification of the general nature of the documents produced" and that the government did not intend "to present [the documents and emails] at trial from this source [the CI]."[44]

D. Theft of Email from Mr. Schock's District Office

Six days after his seizure of Mr. Schock's documents from Mr. LaHood's desk, the CI searched for and seized more than 10,000 emails over several years for himself and another staffer, Shea Ledford, from their government "house.gov" email accounts.[45] These documents, staff records of the 18th District of Illinois Congressional Office, were owned by Mr. Schock and held on a computer system owned by the United States House of Representatives.[46] According to Inspector Rowe's report, the CI apparently told Inspector Rowe that he would be providing the government with emails from his "house.gov" account.[47] In addition, a text message from the CI to Inspector Rowe makes it clear that Inspector Rowe was expecting the emails and that the CI was obtaining them for Inspector Rowe: "Working on finishing up those emails for you. Do you want to meet late this afternoon?"[48]

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[44] Letter from Acting United States Attorney Patrick Hansen to Robert J. Bittman, Feb. 1, 2017.

[45] Confidential Source Contact Report, Inspector S. Rowe, May 26, 2015 ("CI previously told Inspector Rowe that CI would provide all of his own emails. CI told Inspector Eastman there were emails for Dayne [LaHood], Shea [Ledford] and CI. CI provided a thumbdrive and indicated it had emails for CI and [Ledford] going back to 2013 and more could be provided.") (AGENT_RPT_00000953). The 10,923 emails total 27,422 pages of materials, including 3,328 attachments.

[46] *See*, *supra*, note 26. The House owns the systems housing the records belonging to the Member, just as it could own a filing cabinet in which paper records belong to a Member would be stored. Because of the House ownership interest we have notified the General Counsel of the House of the thefts from that system.

[47] Confidential Source Contact Report, Inspector S. Rowe, May 26, 2015 (AGENT_RPT_00000953) ("CI previously told Inspector Rowe that CI would provide all of his own emails.") (emphasis added).

[48] Confidential Source Contact Report, Inspector S. Rowe, Mar. 20, 2015 through June 22, 2015 at 17 (AGENT_RPT_00000846).

The CI used Mr. Ledford's user name and password to access Mr. Ledford's email.[49] The CI copied the 27,422 pages of "house.gov" email, put the email on a thumb drive, and gave the thumb drive to the government. These emails included materials that were protected by the Speech or Debate privilege. As with the other documents that the CI illegally seized, the government tacitly acknowledged the impropriety of its conduct by noting in a February 1, 2017 letter to Mr. Schock that the government claimed it had not reviewed the emails, except as to their "general nature" – whatever that means.[50]

E. Theft of Employee Records from Mr. Schock's District Office

The CI continued as an informant for the government after his theft of documents from Mr. LaHood's desk and the "house.gov" email accounts, and he continued to take documents from the District Office and provide them to the government.[51] On July 24, 2015, the CI apparently stole an Excel spreadsheet from the District Office entitled, "StaffVacationSickPersonalDays.xlsx," that lists the vacation, sick and personal days for each staff member of the District Office. After taking the document, the CI then attached the Excel spreadsheet, which belonged to Mr. Schock, to an email to Inspector Rowe.[52] The Excel spreadsheet was not in the discovery provided to the defense, and to date, the defense has not received the Excel spreadsheet, although the defense requested this document from the government on March 17, 2017.

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[49] Confidential Source Contact Report, Inspector S. Rowe, May 27, 2015 (AGENT_RPT_00000954) ("CI said he accessed Shea's email because when Shea resigned, he provided CI with his user name and password.").

[50] Letter from Acting United States Attorney Patrick Hansen to Robert J. Bittman, Feb. 1, 2017.

[51] *See.,e.g.,* Confidential Source Contact Report, Inspector S. Rowe, Jun. 18, 2015 (AGENT_RPT_00000964); Confidential Source Contact Report, Inspector S. Rowe, Jul. 23, 2015 (AGENT_RPT_00000983).

[52] Email from the CI to Inspector S. Rowe, Jul. 24, 2015, attached to Confidential Source Contact Report, Inspector S. Rowe, Jul. 24, 2015 (AGENT_RPT_00000984-89).

III. The Absence of Written Records Relating to the Government's Conduct

The government had extensive, almost daily contact with the CI.[53] These debriefings with the CI included information that was not recorded.[54] Other communications with the CI have not been provided in discovery. For example, the CI sent a text message to Inspector Rowe at one point and said: "Left you a voicemail with some other things I forgot to mention."[55] The government has not produced the voicemail message or otherwise provided what the CI and Inspector Rowe discussed. Mr. Schock has reason to believe that the government debriefed the CI at least eight times, for which it has not provided any record of the information that the CI passed to the government. The government has represented most recently that it continues to use the CI as an "active source."

ARGUMENT

I. Standard for Discovery in Support of Allegations of Pre-Indictment Misconduct

A district court has the power to order discovery in a criminal case under Fed. R. Crim. P. 16, a statutory grant of authority, or its own inherent authority. *See United States v. Jackson*, 508 F.2d 1001, 1006-07 (7th Cir. 1975); *United States v. Williams*, 792 F. Supp. 1120, 1124 (S.D. Ind. 1992). Rule 16(a)(1)(E) provides that the government "must permit the defendant to inspect" materials in its possession or control if (i) "the item is material to preparing the defense" or (iii) "the item was obtained from or belongs to the defendant." Because the CI has been identified by

[53] Basil Demczak, Grand Jury Testimony, Apr. 9, 2015 at 13 (GJ_TRANSCRIPT_00000041) ("since that day [March 18] we've probably been pretty much in almost daily contact with him.").
[54] Basil Demczak, Grand Jury Testimony, Apr. 9, 2015 at 19-20 (GJ_TRANSCRIPT_00000047-48).
[55] Confidential Source Contact Report, Inspector S. Rowe, Mar. 20, 2015 through June 22, 2015 at 8 (AGENT_RPT_00000837).

the government as a trial witness, materials regarding the CI may be used to respond to the government's case-in-chief, and the materials that he stole belong to Mr. Schock.

Rule 16 does not capture the whole of the Court's power to order discovery: "the district court has the inherent authority to order discovery beyond that authorized by Rule 16." *Williams*, 792 F. Supp. at 1126; *see also United States v. Campagnuolo*, 592 F.2d 852, 857 n.2 (5th Cir. 1979) ("It is within the sound discretion of the district judge to make any discovery order that is not barred by higher authority."); *United States v. George*, 786 F. Supp. 11, 15 (D.D.C. 1991) ("A district judge may be permitted to order discovery beyond that specified by Rule 16."). A defendant may invoke this inherent authority by demonstrating "that such discovery is necessary . . . for the proper and orderly administration of criminal justice." *United States v. Connors*, No. 01 CR 326, 2002 WL 1359427 at *9 (N.D. Ill. June 20, 2002) (citing *Jackson*, 508 F.2d at 1006-07).

One of the bases on which Mr. Schock seeks this discovery is to support a motion to dismiss based on the government's misuse of the CI and/or to suppress any fruits arising from illegal government conduct the CI carried out. In *United States v. Armstrong*, the Supreme Court held that a defendant alleging a selective prosecution claim could obtain discovery beyond that provided by Rule 16 upon a credible showing that there was evidence to support a core element of a constitutional defense. 517 U.S. 456, 469 (1996). In the wake of *Armstrong*, courts have noted that "its lessons can be applied to other types of collateral attacks based upon prosecutorial conduct." *United States v. Griggs*, No. 08-cr-00365, 2009 WL 3838022 at *3 (D. Col. Nov. 12, 2009). Considering just such a claim, the court in *United States v. Siriprechapong* ordered that the government disclose to the defendant documents related to its investigation, based on a "'clear' threshold showing of some evidence tending to show governmental misconduct." 181 F.R.D. 416, 429 (N.D. Cal. 1998). The district court in *United States v. Ail* used a similar standard in weighing

a claim of prosecutorial misconduct. No. CR 05-325-RE, 2007 WL 1229415 at *3 (D. Or. Apr. 24, 2007).

With regard to discovery in support of a motion to suppress, a defendant is entitled to discovery where his "allegations are definite, non-conjectural, and detailed enough to enable the court to conclude that a substantial claim is presented and that there are disputed issues of material fact that will affect the outcome of the motion." *United States v. Boarden*, 29 F. Supp. 3d 1164, 1168 (E.D. Wis. 2014) (setting forth standard for an evidentiary hearing on a motion to suppress); *see also United States v. Rodriguez*, 69 F.3d 136, 141 (7th Cir. 1995).

Brady, as this Court well knows, requires the prosecution to produce all material exculpatory information to the defendant, which includes information favorable for trial or sentencing purposes. *Giglio* requires the government to produce information in its possession that could impeach one of its trial witnesses, and the government has advised that it intends to call the CI at trial.

II. Discovery Is Merited Because a Clear Predicate Has Been Established that the CI Engaged in Constitutional Violations and Other Illegal Acts that Are Relevant to Pre-Trial Motions and Trial Defense

As discussed below, the CI's conduct violated Mr. Schock's constitutional rights. The CI's actions, and the government's direction, knowledge, or tacit approval of them, implicate several potential pretrial motions, as well as provide substantial fodder for impeachment of the CI as a trial witness. Mr. Schock's discovery requests are built upon this foundation and seek information necessary to support his constitutional right to mount a defense.

A. The Government Used the CI to Conduct an Illegal Seizure from Mr. Schock's Office

The Fourth Amendment provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be

violated, and no Warrants shall issue, but upon probable cause." U.S. Const. amend. IV. "A 'search' occurs when an expectation of privacy that society is prepared to consider reasonable is infringed." *United States v. Jacobsen*, 466 U.S. 109, 113 (1984). "A 'seizure' of property occurs when there is some meaningful interference with an individual's possessory interests in that property." *Id.* It is well-settled that the Fourth Amendment protects the private areas of an individual's business and Congressional offices. *See Marshall v. Barlow's, Inc.*, 436 U.S. 307, 309-10 (1978) (business); *United States v. Rayburn House Office Bldg., Room 2113, Washington, D.C. 20515*, 497 F.3d 654, 659 (D.C. Cir. 2007) (Congressional office).

It is undisputed that the government did not obtain a warrant to search Mr. Schock's Congressional Office in Peoria, Illinois and seize documents therein. Instead, the government enlisted the CI as a confidential informant and gave him explicit directions to remove documents from Mr. Schock's Congressional Office to be turned over to them. As this Court has ruled, Mr. Schock had a personal ownership interest in the documents contained in his Congressional Offices.[56] Thus, the theft of documents from his Congressional Office, including the unauthorized copying of another staffer's email account, was at least an unconstitutional seizure in violation of the Fourth Amendment.

The government's violations are plain; the fact that they were carried out by the CI only points to additional need for discovery. "The government may not do, through a private individual, that which it is otherwise forbidden to do." *United States v. Feffer*, 831 F.2d 734, 737 (7th Cir. 1987). Thus, a search conducted by a non-governmental individual will implicate the Fourth Amendment where the individual is "acting as an agent of the Government or with the participation

[56] *See* Hr'g on Court's Order to Show Cause Why Def. Should not be Held in Contempt, 9, *In re Grand Jury Subpoena*, No. 3:15-mc-03005-SEM (C.D. Ill. July 28, 2015).

or knowledge of any governmental official." *Jacobsen*, 466 U.S. at 113 (quoting *Walter v. United States*, 447 U.S. 649, 662 (1980) (Blackmun, J. dissenting) (quotation marks omitted)). As the Seventh Circuit has stated, "if in light of all the circumstances a private party conducting a search must be regarded as an instrument or agent of the government, the fourth amendment applies to that party's actions." *Feffer*, 831 F.2d at 737.

The Seventh Circuit has considered "two critical factors in the 'instrument or agent' analysis": "whether the government knew of and acquiesced in the intrusive conduct and whether the private party's purpose for conducting the search was to assist law enforcement efforts or to further her own ends." *Id.* at 739. The CI clearly meets this test based on the facts related above. The CI was evidently attempting to help the government. The government specifically directed the CI to secure certain records from Mr. Schock's Offices and accepted and retained the records the CI provided.

For at least certain of the records purloined by the CI the government appears to have conceded that they will not be used. The government has stated it will not use the documents taken from Mr. LaHood's desk or the emails of the CI and the other staffer from the copies taken by the CI. This does not moot Mr. Schock's discovery request, however. The government has not agreed that it will not use other documents, namely the staff roster and the vacation day spreadsheet, taken by the CI, and in any event Mr. Schock is entitled to discovery on any use the government made of the purloined records in its investigation to inform the scope of the appropriate suppression remedy for its Fourth Amendment violation.

B. The Government's Use of the CI Implicates the Attorney-Client Relationship

The government directed the CI to insert himself in conversations involving Mr. Schock and other staffers, all of whom were represented by counsel. In so doing, the CI (while purporting

to be represented by the same attorney as counsel for other staff members) had conversations about the subject matter of the representation and with the staff and their attorney. In addition, the government explicitly directed the CI to obtain documents protected by the work-product doctrine when it knew or should have known that the documents were so protected. The requested discovery in this regard is of potential relevance at least to a motion to dismiss for prosecutorial misconduct, as well as a motion to suppress.

1. The Government Used the CI to Have Conversations with Mr. Schock and Staff Members Represented by Counsel Raising Attorney-Client Privilege Concerns

It is undisputed that the government's use of the CI deliberately inserted the CI into situations where he was having conversations with Mr. Schock and staff members represented by counsel. In those conversations there were discussions, some of which were deliberately elicited by the CI, about attorney-client communications. It also appears that the CI participated in one or more attorney-client privileged calls with one or more staff members and their attorney while falsely purporting to also be represented by that attorney.

Courts have held that "government interference with a defendant's relationship with his attorney may render counsel's assistance so ineffective as to violate his Sixth Amendment right to counsel and his Fifth Amendment right to due process of law." *United States v. Irwin*, 612 F.2d 1182, 1185 (9th Cir. 1980). The Seventh Circuit has noted that a defendant's Fifth Amendment due process rights may be violated where the government obtains information protected by the attorney-client privilege through improper means. *See* United States v. White, 879 F.2d 1509, 1513 (7th Cir. 1989) (remanding case for hearing on whether government procured violation of attorney-client privileged and whether violation resulted in prejudice). Other circuits have also held that a prejudicial intrusion on the attorney-client relationship preindictment implicates a

defendant's due process rights under the Fifth Amendment. *See United States v. Ofshe*, 817 F.2d 1508, 1516 (11th Cir. 1987); *United States v. Voigt*, 89 F.3d 1050, 1066 (3d Cir. 1996); *United States v. Kennedy*, 225 F.3d 1187, 1194 (10th Cir. 2000); *United States v. Marshank*, 777 F. Supp. 1507, 1518-19 (N.D. Cal. 1991); *United States v. Daprano*, 505 F. Supp. 2d 1009, 1018 (D. N.M. 2007). To establish a violation, a defendant must show that (1) the government was aware of an ongoing, personal attorney-client relationship involving the defendant; and (2) the government deliberately intruded into that relationship; causing (3) actual and substantial prejudice. *See Irwin*, 612 F.2d at 1185; *Voigt*, 89 F.3d at 1067; *Kennedy*, 225 F.3d at 1195.

It is undisputed that the government here, including the agents handling the CI and the Assistant United States Attorney leading the investigation, knew of an ongoing attorney-client relationship involving Mr. Schock as well as other staff members. Based on the above described conduct by the CI, of which the government was aware, and the government's continued use of the CI over a number of days during that time period, there is a basis for concern as to the government's deliberate intrusion into the attorney-client relationship, particularly in light of the fact that the government instructed the CI not to record any discussions with the attorney thus implicitly acknowledging that the CI would potentially be a part of such discussions.[57]

The requested discovery will enable Mr. Schock to evaluate the full facts related to the three elements identified above. For example, while the CI did not record attorney-client discussions that appear to have taken place among the lawyer, the CI, and one or more staff members, the CI may have been debriefed on these discussions and may have passed on privileged

[57] *See, e.g.*, SA G. Spencer, FBI Form FD-1023 CHS Reporting Document, March 27, 2015 (AGENT_RPT_00000043); SA G. Spencer, FBI Form FD-1023 CHS Reporting Document, March 29, 2015 (AGENT_RPT_00000045).

information.[58] The discovery will also enable Mr. Schock to assess the prejudice flowing from the CI's conduct.

2. The Government Directed the CI to Illegally Obtain Documents Protected by the Work-Product Doctrine

The government attempted through the CI to obtain privileged work product of Mr. Schock's attorneys. "The work-product doctrine protects documents prepared by attorneys in anticipation of litigation for the purpose of analyzing and preparing a client's case." *Sandra v. South Berwyn Sch. Dist. 100*, 600 F.3d 612, 618 (7th Cir. 2010). The doctrine has been held to apply in the criminal context, "where it is 'even more vital' to ensure the proper functioning of the criminal justice system." *In re Special September 1978 Grand Jury*, 640 F.2d 49, 61 (7th Cir. 1980) (quoting *United States v. Nobles*, 422 U.S. 225, 238 (1974)). The doctrine also applies in

[58] The CI's contact with Mr. Schock and other staff members while they were represented raises concerns under Rule 4.2 of the Illinois Rules of Professional Conduct ("IRPC"), which forbids such contacts. Rule 4.2 provides that "a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order." Illinois case law – both federal and state – confirms that IRPC 4.2 applies to pre-indictment investigatory conduct by federal prosecutors. *See United States v. Thomas*, 39 F. Supp. 3d 1015, 1024 (N.D. Ill. 2014) ("[IRPC 4.2] applies to prosecutors prior to the filing of formal charges."); *People v. Santiago*, 925 N.E.2d 1122, 1128 (Ill. 2010) ("The State concedes that . . . [IRPC 4.2] applies to prosecutors prior to the filing of formal charges."). While Comment 5 to IRPC 4.2 states that "[c]ommunications authorized by law may . . . include investigative activities of lawyers representing governmental entities, directly or through investigative agents, prior to the commencement of criminal or civil enforcement proceedings," *see* IRPC 4.2, cmt. 5, these communications are not authorized under Illinois law when the agents act as the prosecutor's alter ego. *See People v. White*, 567 N.E.2d 1368, 1386 (Ill. App. Ct. 5th Dist. 1991); *United States v. Thomas*, 39 F. Supp. 3d at 1024-25 (noting, through citations to *White*, that a government agent could impermissibly act as an alter ego of the prosecution and violate IRPC 4.2 when the prosecutor instructs the agent on how to elicit incriminating statements by telling the agent what to say to or ask of a subject). Additionally, in the context of an IRPC 4.2 discussion about what investigative conduct was "authorized by law," the Northern District of Illinois specifically warned that a prosecutor could "abuse" their right to surreptitiously record if they "interfere[d] with a suspect's relationship with counsel." *United States v. Ward*, 895 F. Supp. 1000, 1006 (N.D. Ill. 1995). Discovery is likewise needed to determine if alter ego acts have occurred in this case, such that Rule 4.2 has been implicated.

the grand jury context. *Id.* "The work-product doctrine shields materials that are prepared in anticipation of litigation from the opposing party, on the theory that the opponent shouldn't be allowed to take a free ride on the other party's research, or get the inside dope on that party's strategy." *Mattenson v. Baxter Healthcare Corp.*, 438 F.3d 763, 767-68 (7th Cir. 2006).

There can be no doubt that the documents the government directed the CI to obtain were created in anticipation of litigation. The documents would not have been prepared absent the threat of future litigation. They were created by Mr. Schock's lawyers or their agents. Accordingly, the documents were protected as either fact or opinion work product and in either case were privileged from disclosure to the government. *See Wash. Bancorp. v. Said*, 145 F.R.D. 274, 277 (D.D.C. 1992) (holding that index of documents was subject to work product protection). Nor could the government have believed that sending the CI, a low-level staffer, to obtain the materials would constitute a waiver of the doctrine. The unwitting disclosure of work product material to a government informant does not waive work product protection, where the confidential informant is "a friend who was similarly positioned in relation to the government's investigation." *United States v. Ghavami*, 882 F. Supp. 2d 532, 541 (S.D.N.Y. 2012).

Discovery of the government's instructions to the CI in this regard is relevant to and necessary for a motion to dismiss for prosecutorial misconduct.

C. Discovery Related to Intrusion on Mr. Schock's Speech or Debate Privilege

The government used the CI to intrude upon Mr. Schock's Office, to listen to and record conversations with Mr. Schock and his staffers, and to seize documents from within Mr. Schock's Congressional Office. This intrusion violated the Constitutional privilege against executive interference granted to all Members of Congress by the Speech or Debate Clause.

Article I, Section 6, Clause 1 of the Constitution provides that Senators and Members of the House of Representatives "shall be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other place." The last clause is known as the Speech or Debate Clause, which affords protection to Senators and Representatives for their legislative acts. The Clause prohibits inquiry by the Executive "into those things generally said or done [by legislators] . . . in the performance of official duties and into the motivation for those acts." *United States v. Brewster*, 408 U.S. 501, 512 (1972). The privilege conferred by the Clause is construed broadly to effectuate its purposes. *Eastland v. U.S. Servicemen's Fund*, 421 U.S. 491, 501 (1975). A former Member of Congress may assert the privilege regarding legislative acts they performed while in office. *Brewster*, 408 U.S. at 502 (former Senator). Where the privilege applies, including to documents and testimony, it is absolute. *United States v. Rayburn House Office Bldg., Room 2113, Washington, D.C. 20515*, 497 F.3d 654, 660 (D.C. Cir. 2007).

The protection afforded by the Speech or Debate Clause extends beyond the floor of the Senate or the House and embraces communications between Members and their staff about a legislative act or about the content of a law, as well as to other matters which the Constitution reserves exclusively to the House. *United States v. Swindall*, 971 F.2d 1531, 1543 (11th Cir. 1992); *Fields v. Office of Eddie Bernice Johnson*, 459 F.3d 1, 15 (D.C. Cir. 2006), *Gravel v. United States*, 408 U.S. 606, 616 (1972). Thus, the privilege also protects a Member of Congress's legislative aides, because "the complexities of the modern legislative process" make it "literally impossible" for Congressmen to "perform their legislative tasks without the help of aides and assistants." *Gravel*, 408 U.S. at 616.

The government has admitted that it reviewed materials stolen by the CI from Mr. Schock's District Office "for identification of the general nature of the documents produced."[59] Additionally, the CI was party to conversations that were not recorded, but with regard to which he was debriefed by government agents. Accordingly, Mr. Schock cannot yet know the full extent to which privileged material was disclosed to the government without his consent. For that reason, Mr. Schock is entitled to discovery regarding the instructions given to the CI, a list of government individuals who had contact with the CI, and the full scope of the information that the CI conveyed to the government, however memorialized, or not. This discovery is relevant at least to a motion to dismiss for prosecutorial misconduct and a motion to suppress based on violation of the Speech or Debate Clause.

D. Because he is a Trial Witness, Mr. Schock is Entitled to all Impeachment Evidence in the Government's Possession Pertaining to the CI

The government has identified the CI as a witness that it intends to call in its case-in-chief at trial. Accordingly, pursuant to *Giglio v. United States*, 405 U.S. 150 (1972), Mr. Schock is entitled to all material, impeaching information in the government's possession regarding the CI. Indeed, as the Seventh Circuit has held, *Giglio* requires "that any material evidence which might undermine the reliability of a government witness must be turned over to a defendant." *United States v. Jumah*, 599 F.3d 799, 808 (7th Cir. 2010).

As detailed in the foregoing sections of this motion, the CI's career as a confidential informant was marked by misconduct. The government's policies regarding use of confidential informants required the government to undertake certain acts and to memorialize them.[60] At a

[59] Letter from Acting U.S. Attorney Patrick Hansen to Robert J. Bittman, Feb. 1, 2017.
[60] *See* U.S. Dep't of Justice, The Attorney General's Guidelines Regarding the Use of Confidential Informants, 8-10, 20-23, 26, 31 (2002) (directing government agents to memorialize the approval

minimum, Mr. Schock is entitled to discover the instructions given to the CI, any authorizations to engage in illegal conduct, what, if any, steps the government took to admonish or punish the CI for his illegal conduct as well as information concerning the government's adherence or lack thereof to any internal guidelines or authorizations concerning the use of the CI and the proceeds of his activities.

CONCLUSION

Having demonstrated a threshold showing of impropriety in connection with the government's use of the CI as a confidential informant, Aaron J. Schock respectfully requests that the Court grant his Motion for Discovery.

Dated: March 28, 2017

Respectfully submitted,

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process for confidential informants, the set of instructions given to a confidential informant, and to report unauthorized illegal conduct by the informant).

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel of record at their respective email addresses disclosed on the pleadings on this 28th day of March, 2017.

/s/ George J. Terwilliger

George J. Terwilliger