

This is the letter written by AUSA Tracey N. Knight detailing the Attorney/Client Privilege abuse by SS Agent Parsons. Again, this is very rare to actually catch an FBI agent violating the A/C Privilege. More will be explained about this in the January 20, 2015 chapter.



U.S. Department of Justice
United States Attorney
Eastern District of Louisiana

Tracey N. Knight
Assistant United States Attorney

The Poydras Center
650 Poydras Street, Suite 1600
New Orleans, Louisiana 70130

Telephone: 504-680-3080
Fax: 504-589-2027

January 20, 2015

Ralph Capitelli, Esq.
Brian J. Capitelli, Esq.
Capitelli & Wicker
2950 Energy Centre
1100 Poydras Street
New Orleans, Louisiana 70163-2950

Re: United States v. Rainer Wittich and The Brinson Company
Criminal Docket Number 14-035, Section "G"

Dear Counselors:

As per your request, the following is a summary of the actions taken by the government regarding the attorney/client privilege protocol for the above referenced case. The exhibits referenced herein are enclosed on a disc.

On July 13, 2012, a search warrant was executed at The Brinson Company. At that time, the Federal Bureau of Investigation imaged several computer hard drives. On July 20, 2012, you alerted the government that certain correspondence contained on Rainer Wittich's and Jay Schlotterer's computers may be subject to the attorney/client privilege. On August 1, 2012, you and Assistant U.S. Attorney Jordan Ginsberg agreed on a protocol whereby a taint team would identify and separate out all such correspondence to be turned over to defense counsel for review.

Specifically, the government would: (1) conduct a search of the images on the computers of Rainer Wittich and Jay Schlotterer, (2) cull out any "hits" to the names of Attorneys Robert Brown and Alan Serwer and/or their email addresses, and (3) provide a copy of any attorney/client correspondence identified to defense counsel. Defense counsel would: (1) review the universe of documents, (2) produce to the government all documents that were not privileged, and (3) produce to the government a privilege log identifying any documents that the defense claimed to be privileged.

AUSA Ginsberg forwarded to and discussed the agreed upon protocol with the case agent, FBI Special Agent Sundanah Parsons. Shortly thereafter, SA Parsons submitted a request to the Computer Analysis and Response Team (CART) to separate the Wittich and Schlotterer

computer evidence from all other seized computer evidence for further review by the taint team. The request specifically indicated that the two computers may contain attorney/client information from the law firm of K&L Gates and attorneys Robert Brown and Alan Serwer. (Exhibit #1, CART requests). At that time, SA Parsons' access to these computers was restricted.

Processing of the computer evidence was completed by CART on December 13, 2012. As requested, the Wittich and Schlotterer computers were segregated for further review. After several changes in the taint team assignment, SA Matthew Romeril was assigned to conduct the review on January 24, 2013. SA Romeril generally understood that the case agent was restricted from viewing any attorney/client communications that may be found on the computers. However, he was not provided with the attorneys' names or email addresses. Instead, SA Parsons provided SA Romeril with certain case-related search terms. SA Romeril searched the computers using the search terms and attempted to exclude any communications that appeared to be to or from an attorney. He ultimately bookmarked as "Important" 61 emails and/or documents that he believed were relevant to the case and did not contain attorney/client communications. (Exhibit #2, "Important" documents list).

SA Romeril did not specifically mark or utilize a process to exclude from view any of the attorney/client communications that he found, nor did he separate these communications for review by defense counsel. It was his belief that SA Parsons would only have access to the documents that he bookmarked as "Important." However, this was not the case. To shield attorney/client communications from view, SA Romeril needed to specifically mark them as privileged.

I subsequently reviewed the 61 documents marked "Important," and identified one (1) email that is an attorney/client communication. (Exhibit #7, "Question") Although this email is not readily identifiable as an attorney/client communication from the subject line or the content, it was sent to Alan Serwer, one of the attorneys identified by defense counsel.

Upon completion of SA Romeril's review in May 2013, SA Parsons obtained access to the files. SA Parsons also believed that he only had access to the "Important" documents from the Wittich and Schlotterer computers. The first time that SA Parsons logged on and reviewed any documents on the Wittich and Schlotterer computers was on September 29, 2014. (Exhibit #3, HK log). At that time, no attorney/client communications were viewed.

However, on December 30, 2014, SA Parsons conducted a search of several computers while looking for a specific non-privileged email. During the search of the Wittich and Schlotterer computers, he viewed twenty (20) items, four (4) of which were attorney/client communications. (Exhibit #4, list of items reviewed) (*See also* the specific communications - Exhibit #5 "Falco v. Brinson Co.," Exhibit #6 "As we discussed," Exhibit #7 "Question," and Exhibit #8 "Falco Mediation notes"). After looking at the last email, SA Parsons suspected that he was viewing documents that he should not have access to, and he sought assistance from CART. Thereafter, it was learned that the taint procedure was not correctly implemented, and

Ralph Capitelli, Esq.
Brian J. Capitelli, Esq.
January 20, 2015
Page 3

that SA Parsons inadvertently still had access to all contents of the Wittich and Schlotterer computers.

SA Parsons has not reviewed any documents or email communications on the Wittich and Schlotterer computers since December 30, 2014. The only investigative activity by SA Parsons since that date were interviews of Thomas Maier on January 8, 2015 and Charles Marlow on January 12, 2015. He has since been removed as the case agent with restricted access until this matter can be resolved.

On January 9, 2015, you went to the FBI to examine evidence. Among other computer evidence, you requested the attorney/client communications which were culled out pursuant to the protocol. While gathering the requested information, SA Parsons learned that the attorney/client communications had not been segregated for your review and immediately contacted AUSA Ginsberg. I became involved on January 12, 2015, and notified you of the circumstances on January 13, 2015.

I also investigated whether any trial attorney had been tainted by viewing attorney/client communications. Sometime in November 2014, CART provided a hard drive containing email evidence to AUSA Ginsberg in preparation for trial. The hard drive was immediately given to an employee of the U.S. Attorney's IT department without review by AUSA Ginsberg. Some of the emails were later loaded onto a standalone computer for the trial team's use.

After further conversations with the IT employee regarding the location of and access to the email evidence in the U.S. Attorney's Office, I learned that no emails from the Wittich and Schlotterer computers were placed on the standalone computer. I am confident from my review that none of the trial attorneys have ever had access to or viewed any attorney/client communications from the Wittich and Schlotterer computers.

Please let me know if you have any further questions or would like to examine any additional documents. After you have had an opportunity to review this, please contact me to discuss a resolution of this matter.

Very truly yours,

KENNETH ALLEN POLITE, JR.
UNITED STATES ATTORNEY


TRACEY N. KNIGHT
Assistant United States Attorney

TNK/lo
Enclosure