CHAPTER EIGHTEEN
Rev. 4/18/10

DISCOVERY

This chapter sets forth certain policies of our office regarding pretrial discovery in criminal cases and provides guidance in the disclosure of Jencks Act material and exculpatory evidence. It also discusses some special issues, for example, the office's policy regarding the disclosure to prosecutors of potential impeachment information concerning law enforcement witnesses.

By encouraging early disclosure of pretrial discovery, the office's discovery policies are consistent with Department policies, as found in USAM 9-5.001 (Policy Regarding Disclosure of Exculpatory and Impeaching Information)(Exhibit 18-1) and in the January 4, 2010 Guidance for Prosecutors Regarding Criminal Discovery from Deputy Attorney General David W. Ogden ("the DAG Guidance")(Exhibit 18-2). Our office policies, and the Department policies, require disclosure that is broader in scope and earlier in time than that required by the federal and local rules, the Jencks Act (18 U.S.C. §3500), and due process. In certain instances, however, early disclosure of pretrial discovery is not advisable and therefore should not be provided. This chapter recognizes the necessary limitations on early disclosure of pretrial discovery and should help you to identify when early disclosure is, and is not, appropriate.

The Local Rules Concerning Criminal Cases for this district are located in the Massachusetts Rules of Court: Federal (West), which you have received. You should also be familiar with the October 28, 1998 *Report of the Judicial Members of the Committee Established to Review and Recommend Revisions to the Local Rules* (Exhibit 18-3), which was released in conjunction with the December 1, 1998 amendments to the local rules, and the various timetables that were also prepared at that time. *See* Exhibit 18-4 (clerk's office timetable); Exhibit 18-5 (USAO's timetable); and Exhibit 18-6 (Federal Defender's timetable).

(1) The annotated local rules concerning criminal cases (Exhibit 18-7).

The office has a set of extensive annotations to the Local Rules Concerning Criminal Discovery (the "Annotated Local Rules"), which are found on the office's intranet site and are attached hereto as Exhibit 18-7. The annotations are the office's single most comprehensive set of guidance, policy, and practice advice on discovery in criminal cases. You must be familiar with them and comply with those portions that mandate particular practices throughout the office.

(2) General office policy on pretrial discovery

It is the policy of this office, and of the Department, to provide discovery which is broader in scope than that required by the federal and local rules, the Jencks Act (18 U.S.C. §3500) and due process, and in advance of the deadlines imposed thereby, when such discovery may prompt an early

and just resolution of the case or is otherwise in the interest of justice, and is not outweighed by appropriate countervailing considerations in the particular case. Such appropriate countervailing considerations include, but are not limited to, (1) protection of victims and witnesses from harassment or intimidation; (2) protection of the privacy interests of witnesses; (3) protection of privileged information and consideration of any applicable legal or evidentiary privilege; (4) protection of the integrity of ongoing investigations; (5) protection of the trial from efforts at obstruction of justice, such as by fabrication of testimony or documents or any other aspect of the defense; (6) protection of national security interests or appropriate investigative agency concerns; (7) enhancement of the likelihood of receiving reciprocal discovery by defendants; (8) any other strategic considerations that enhance the likelihood of achieving a just result in a particular case.

Whenever full disclosure of any discovery material would be detrimental to the interests of justice, partial disclosure of such material should be made to the extent that such partial disclosure is practicable and not detrimental to the interests of justice. Consider in such instances whether a protective order limiting dissemination of the material in question would be sufficient to protect against harmful disclosure. You should decline to make disclosures under Local Rule 116.6 only after consultation with your unit chief.

Notwithstanding the breadth of the discovery policy set forth above, you should never describe the discovery being provided as "open file." Even if you intend to provide expansive discovery in a particular case, it is always possible that something will be inadvertently omitted from production and use of that descriptive would result in your having unintentionally misrepresented the scope of materials provided. Moreover, because the concept of the "file" is imprecise, such a representation could expose you to potential sanction for failure to disclose other materials (e.g., agent notes, internal memoranda) that a particular judge might deem to have been part of the "file."

If, in a particular case, you deem it appropriate to make broad and early discovery consistent with the general office and Department policy above due to the absence of appropriate countervailing considerations, you should advise the defense by letter that you are electing to produce discovery beyond that which is required by the rules, the Jencks Act, and due process, but you are not committing to any further discovery beyond that required by the rules, the Jencks Act, and due process.

(3) Exculpatory and impeaching information.

The Department's policy concerning the disclosure of exculpatory and impeaching information is set forth with clarity and detail in USAM 9-5.001 (Exhibit 18-1). That policy requires prosecutors to go beyond the minimum obligations required by the Constitution and establishes broader standards for disclosure of exculpatory and impeachment information. In short, this policy requires disclosure of "information beyond that which is 'material' to guilt as articulated in Kyles v. Whitley, 514 U.S. 419 (1995)," and encourages prosecutors to "err on the side of disclosure." The policy requires prosecutors to produce "information," not just "evidence," and counsels that the prosecutor must consider the cumulative impact of items of information. It is your responsibility to be completely familiar with the details of this policy and to comply with it in every case.

The disclosure of exculpatory and impeaching information is addressed with a great deal of specificity in Local Rule 116.2, which both defines exculpatory information (in a manner arguably broader in some respects than its constitutional contours) and establishes presumptive timing for the disclosure of different types of exculpatory information. With respect to the timing of disclosure, the rule in essence makes a distinction between information that the government ordinarily has identified by the time the case is indicted (disclosable within the time period set forth in Local Rule 116.1(C)(1)) and information that it may not recognize until it prepares seriously for trial (disclosable not later than 21 days before trial).

Local Rule 116.2 should be used as a check list for determining compliance with our obligations to disclose exculpatory information, and the Annotated Local Rules provide seventeen pages of guidance concerning construction and application of that Rule. Nonetheless, Rule 116.2 should not be considered a completely safe haven. It is not possible to create an exhaustive list of the categories of exculpatory evidence. Any evidence that is favorable to a defendant and material to guilt or punishment falls within the purview of Brady and its progeny, and information that may not be "material" in the constitutional sense may yet be disclosable under Department policy. For example, evidence such as a contradictory statement on an immaterial matter, or evidence of minor transgressions by a witness which did not result in any criminal charge and are not the subject of any promise, reward or inducement, may not rise to the level of material exculpatory evidence the disclosure of which is mandated by the Brady line of cases, but you must consider further whether its disclosure is required by USAM 9-5.001. When you are uncertain about what potentially exculpatory or impeaching information you must produce, you should always discuss the matter with your unit chief.

(4) Obtaining potentially disclosable information.

(a) The prosecution team. Department policy states that, "[i]t is the obligation of federal prosecutors, in preparing for trial, to seek all exculpatory and impeachment information from all members of the prosecution team. Members of the prosecution team include federal, state, and local law enforcement officers and other government officials participating in the investigation and prosecution of the criminal case against the defendant." USAM 9-5.001(B)(2). Certain investigations, such as national security cases or cases involving regulatory agencies, parallel proceedings, or task force investigations, may present sensitive and difficult issues in determining how far the "prosecution team" concept should be considered to extend. Section I(A) of the DAG Guidance (Exhibit 18-2) contains an important discussion of the criteria which should help to resolve this issue in particular cases. However, because the parameters of the "prosecution team" may often not be clear, you should discuss the issue with your unit chief and the Chief or Deputy Chief of the Criminal Division, if necessary.

(b) <u>Informing members of the prosecution team of their obligations</u>. Local Rule 116.8 imposes a duty on attorneys for the government to inform all federal, state, and local law enforcement agencies formally participating in a criminal investigation of the discovery obligations under the local rules and to obtain any information subject to disclosure from each such agency. To ensure that notes, reports, and statements are preserved where appropriate, you should discuss our discovery obligations as early as possible in the investigation with members of the investigative team, particularly state and local law enforcement officers who may not be familiar with the federal and local rules, and you should provide them with a copy of our Local Rules Concerning Criminal Cases and a copy of our form automatic discovery letter. You also should address our discovery obligations with members of the investigative team prior to trial and during trial preparation, to ensure you are aware of all materials potentially subject to discovery.

At or before the time of indictment, ask all investigators if they have any exculpatory information, including both information that might tend to show that any defendant did not commit any offenses charged in the indictment and witness impeachment evidence. Obtain any such evidence for disclosure. Exculpatory information which unbeknownst to you may be in the possession of investigators (and about which you have a responsibility to learn) is itemized in Local Rule 116.2. Make sure that all agents and other law enforcement officers participating in the investigation understand the breadth of the concept of exculpatory information as defined in the Local Rule.

Agents and other law enforcement officers who formally participated in the criminal investigation should be instructed, at the earliest opportunity during the investigation, to preserve the following materials:

(1) All contemporaneous notes, memoranda, statements, reports, surveillance logs, tape recordings, and other documents memorializing matters relevant to the charges contained in the indictment [Local Rule 116.9(A)];

(2) Any written statements or notes made by potential witnesses (18 U.S.C. §3500);

(3) Any recordings of potential witnesses (18 U.S.C. §3500);

(4) Anything in writing signed or otherwise adopted or approved by potential witnesses (18 U.S.C. §3500); and

(5) All other evidence [FRCP 16 (a)(1)(C)].

Rough drafts of reports, after a subsequent draft or final report has been prepared by an agent or other law enforcement officer, need not be preserved, unless a court has issued a contrary order. [Local Rule 116.9(B)].

After indictment and before trial, the following procedures should be followed:

(1) Provide each lead agent with a copy of all the discovery orders entered during the case (Local Rule 116.8);

(2) Obtain all witness statements from the investigators that have not previously been obtained during the investigation (18 U.S.C. §3500);

(3) Ascertain from each witness whether the witness has provided any statements to investigators other then those already in your possession (18 U.S.C. §3500).

(c) Obtaining potentially disclosable information from the prosecution team. The DAG Guidance (Exhibit 18-2) contains, at pp. 4-8, an extended discussion of what materials should be reviewed for potential discovery. Some of those topics (substantive case-related communications, potential Giglio information concerning law enforcement witnesses, information obtained in witness interviews and trial preparation meetings with witnesses, and agent notes) are dealt with separately below.

The decision as to how to obtain these materials for review is yours. In each case, you should consider whether it is appropriate to request discovery materials from the investigating officers in writing. That approach may be particularly advantageous when dealing with less experienced law enforcement officers or with state or local law enforcement officers (or federal agents from other districts) who will be less familiar with the particular substantive and timing requirements of the Local Rules. A letter, perhaps including the above-referenced listing of discovery materials together with instructions or cautions particular to the case, can be very useful to investigators as a checklist. Further guidance concerning the persons or entities from whom discovery should be sought is found on page 37 of the Annotated Local Rules.

The appropriate decision whether to rely on investigators to identify and provide potentially discoverable information to you for review, or whether to conduct your own personal review of agency files together with the investigators, may vary from case to case depending on a variety of factors including, among other things, the volume and geographic location of potentially discoverable materials, the experience level and sophistication of the investigators on the prosecution team, and the sensitivity and difficulty of the case. Always bear in mind that, when your case gets to court, the ultimate responsibility for the discovery decisions in the case is yours, whatever your prior decisions on delegating review responsibility.

(5) Exercising your judgment.

Office and Department policy favoring broad and early disclosure does not in any way diminish your ability – indeed, your duty – to exercise your own judgment as to whether there are countervailing considerations which militate against providing early discovery in any particular case. Whenever you believe that it is detrimental to the interest of justice to make any disclosure otherwise required under Local Rule 116.1 or Local Rule 116.2, FRCP 16 or 26.2, or the Jencks Act,

18 U.S.C.§ 3500, you should, with the concurrence of your unit chief, decline to make such a disclosure. If you do so, advise defense counsel in writing, and file a copy with the clerk's office, as provided under Local Rule 116.6, or move for an in camera review pursuant to 18 U.S.C. §3500 (c) or Local Rule 116.6 (B) seeking an order that the information need not be produced to the defense, either at that time or at any time. If the court orders the information produced to the defense, consider seeking a protective order appropriately restricting the dissemination of the information (e.g., only to counsel, not the defendant; or only to counsel, the defendant and the defense team) .

You should also remember that it is frequently permissible, if not mandatory, to make disclosures in the form of attorneys' letters, rather than disclose the original documents to the defense. Keep in mind the following caution from the DAG Guidance (Exhibit 18-2, p. 10): "There may be instances when it is not advisable to turn over discoverable information in its original form, such as when the disclosure would create security concerns or when such information is contained in attorney notes, internal agency documents, confidential source documents, Suspicious Activity Reports, etc. If discoverable information is not provided in its original form and is instead provided in a letter to defense counsel, including particular language where pertinent, prosecutors should take great care to ensure that the full scope of pertinent information is provided to the defendant."

Finally, you should always bear in mind that the issues of discoverability and admissibility are analytically distinct. In other words, the fact that information must be disclosed to the defense under applicable discovery rules does not mean that it is necessarily admissible at trial. When appropriate, you should give careful consideration to filing motions in limine seeking pretrial judicial rulings that particular information produced to the defense not be admitted at trial.

(6) Keeping a record of materials provided to the defense in discovery.

In every case, you must keep a record sufficiently clear for you to be able to document – to the court, if necessary – precisely which materials you provided to the defense in discovery, in what form, and at what time. Such a record is more than simply copies of your discovery correspondence, though the letters are obviously important. You should keep an integral copy of all such documents, available solely for purposes of documenting your discovery compliance. Whether that copy is a physical or electronic copy of the materials produced will be determined by the circumstances of the particular case, largely by the volume of materials and the manner in which they were produced.

(7) Witness statements.

(a) "Statements" within the technical scope of the Jencks Act. Exhibit 18-8 contains an excellent discussion of our obligations with respect to "statements" as technically defined by the Jencks Act (a common example of which would be grand jury transcripts). As a general matter, the court cannot appropriately require our office to disclose prior Jencks Act statements of a trial witness before the witness has testified on direct examination. Nonetheless, it

is our general practice to disclose, shortly before trial, witness statements which have not previously been produced as potential exculpatory evidence pursuant to Local Rule 116.2. Further, it is within your discretion to disclose witness statements at any earlier point in the discovery process in appropriate instances. Absent significant countervailing concerns, witness statements should be disclosed within a reasonable time period after the court has set a reliable trial date pursuant to Local Rule 117.1(A)(3), and not later than seven days before trial. If you believe it is not prudent to disclose all witness statements at least seven days before trial, you should discuss the matter with your unit chief, and get his or her approval.

(b) Reports of interviews of witnesses. Reports of interviews of a trial witness (e.g., FBI 302s, DEA 6s) are not technically "statements" of the witness under the Jencks Act unless they have been signed, adopted, or approved by the witness, or contain "substantially verbatim" recitals of the witness' statements. United States v. Foley, 871 F.2d 235 (1st Cir. 1989) (See the discussion in Exhibit 18-7). However, it is the policy of the office to disclose witness interview reports prior to trial, generally not later than the time when Jencks Act statements are produced. In reviewing such reports of interview, you should always be alert to the possibility that they may contain inconsistencies (either with other statements of the same witness or with statements of other witnesses) or other information which would make them disclosable as potential exculpatory or impeachment information on the timetable established by Local Rule 116.2.

(c) Reports of interviews and grand jury testimony of persons who will not be trial witnesses. Many criminal investigations are broader in scope than the particular charged criminal case, and may have encompassed interviews or grand jury testimony (or both) of persons other than your anticipated trial witnesses. As part of your discovery preparation, you should review all relevant reports of interview and grand jury testimony of such persons in order to determine whether they contain any potential exculpatory or impeaching information which should be disclosed under Local Rule 116.2.

(8) Review of agent notes underlying reports.

One issue that sometimes arises concerning agent notes is whether AUSAs have an obligation, in every instance, to review the agent notes which form the basis for reports in order to determine whether there might be inconsistencies between the notes and the reports which must be disclosed to the defense as exculpatory information. It is the office's position that current law does not require such a review, absent some more particularized circumstances suggesting that such a review would be prudent in a particular case or with respect to a particular report or agent/officer. Consistent with Section (I)(B)(8)(c) of the DAG Guidance, the agent notes should be reviewed if there is a reason to believe that the notes are materially different from the report (as, for example, if the report was prepared by an officer whose previous reports had proven to be incomplete or inaccurate), if a written report was not prepared, if the precise words used by the witness are significant, if the witness disputes the agent's account of the interview, or if the report is a particularly important report, such as the confession of a defendant or the statement of a critical witness. Accordingly, it is the policy of the office that such a review will not be conducted, absent some such special circumstances. If you believe that there exist circumstances which might warrant

such a review, you should discuss the matter with your unit chief. It is always good advice to remind agents that they should check their own notes to ensure that there are no material inconsistencies between their reports and the notes from which they prepared them. Notes of an interview of an individual defendant, or of individuals whose statements may be attributed to a corporate defendant, may be discoverable under FRCP 16(a)(1)(B). See United States v. Vallee, 380 F.Supp. 11, 12-14 (D.Mass. 2005).

(9) Interviews with witnesses in preparation for testimony.

Whenever possible, you should not conduct an interview of a witness (in preparation for grand jury, trial or evidentiary hearings) without the presence of an agent, in order to avoid the risk of making yourself a witness to a statement and consequently being disqualified from handling the case if the statement becomes an issue. If exigent circumstances make it impossible to secure the presence of an agent during such an interview, you should try to have another office employee present.

As a general office policy matter, trial or hearing preparation sessions with witnesses need not be memorialized, unless the rules of the agency of a participating agent require otherwise. However, if the interview yields new information that is exculpatory or impeaching, that information should promptly be disclosed to the defense, either in a letter from you or a report from an agent who was present. In addition, if the interview yields new inculpatory information, or new evidentiary detail, you should consider promptly disclosing that information to the defense as well in order to blunt possible defense arguments that the new information is "inconsistent" with previous statements of the witness or was otherwise the subject of mandatory pretrial disclosure.

You should preserve any notes you made of the witness' statements at least until the case is closed. You should be sure to review your notes at or about the time of the witness' testimony to ensure that they do not contain any information which is materially at variance with the witness' testimony at the trial or hearing. If they do contain such information, it should be promptly disclosed.

(10) Interviews in which you, the AUSA, participate.

There may be a variety of occasions in which you participate, with agents, in interviews of potential witnesses, even though such interviews may not be in preparation for testimony of the witness. In such circumstances, the interview should be memorialized, usually by the agent. As a matter of office policy, you should ask the agent to provide you with a copy of the interview report in draft, so that you can compare the report against your own notes and recollection for accuracy and completeness. You should explain to the agent that the purpose of doing so is to avoid the possibility that your notes and/or recollection of the interview might be so materially at variance with the content of the report that you later have an obligation to disclose that information because of its inconsistency with the final report (a result that obviously is potentially detrimental to the case). When you have reviewed the draft, it is appropriate to discuss with the authoring agent (and other agents present for the interview) any material variances between the draft and your notes

and/or recollection. However, the report remains that of the agent and ultimately it is the agent's recollection and understanding that must determine the content of the report.

(11) Storing and reviewing substantive, case-related communications.

The office policy concerning E-Mail Use in Criminal and Parallel Proceeding Cases is appended as Exhibit 18-9. You must be familiar with this policy, and comply with the discovery direction found particularly in section II(D) of the policy.

(12) Policy regarding the disclosure to prosecutors of potential information concerning law enforcement agency witnesses.

The Department's policy, set forth in USAM §9-5.100 (Exhibit 18-10), regarding the disclosure to prosecutors of potential impeachment information concerning law enforcement agency witnesses, attempts to strike a balance between two very important interests: the prosecutor's need to obtain potential impeachment information concerning law enforcement witnesses in order to comply with the prosecutor's Giglio obligations, and the legitimate concern of investigative agencies that sensitive personnel information be treated in a way which adequately safeguards investigators' privacy interests.

Consistent with the Attorney General's directive that each office develop a plan to implement the Giglio policy, this office, in consultation with the affected investigative agencies of both DOJ and the Treasury, developed its Implementation Plan (Exhibit 18-11). Under the plan, and the respective orders of the Attorney General and the Treasury Secretary, the primary responsibility for ensuring the prompt and complete disclosure of potential Giglio material rests with the agency case agent and the line AUSA. Note, for example, that paragraph 4 of the office plan requires that each AUSA discuss disclosure of Giglio material directly with the case agent to ensure that all potential impeachment material has been disclosed to the AUSA for review.

Paragraph 7 of the office plan requires that, on receipt of potential Giglio material, the line AUSA should give appropriate consideration to seeking an *ex parte, in camera* review and decision by the court regarding whether Giglio material must be disclosed to defense counsel. If the court requires such disclosure, appropriate consideration should be given to seeking a protective order to limit the use and further dissemination of the material by defense counsel.

You should read the plan carefully, and discuss any issues with the unit chief and with Criminal Chief James Lang, the office's point person for Giglio requests.

(13) Email survey of Criminal Division and Civil Division concerning witnesses ("Osorio requests").

Several subsections of Local Rule 116.2 require disclosure of potential impeachment information concerning witnesses whom the government anticipates calling in its case-in-chief. In an office as large as ours, it may sometimes happen that, notwithstanding the good faith efforts of

the AUSAs and investigators on a particular case, other AUSAs in the office may have pertinent impeachment information of which the members of the prosecuting team are unaware concerning such witnesses. For an example of such a hazard, see United States v. Osorio, 929 F.2d 753, 755 (1st Cir. 1991)(AUSA prosecuting case learns mid-trial, after cooperating witness testifies, that other AUSAs in the office know of drug dealing by witness which is much more extensive than that which witness had admitted). To avoid such unpleasant surprises and to ensure that the office complies with its discovery obligations, you should – in every case – circulate an email (entitled "Osorio request") to all other Criminal AUSAs and Civil AUSAs listing the anticipated trial witnesses and asking whether other AUSAs are aware of any potential impeachment information as to those witnesses. Particularly with regard to witnesses with criminal pasts (or presents), the "Osorio request" should provide sufficient identifying information (e.g., heroin dealer from New Bedford) to permit a meaningful response. AUSAs receiving such queries should review them carefully and should respond promptly if they have pertinent information. If you believe that there are special considerations (e.g., risks to the witness from such disclosure, scope of the witness' past known criminal conduct, notoriety of the witness, necessity to avoid inadvertent disclosure of sensitive rebuttal witnesses) which suggest that it is unnecessary or imprudent to circulate such a query, or that the query should be distributed less widely, you should consult with your unit chief and/or the Criminal Chief.

(14) Cooperating witness and confidential informant issues.

Issues concerning informants and accomplice witnesses often arise in discovery, and elsewhere. Precision in the use of the terms "cooperating witness" ("CW"), "confidential informant" ("CI") and the like is critical. A confidential informant is someone who has provided information on a confidential basis (e.g., in connection with a search warrant or a Title III investigation), and who is not going to testify. A confidential informant's identity may be protected under Roviaro v. United States, 353 U.S. 53 (1957). Only under very limited and unusual circumstances must impeaching information about a confidential informant be disclosed during the discovery process. A cooperating witness, on the other hand, is someone who is expected to testify; impeachment material (such as promises, rewards, and inducements) about cooperating witnesses must be disclosed routinely. In answering discovery motions, please bear these distinctions in mind and use the terms correctly.

(15) Other witness considerations.

The following procedures should always be followed for potential witnesses:

(1) Determine whether any promise, or reward, or inducement has been given to the witness by any agent or other law enforcement officer [Local Rule 116.2 (B)(1)(c)];

(2) Perform a criminal record check [Local Rule 116.2 (B)(1)(d)];

(3) Search federal computer indices to see if there are pending cases or other files on the potential witness [Local Rule 116.2 (B)(1)(e)];

(4) Inquire of any state or local agencies participating in the investigation to see whether there are any pending cases or files on the potential witness [Local Rule 116.2 (B)(1)(e)].

Whenever the computer indices show a file on the potential witness, or you, the agent or other law enforcement officer know of any such file, the following procedure should be followed:

(1) If the file is in the possession of any federal agency or any state or local agency participating in the criminal investigation, all materials listed in paragraph a above must be preserved;

(2) If the file is in the possession of a state or local agency which is not participating in the investigation, in deciding whether or not to contact the agency, you should balance the importance of keeping the investigation confidential against the benefits of possibly obtaining more information about your case. This balance will often change after the case has become public.

(16) Discovery of prison telephone conversations.

If you receive a defense request for tape-recorded conversations of prisoners, please read Exhibit 15-4, and consult your unit chief. If you would like to obtain recorded conversations of BOP prisoner telephone calls, or transactional data, please read Exhibit 15-5. See also Chapter Twenty-Four (Prisoners).

(17) Deviations from the policies of this chapter.

If you feel that the circumstances of a particular case suggest that a policy articulated in this chapter not be followed, you should discuss the matter with your unit chief and the Chief or Deputy Chief of the Criminal Division and secure their written concurrence.

(18) Reservation.

Nothing in this document is intended to create any substantive or procedural rights, privileges, or benefits to actual or prospective parties or witnesses; to be enforceable in any civil, criminal, or administrative matter by any actual or prospective parties or witnesses; or to have the force of law. See United States v. Caceres, 440 U.S. 741 (1979).

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