UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

HEEBE ET AL.	*	CIVIL ACTION
	*	
VERSUS	*	NO: 10-3452
	*	
UNITED STATES OF AMERICA	*	SECTION: "C" (5)
	*	

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OPPOSITION TO GOVERNMENT'S MOTION FOR RECONSIDERATION

NOW INTO COURT through undersigned counsel come petitioners, Frederick R. Heebe, A.J. Ward, Shadowlake Management, ("Shadowlake"), Willow, Inc., Fred Heebe Investments, Live Oak Homes Corporation ("Live Oak"), Heebe & Heebe, P.L.C., and River Birch, Inc. ("River Birch"), who respectfully submit the following opposition to the Government's Motion for Rule 41(g) Evidentiary Hearing in Reconsideration of Order to Return Seized Documents.

INTRODUCTION

On September 22, 2010, the Government obtained a search warrant for the "offices of River Birch Landfill[1] . . . located at 2000 Belle Chasse Highway, Gretna, Louisiana, 70056." Rec. Doc. No. 3-3, Ex. "A." The third floor of the commercial building located at 2000 Belle Chasse Highway houses River Birch, Inc. and six other businesses, two of which are law firms.

[1] Although the warrant authorized the search of "the offices of River Birch Landfill," River Birch Landfill is not an entity. River Birch, Inc., a Louisiana corporation, owns and operates a landfill. The actual landfill's offices are located on Highway 90 in Waggaman, Louisiana, not on Belle Chasse Highway.

Rec. Doc. No. 3-3, Ex. "B." Although the warrant clearly limited the Government's search to the "offices of River Birch," the Government improperly searched every business in the building and seized property from each. When the Government refused to return any of the property it illegally seized, the plaintiffs filed a motion to return property.

On December 21, 2010, this Court granted the plaintiffs' motion to return property and determined that: (1) the Government conducted a search well beyond the four corners of its search warrant; (2) the search was conducted with a callous disregard for the plaintiffs' constitutional rights, and (3) the plaintiffs were irreparably injured and no other adequate remedy was available. Rec. Doc. No. 22 at p. 1. Those determinations were based on the Court's findings that the Government knew or should have known that numerous separate businesses were located on the third floor of 2000 Belle Chasse Highway and that the search of the entire third floor was therefore "objectively unreasonable and display[ed] a 'callous disregard' for privacy rights protected by the Fourth Amendment." *Id*. at p. 5. The Government did not appeal this decision or immediately seek reconsideration. Instead, it sought additional time in which to comply with the Court's Judgment, and this Court subsequently gave the Government an extension of time in which to return the property.

Now, the Government seeks to vacate the Court's judgment, arguing that the Court's decision was based on "factual misperceptions" and on "credibility determinations on disputed issues of fact in the absence of testimony and demeanor evidence." Rec. Doc. No. 31-1 at p. 1. But the Government's claimed "factual misperceptions" do not match up with the facts. Indeed, the primary "factual misperception" urged by the Government involves a directory listing the seven different businesses located at 2000 Belle Chasse Highway. FBI Special Agent Malcolm J. Bezet has testified in an affidavit that "agents entered the building and third floor by use of the

stairs, a course which did not permit viewing of a first floor directory" listing the seven different businesses located on the third floor.[2] Rec. Doc. No. 31-1 at p. 2. Agent Bezet further testifies that "[s]uch a sign would only be visible to individuals that entered into the building and accessed the third floor using a single elevator." Rec. Doc. No. 31-3 at p. 4-5. As is clear in Exhibit "A," however, it is virtually impossible not to see the first floor directory, even when taking the stairs, because the directory is plainly visible from the front door, through which all the agents entered the building. Moreover, even if it were only possible to see the directory from the elevator, Agent Bezet omits the important fact that numerous agents, including himself, used the elevator throughout the course of the search, which lasted approximately 11 hours, and therefore must have seen the directory at some point during the search. Such willful blindness does not excuse the Government's overly broad search.

The Government's other alleged "factual misperceptions" are equally unavailing. Despite the Government's contention that the Court erroneously found that the agents "ignored clearly marked documents and file cabinets," Rec. Doc. No. 31-1 at p. 5, objective evidence demonstrates that there were indeed labels on file cabinets and markings on documents. Rec. Doc. No. 17, Ex. "Reply – A" and "Reply – B." In fact, the Government seized many documents on the letter head of Willow, Shadowlake, Live Oak, and the Law Offices of Peter J. Butler, L.L.C. Ex. "A."

Furthermore, the Government's contention that Court must make "credibility determinations" on witness testimony is both unfounded and unnecessary. The only testimony

[2] In its Order and Reasons, the Court quotes a line from the plaintiffs' memorandum that "They [the Government] ignored the directory listing seven different businesses on the third floor when they entered the building to conduct the search." Rec. Doc. No. 22 at p. 5. Based on this quotation, the Government argues that the Court incorrectly found that a directory was located on the third floor. Rec. Doc. No. 31-1 at p. 5. Although the plaintiffs do not read the Court's order as finding that there was a directory on the third floor, for the sake of clarity the plaintiffs point out that there was only one directory, and it was located on the first floor. That directory, which is plainly visible to anyone who enters the building, explained that there were seven different businesses on the third floor.

the Government complains about is the affidavit of Scott Manzella, who explained that various computer servers belonged to Willow, Shadowlake, and River Birch. However, there is no dispute about the veracity of Mr. Manzella's affidavit. The Government concedes that FBI computer "personnel were able to confirm information provided by Mr. Manzella" by logging on to the various computers. Despite that verification, the Government seized numerous non-River Birch computers. In addition, the Government has been reviewing the contents of those computers for more than four months and has not claimed that any of Mr. Manzella's information was inaccurate. On the other hand, Agent Bezet's testimony that there were no indications of other businesses at 2000 Belle Chasse Highway is contradicted by the objective evidence that has already been submitted to the Court.

Finally, even if the Government were correct about the existence of "factual misperceptions," it has still failed to address numerous undisputed facts, any one of which is sufficient to uphold the Court's decision that the search was excessively broad and unconstitutional. For example, the large sign outside the building listed River Birch and Willow as tenants. Rec. Doc. 3, Ex. "A." The Government clearly knew Willow was in the building before the search, yet it failed to take any steps to ensure that Willow was not improperly searched and in fact seized documents belonging to Willow. Well before the search, the Government received correspondence about this investigation from the Law Offices of Peter J. Butler, L.L.C. listing a 2000 Belle Chasse Highway address. The Government clearly knew Peter J. Butler, L.L.C. was located in the building, yet it did nothing to ensure that law firm was not improperly searched. On the contrary, the Government brought in a clean team for the specific purpose of searching that business. Moreover, the Government fails to explain how its agents found that law office or knew to go straight to the third floor if none of those agents had

seen the building directory indicating that all the businesses were located on the third floor. Consequently, the Government has offered no persuasive arguments justifying alteration of the Court's Order and Judgment, and the Government's motion for reconsideration should be denied.

LAW AND ARGUMENT

"Reconsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly," and a motion for reconsideration "is not the proper vehicle for rehashing evidence, legal theories, or arguments that could have been offered or raised before the entry of judgment." *Templet v. HydroChem, Inc.*, 367 F.3d 473, 478-479 (5th Cir. 2004).

District courts enjoy "considerable discretion" in granting or denying a motion to vacate a judgment under Rule 59(e), and courts typically consider four factors in exercising this discretion: (1) whether the judgment was based upon a manifest error of fact or law; (2) whether the movant presents newly discovered or previously unavailable evidence; (3) whether amendment is necessary to prevent manifest injustice; and (4) whether an intervening change in controlling law has occurred. *Clancy v. Employers Health Ins. Co.*, 101 F.Supp.2d 463, 464-465 (E.D.La. 2000) (citations omitted). Here, the Government has failed to satisfy any of these factors. It has presented no facts or evidence sufficient to overturn this Court's judgment and can show no manifest error of law. Moreover, amendment of the Court's judgment would not prevent any manifest injustice, and the law has not changed since the Court rendered its decision.

I. The Government has presented no facts or evidence sufficient to overturn the Court's Judgment.

The Government has failed to meet its heavy burden on any of the factual issues. In fact, the Government has provided no newly discovered or previously unavailable evidence, and its "old" evidence does not uncover a manifest error of law or fact.

A. All of the Government's evidence could have been presented before the entry of Judgment.

Throughout its memorandum, the Government criticizes the Court for not holding an evidentiary hearing and complains that it was "unable to provide the Court" with certain evidence. However, none of the Government's evidence is new, and everything contained in the Motion for Reconsideration could have been presented before the Court ruled. More importantly, the Government's evidence does not call the Court's ruling into question.

Specifically, the Government contends that it was "unable to provide the Court" with three pieces of evidence: (1) the testimony of AUSA Gregory M. Kennedy, (2) the testimony of FBI Special Agent Malcolm J. Bezet, and (3) a sealed exhibit that the Government submitted to the Court for *ex parte, in camera* review.[3] Ironically, in the pending motion for reconsideration, the Government has offered all of this evidence to the Court in writing and has not even suggested this evidence was previously unavailable. Accordingly, the Government was clearly able to provide the Court with this very same evidence before the Court entered its Final Judgment on December 21, 2010.

Furthermore, the plaintiffs filed their motion for return of property on October 13, 2010 and noticed it for hearing on November 24, 2010. Rec. Doc. No. 3. Based on the November 24, 2010 hearing date, the Government's opposition was due on November 16, 2010. The Government served its opposition on the plaintiffs on November 17, 2010, and submitted an affidavit of Special Agent Bezet and a number of photographs as exhibits. On November 18, 2010, the Court ordered the plaintiffs to name the United States as a defendant and ordered the Government to file any further opposition to the plaintiffs' motion by November 24, 2010. Rec.

[3] The plaintiffs have filed an opposition to the Government's submission of a secret exhibit. Rec. Doc. No. 35. For the reasons set forth in that opposition, the plaintiffs respectfully urge the Court to order the Government to disclose that exhibit to the plaintiffs, and to allow the plaintiffs to respond to that exhibit if necessary.

Doc. No. 6. The Court also ordered that the motion would be decided on the briefs, without oral argument or an evidentiary hearing. *Id*.

After the Court advised the parties that it would decide this matter on the briefs, the Government chose to submit no additional evidence for the Court's consideration. Indeed, the Government submitted nothing further until it filed its Motion for Reconsideration on January 5, 2011. The plaintiffs do not know what the Government has submitted in its sealed exhibit, but every other piece of evidence in the Motion for Reconsideration could have been presented to the Court before the Judgment was entered.

B. The Government's new affidavits do not call the Court's ruling into question.

Even if the Government's new affidavits had been timely submitted, or if they somehow contained "new" evidence, the Government has failed to demonstrate that the Court's Judgment should be altered. In fact, as is discussed below, the Government's factual arguments are contradicted by the objective evidence.

1. The building directory is clearly visible and must have been seen by the Government throughout the 11 hour search.

The Government's primary argument is that none of the searching agents saw the building directory that indicated there were seven separate businesses on the third floor. Indeed, Special Agent Bezet testifies that neither he nor the agents with him saw the building directory when they entered 2000 Belle Chasse Highway. Specifically, Agent Bezet states:

> The only sign listing different businesses in the building was located on the first floor. Individuals that enter the building and use the stairs, as the Affiant and the Agents that were with him did when initially executing the search warrant, do not pass any signs "listing seven different businesses on the third floor." Such a sign would only be visible to individuals that entered into the building and accessed the third floor using a single elevator.

Rec. Doc. No. 31-3 at p. 4-5 (emphasis added).

This statement is unhelpful to the Government for several reasons. First, as the Court will see during its visit to 2000 Belle Chasse Highway, the building directory is plainly visible to anyone entering the front door of the building. It is not necessary to take the elevator. It is difficult to understand how Agent Bezet could have failed to see this sign.

Second, Agent Bezet was only one of approximately 30 agents who entered the building for the search, which lasted from approximately 7:30 a.m. until approximately 6:30 p.m. Although Agent Bezet claims that he did not see the directory when he entered the building, the Government has submitted no evidence that the other agents failed to see the directory as well. The testimony of Agent Bezet does not determine the Government's collective knowledge. "It is well-settled that the government may be charged with the knowledge of its investigating agents." *United States v. Manners*, 384 Fed.Appx. 302, 308, (5th Cir. 2010) (citing *Kyles v. Whitley*, 514 U.S. 419, 437 (1995)); *see also Moreno-Vallejo v. United States*, 414 F.2d 901 (5th Cir. 1969) (stating that "[i]n addition to examining the totality of the circumstances, in view of the degree of communication between them, we look to the collective knowledge of the police officers, rather than the sole knowledge of Officer Kennedy, who performed the search of the truck").

Third, even if the directory could only be seen by "individuals that entered into the building and accessed the third floor using a single elevator," the video surveillance evidence is unequivocal that the searching FBI agents repeatedly used the elevator throughout the day. In fact, during the first two and a half hours of the search, at least seven agents made trips up and down the elevator. Throughout the course of the day, Agent Bezet himself used the elevator numerous times.

2. There were signs and labels throughout the offices.

Agent Bezet also testifies that "[d]uring the execution of the search warrant, I did not observe any labels on any offices or work spaces indicating that they housed different businesses or employees for businesses other than those listed on the billboard, River Birch and Willow Homes." Rec. Doc. No. 31-3 at p. 5. Agent Bezet further states that he "observed no independent identifying information located on the third floor that would have alerted agents to other businesses' spaces housed within the common office space." *Id*. This argument is also unhelpful for a number of reasons.

First, although Agent Bezet admits that he knew Willow was located in the building, neither he nor any member of the search team took any steps to make sure Willow was not improperly searched. Willow was searched, and numerous Willow documents were seized.

Second, as is stated above, the extent of the Government's knowledge does not end with Agent Bezet. Any of the 30 other agents could have, and should have, seen the numerous indicia of businesses other than River Birch.

Third, as the plaintiffs pointed out in their previous motions, labels did in fact exist. File cabinets and binders were labeled, offices of Shadowlake Management contained framed newspaper articles about the company, and business cards were located throughout the offices. Rec. Doc. No. 17 at Ex. "Reply – A" and "Reply – B." The Government willfully ignored this objective evidence.

Fourth, although the Government contends that there was "no independent identifying information" of other businesses "located on the third floor," the Government returned property seized from those other businesses. Ex. "A." The documents identified themselves as belonging to Shadowlake, Willow, Live Oak, and Peter J. Butler, L.L.C., and the documents themselves

alerted the Government that it was not searching River Birch. Even if there were no signs or labels, the Government should have known from the documents it was seizing that it was taking materials that did not belong to River Birch. The Government cannot possibly claim that nothing alerted it to the presence of other businesses.

Perhaps tellingly, the Government has consistently failed to identify any steps it took before the search to ensure that it was searching the proper location. In *Maryland v. Garrison*, the police searched an entire floor of a building believing it contained only one apartment when it actually contained two. 480 U.S. 79 (1987). The Supreme Court held that the search of the second apartment was "objectively understandable and reasonable" because the objective facts suggested no distinction between the two apartments on the premises. *Id.* at 88. Contributing to the Court's conclusion was the fact that, before the search, the police attempted to verify their belief by visiting the building, checking with the electric company to confirm the name on the power bill, and comparing the address against the police department's records. *Id*. at 86.

In the present case, the Government clearly knew before the search about the large sign outside 2000 Belle Chasse Highway listing River Birch and Willow as tenants. Despite this knowledge, the Government has offered no explanation of the steps it took before the search to verify that River Birch was the only business in the building. Accordingly, even before the search began, the Government was willfully blind to the fact that its warrant did not cover the entire building located at 2000 Belle Chasse Highway.

Further, as the Supreme Court pointed out in *Garrison*, the Government has an obligation to discontinue a search when it discovers that it is exceeding the scope of its warrant. *Id*. at 86-87. In the present case, the Government ignored multiple, clear indications that it was searching

more than just River Birch, Inc. and did nothing to restrict its seizure of materials, thoroughly searching every room in the building for almost 11 hours.

3. The Government has offered no justification for rejecting the testimony of Scott Manzella or any other individual on the search scene.

Special Agent Bezet also states that, in his "eight years as an FBI agent, having executed numerous searches," he has "never, and cannot envision a situation in which [he] would ever, solely rely upon officers, employees, or other interested parties to inform the agents as to what areas of files should be searched during the execution of a search warrant." Rec. Doc. No. 31-3 at p. 6.

As far as the plaintiffs are aware, Scott Manzella was the only employee who the Government consulted about the separate businesses. The Government contends that the Court's acceptance of Mr. Manzella's statements "is a credibility call and resolution of a factual dispute without the benefit of an evidentiary hearing." Rec. Doc. No. 31-1 at p. 6. There is no need for a credibility determination, however, because the Government has conceded that Mr. Manzella's information was correct. Agent Bezet states in his affidavit that FBI "personnel were able to confirm information provided by Manzella by logging on to three computers and observing they were used as firewalls, and by logging on to a fourth computer and confirming that it was used for remote connections and property management." Rec. Doc. No. 31-3 at p. 5. Despite this confirmation, the Government still seized copies of two of Shadowlake's servers and both of Willow/River Birch's servers. In addition, the Government has had these copies for more than four months and has not disputed Mr. Manzella's information. Finally, whether the Government believed Mr. Manzella or not, his information put the Government on notice that there were

multiple businesses in the building. Just as this Court ruled, however, the agents willfully ignored this notice and continued their search.

Similarly, although the Government claimed that "agents cannot be expected to take the word of employees or lawyers for the very entity being searched that documents contain privileged materials and therefore could not be seized," (Rec. Doc. No. 14 at p. 8), the objections of Mr. Heebe's attorneys have been verified as well, because the Government has returned privileged material that was improperly seized. In fact, during the search attorneys William Gibbens and Kyle Schonekas specifically objected to the review of a handwritten note from Peter J. Butler to Frederick R. Heebe. *See* Ex. "A" at p. 4. Agent Bezet nevertheless read this document and took it from plaintiff Heebe's personal office, and the document has been returned by the Government as privileged.

As to Agent Bezet's complaint that he could not rely on explanations given by the other employees on hand, this contention is belied by the fact that the Government failed even to ask them where they worked. Indeed, numerous employees of the various businesses were present when the agents began their search at 7:30 a.m. The Government interacted with several of them, but did not ask any of these people what company they worked for.

When other employees arrived for work and attempted to enter the building, agents standing outside the building asked for their names, wrote their names down on blank grand jury subpoenas, and handed them a subpoena compelling them to appear before the Grand Jury. Pretermitting the fact that these agents were apparently delegated the significant authority to issue Grand Jury subpoenas to whomever they chose, the issuance of these subpoenas was problematic because none of these employees were asked where they worked. The Government

cannot complain that these employees were unreliable witnesses, and thus a credibility determination by the Court is unnecessary, when the Government failed to interview them.

4. Assistant United States Attorney Gregory M. Kennedy's affidavit does not excuse the Government's violations.

In his affidavit, AUSA Gregory M. Kennedy states that he "had no reason to believe that the agents may have exceeded the scope of the warrant by searching other known businesses at 2000 Belle Chasse Highway, as claimed by the petitioners." Rec. Doc. No. 31-3 at p. 2-3. However, Mr. Kennedy must have known that Willow was located in the building, because the search warrant itself expressly describes the large sign outside listing River Birch and Willow as tenants. Rec. Doc. No. 3-3 at Ex. A. Mr. Kennedy must also have known that the Law Offices of Peter J. Butler, Jr., L.L.C. were located in the building because the Government sent in a clean team to conduct a search of that office.

The actions of the United States Attorney's Office are also relevant to the Supreme Court's concerns in *Garrison* about the Government's attempts to verify their beliefs before conducting a search. *Garrison*, 480 U.S. at 86. The efforts of the United States Attorney's Office to verify the information, or the lack thereof, are important considerations to whether the Government conducted an objectively unreasonable search.[4]

More importantly, Mr. Kennedy's physical absence from the search scene does not excuse the Government's violations. "It is well-settled that the government may be charged with the knowledge of its investigating agents." *United States v. Manners*, 384 Fed.Appx. 302, 308, (5th Cir. 2010) (citing *Kyles v. Whitley*, 514 U.S. 419, 437 (1995)). The searching agents'

[4] Contrary to the Government's assertions, the validity of the warrant, the probable cause finding, and the particularity of the items and premises identified in the warrant are not undisputed. The plaintiffs have not been provided with the search warrant affidavit and cannot address those issues at this time. However, the plaintiffs reserve their right to contest those issues at the appropriate time.

knowledge is attributed to the Government, and if the agents knew or should have known they were exceeding the scope of the warrant, the search is invalid.

II. The Government has not called the Court's legal findings into question.

In addition to failing to offer any new evidence or facts, the Government has also failed to establish a manifest error of law or manifest injustice. *See Clancy*, 101 F.Supp.2d at 464-465.

A. The Garrison case clearly supports the Court's finding that the Government conducted an objectively unreasonable search, and the Government cites no new authority that casts doubt on the Court's Judgment.

Beyond citing *Garrison* without any analysis or discussion, the Government offers no legal authority that casts doubt on the Court's ruling. The Government contends that *Garrison* does not support the Court's judgment because "*separate apartments* were not involved." Rec. Doc. No. 31-1 at p. 7. However, it makes no difference that *Garrison* involved separate apartments and the present case involves separate businesses. The issue is whether the Government knew or should have known it exceeded the scope of the warrant.

The Supreme Court in *Garrison* held that "if the officers had known, or even if they should have known, that there were two separate dwelling units on the third floor of 2036 Park Avenue, they would have been obligated to exclude respondent's [Garrison's] apartment from the scope of the requested warrant." 480 U.S. at 85 (emphasis added). The Court further explained that had the officers been aware of their error, they were under an obligation "to discontinue the search" as soon as the error was discovered. *Id.* at 86-87 (emphasis added).

In the present case, the Government cannot overcome the clear evidence that it knew 2000 Belle Chasse Highway housed other businesses in addition to River Birch, Inc. The Government concedes that, even before the search, it knew Willow was located in the building. In addition, the interior of the building contained a directory and plenty of obvious labeling,

Scott Manzella told the agents about the various businesses, and the Government seized documents with the letter head of businesses other than River Birch.

Additionally, *Garrison* makes plain that Government searchers have a duty to discontinue a search as soon as they "were put on notice" that they might be outside the premises specifically set forth in a warrant. *Id.* at 87. In the present case, however, the Government's agents breached this duty when they continued to search and seize property despite the numerous indications that the building contained separately identifiable businesses not listed on the face of the search warrant. *Garrison* clearly supports the Court's judgment.

B. The Government has offered no evidence in support of its newly-raised "alter ego" theory.

For the first time in its motion for reconsideration, the Government argues that an evidentiary hearing was necessary "in view of the commingling of potentially 'alter ego' entities within a shared space, which itself would broaden the scope of a reasonable search." Rec. Doc. No. 31-1 at p. 6. This argument has not been timely raised and is therefore not a proper basis for a motion for reconsideration. *See Le Clerc v. Webb*, 419 F.3d 405, 412 n.13 (5th Cir. 2005) ("A motion for reconsideration may not be used to . . . introduce new arguments."). But even if it had been timely raised, the Government offers no factual explanation for this theory, nor does it provide any legal authority for "broadening" a search beyond the four corners of the warrant in this manner. In fact, none of the cases cited by the Government even address the Government's "alter ego" argument. Moreover, in the present case, although the Court did not hold a hearing, it carefully considered numerous pieces of evidence submitted by both sides and rendered a correct decision.

C. The Government has not avoided irreparable injury by the use of a clean team.

Once again, the Government cites its ill-conceived "clean team" procedures to validate its illegal search. But this argument misses its mark because the "clean team" was used to search a single business, the Law Offices of Peter J. Butler, L.L.C., a business which the Government had no authority to enter. Thus, every other business located in 2000 Belle Chasse Highway was searched by the general search team and the existence of the "clean team" does nothing to absolve the Government's unconstitutional search.

Furthermore, *In re Search of 5444 Westheimer Road Suite 1570, Houston, Texas, on May 4, 2006* offers the Government no justification for its handling of attorney-client privileged documents. Simply put, the Government is not following the policy approved by the court in that case.

In *Westheimer Road*, the Government utilized the following clean team procedure:

> A taint team, composed of a Department of Justice attorney and an FBI agent, neither of whom are part of the prosecution team, will review all the 118 seized boxes of materials, including the eight boxes segregated and identified as containing potentially privileged materials. The taint team will notify ERHC once it has identified all potentially privileged documents. At that time, all privileged documents will be returned to ERHC. The taint team will retain all potentially privileged documents it concludes are not actually privileged. In such instances, ERHC will have the opportunity to challenge the taint team's privilege determination in Court before the documents are given to the prosecution team.

In re Search of 5444 Westheimer Road Suite 1570, Houston, Texas, on May 4, 2006, 2006 WL 1881370, 2 (S.D.Tex., July 6, 2006).

In our case, the Government has this procedure backwards. Unlike *Westheimer*, in which the "clean team" reviewed everything first and removed privileged documents, here the

prosecution team is reviewing documents first and sending "potentially privileged" documents to the "clean team."

As Agent Bezet explained in his first affidavit, only items seized from Peter J. Butler, L.L.C. have been kept separate from the rest of the items seized from the other businesses. Rec. Doc. No. 31-3 at p. 9. "Any other items seized that are determined to potentially contain privileged material will also be sent to a 'clean team.'" *Id.* The review of privileged materials in the first instance by the prosecution team breaches the attorney-client privilege and destroys the purpose of the clean team. In addition, if the general search team has failed to designate an item as potentially privileged, such items will never make it to the "clean team" for review. Accordingly, the Government's flawed procedures do not prevent the irreparable injury found by the Court.

CONCLUSION

For the foregoing reasons, the Petitioners request that the Court deny the Government's Motion for Reconsideration.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 25, 2011, I electronically filed the foregoing pleading with the Clerk of Court by using the CM/ECF system which will send a notice of electronic filing to the following:

Gregory M. Kennedy, usalae.ecfcr@usdoj.gov
Salvador Perricone, usalae.ecfcr@usdoj.gov

/s/William P. Gibbens
WILLIAM P. GIBBENS

Live Oak Homes, Inc.

MEMORANDUM

To: Fred Heebe

From: Joey Baldassaro

Date: May 2, 1995

Re: Shadowlake Villas Apartments Polybutylene Replacement

****

[redacted]

Willow Incorporated

P.O. Box 697
Harvey, LA 70059-0697
(504) 366-2355 Phone
(504) 366-3018 Fax

FAX COVER SHEET

TO: [redacted] FAX #: [redacted]

FROM: [redacted]

DATE: [redacted] # Pages (including this cover) [redacted]

RE: [redacted]

COMMENTS: [redacted]

YOUR SPRINT INVOICE

Sprint

504-669-4889, SHADOW LAKE MANAGEMENT cont.

> SUBSCRIBER ACTIVITY SUMMARY

	Rate/Date	Amount
Service Discounts		
$10 Access Credit 13 months		-10.00
Total Service Discounts		-$10.00
Directory Assistance Charges		
Sprint 411 Directory Assistance		5.37
Total Directory Assistance Charges		$5.37
Sprint Surcharges		
* Federal -Univ Serv Assess Non-LD	2.280%	3.99
* State -Univ Serv Assessment	2.020%	2.79
Total Sprint Surcharges		$6.78

*Sprint Surcharges are rates we choose to collect from you to help defray costs imposed on us. Surcharges are not taxes or amounts we are required to collect from you by law. Surcharges may include: Federal USF, regulatory charges, administrative charges, gross receipts charges, and other charges incurred to recover costs associated with governmental programs. The amounts, and the components used to calculate Surcharge amounts, are subject to change.

Government Fees and Taxes		
State - Sales Tax	3.000%	5.47
County -911 Taxes		1.19
Total Government Fees and Taxes		$6.66
Total Charges for SHADOW LAKE MANAGEMENT		**$188.81**

> SUBSCRIBER ACTIVITY DETAIL

To view coverage maps and rates visit Sprint.com.

Cellular Services Call Detail

No.	Date	Time	Call To	Number	Footnote (See pg. 2)	Min:Sec	Usage	*Long Dist./ Other	Total Charges
[redacted]									

Cellular Services Call Detail

No.	Date	Time	Call To	Number	Footnote (See pg. 2)	Min:Sec	Usage	*Long Dist./ Other	Total Charges
[redacted]									

Continued...

From The Desk Of:
Peter J. Butler

Feb. 16, 2010

Dear Linda

[redacted]

Regards

PJB