No.

In the Supreme Court of the United States

MARY WILKERSON - PETITIONER

v.

UNITED STATES OF AMERICA - RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI
TO THE ELEVENTH CIRCUIT COURT OF APPEALS

APPENDIX III

PETITION FOR A WRIT OF CERTIORARI OF
MARY WILKERSON, PETITIONER

APPENDIX

APPENDIX III
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APPENDIX O

Motion For Prosecutorial Misconduct
Exhibit F -
Doc. 446@F

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION

UNITED STATES OF AMERICA	* CRIMINAL NO. 1:13-CR-00012-WLS-TQL-4 * VIOLATIONS: * 18 U.S.C. SECTIONS 1505 * *
v.	* *
MARY WILKERSON, Defendant.	* MOTION TO DISMISS THE INDICTMENT * ON COUNT 73 DUE TO PROSECUTORIAL * MISCONDUCT, OR, IN THE * ALTERNATIVE, MOTION FOR A NEW TRIAL, * DISCOVERY AND AN EVIDENTIARY * HEARING

COMES NOW, the Defendant, MARY WILKERSON, by and through her attorney of record and moves this Honorable Court to Dismiss Count 73 of the Indictment against the Defendant, Mary Wilkerson due to Prosecutorial Misconduct as per the following complaints of misconduct that have blatantly and willfully occurred during the Government's investigation of PCA and Defendant Wilkerson, throughout the Trial up until the present with the objective to indict Mary Wilkerson and win a conviction by any means whatsoever even at the cost of preventing her from having a fair and impartial Trial and from preparing a Defense in violation of Due Process under the Law pursuant to the 5th, 6th and 14th Amendments. In support thereof, the Defendant files the attached Brief in Support of the Motion to Dismiss the Indictment on Count 73 Due to Prosecutorial Misconduct, or in the Alternative, Motion for a New Trial, Discovery and an Evidentiary Hearing with the Exhibits filed simultaneously herewith as A – O.

PROCEDURAL HISTORY

1.

The Defendant was charged with two counts of Obstruction of Justice, 18 U.S.C. § 1505, Count No. 73 and Count No. 76 in the above Indictment, each of which Count carried a fine and/or a sentence of up to five years imprisonment.

2.

The Government's Indictment was filed on February 25, 2013 more than four years after the alleged incident and near the Statute of Limitations of this case.

3.

Whereas, after the conclusion of Closing Arguments and giving of the jury charges, the jury retired to deliberate the case on September 12, 2014 and returned a verdict of Guilty on the Obstruction charge in Count 73 and Not Guilty on the Obstruction charge in Count 76 for Defendant, Mary Wilkerson, on September 19, 2014. To date, no Judgment has been entered.

4.

The Defendant by and through her Counsel of record submitted an Oral Motion for Judgment of Acquittal at the conclusion of Trial, and filed a Rule 29 - Motion for Judgment of Acquittal - on October 3, 2014 due to the consistent and deliberate Brady violations. The Government's Response was filed on November 6, 2014, some 34 days after the Motion was filed (13 days late), although the Government did not file a Motion for an extension for its' Response. No sanctions were imposed on the Government for its' late Response. The Defendant timely filed her Reply Brief to the Government's Response on November 20, 2014 and an Amendment to the Reply Brief on November 21, 2014. The Defendant then filed an Amended Motion for Judgment of Acquittal on April 2, 2015 due to consistent and egregious *Brady* violations that continued

throughout the investigation and well into the Trial. As an indigent Defendant, Wilkerson's 5th, 6th and 14th Amendment rights were violated time and time again, preventing her from having a fair Trial and from preparing a defense which insured her conviction and possible loss of liberty and property. The Government prosecution team never met its obligation to produce exculpatory and impeachment information to the defense but instead deliberately eliminated any chance of Wilkerson finding the exculpatory evidence even with making diligent efforts since it was buried in the millions and millions of documents the Government prosecution produced over a time period of year and a half or more and even after Trial began, most of which Discovery was produced after the Discovery deadline of July 17, 2013. Wilkerson's Motion for Judgment of Acquittal was denied.

5.

The Defendant by and through her Counsel of record submitted a Motion to Dismiss on April 3, 2015, and although the verdict was rendered on September 19, 2014, Wilkerson had not been sentenced nor had a PSR been produced when she filed the Motion. Wilkerson filed the Motion to Dismiss the Indictment of Count 73 based on the prosecution team's egregious and deliberate violations of *Brady*, *Giglio*, Rule 16, and the 5th, 6th and 14th Amendments by releasing Discovery in numerous packages long past the Discovery deadline of July 17, 2013 and even throughout Trial, denying her Due Process afforded to her in the U. S. Constitution by the 5th, 6th and 14th Amendments. These *Brady violations* and *Stevens* Discovery abuses impeded and prevented her from preparing a defense so that the prosecution team could guarantee her conviction by whatever means necessary. Since the exculpatory evidence that would have refuted and impeached Investigator Gray was so well hidden in the 6 to 8 million pages of documents which was the "diary" page of Janet Gray (Government Exhibit #837), the testimony of

Investigator Gray was not refuted at Trial, only questioned. Even the e-mail to the FDA supervisors for the Congressional report was buried so deep into the pile of data dump that the Defendant was unable to find the "diary" page or the e-mail before Trial. Brady v. Maryland, 373 U.S. 83 (1963). SEC v. Collins & Aikman Corp., 256 F.R.D. 403 (S.D.N.Y. Giglio v. United States, 405 U.S. 105 (1972). United States v. Skilling, 554 F.3d 529, 576-77 (5th Cir. 2009). United States v. Corbin, 734 F.2d 643, 650 (11th Cir. 1984). United States v. Lincoln, 630 F.2d 1313, 1319 (8th Cir. 1980). U. S. v. Theodore F. Stevens, 593 F. Supp. 2d 177 (D.C. 2009). Rule 16 of the Federal Rules of Criminal Procedure. The Court denied Wilkerson's Motion to Dismiss.

BACKGROUND OF PROSECUTORIAL MISCONDUCT

1.

The Defendant by and through her Counsel of Record consistently was forced to file Motions throughout the Pre-Trial Period pertaining to *Brady* materials and *Giglio* due to the massive "data dump" of Discovery to Wilkerson of at least 6 to 8 million or more pages of documents over an extended period of time from Indictment, on the eve of the Trial and more even after Trial began, which were deliberate and consistent egregious *Brady* violations by the Government prosecutors. The Statement of Chris Hall, IT Consultant for Wilkerson's defense states the estimated number of documents that he can determine Wilkerson received, which still is an incomplete and arduous task for the software to count, as so many documents had **no** Bates Numbers and were not indexed and, therefore, will be uncountable. (See Exhibit "A" – Statement of Chris Hall). The following is a timeline of Motions filed by Wilkerson in a futile attempt to request that the prosecution team provide exculpatory and relevant Discovery to her and eliminate the unnecessary searching through millions of non-relevant documents which consumed

Wilkerson's time at the cost of preparing a defense and unsuccessfully digging out the exculpatory evidence before Trial for Count 73.

a) Motion to Compel Meaningful Discovery based on *Brady* (Doc. 78) filed July 11, 2013. This Motion was filed requesting the meaningful and relevant Discovery from the Government prosecution, some five months after Indictment, as the Government prosecution had already produced more than 2-1/2 million documents to Wilkerson without any means to search through the documents and **no** Bates Index or numbering in February 2013. The Scheduling Order set the Discovery deadline for June 17, 2013. The Government prosecution team then filed a Motion to Extend the Discovery Deadline (Doc. 67) to July 17, 2013 and the Court issued an Order granting the Government's Motion for the extension to July 17, 2013. This is just the beginning of the number of misrepresentations and mistruths made to the Court about the number of documents the Government produced and the timeline of when it was produced, which was explained and refuted in each subsequent Motion filed by the Defendant. These first 2-1/2 million documents and another 96,000 documents which were sent on April 30, 2013 were useless to Wilkerson in the form they were produced due to the incapability of Wilkerson to search through the documents with no Bates Index in attempting to weed out the millions of documents not relevant to her Indictment, as well as, find the exculpatory evidence. Even if the Government had only produced no more than the approximate 2-3/4 million documents already produced by April 2013, the Defendant would still have been searching through these documents well after the end of Trial if her defense team was able to read two pages per minute around the clock 365 days per year. (2 pages x 60 minutes x 24 hours per day x 365 days per year = 1,051,200 pages per year) or 1,051,200 pages x 2.5 years for approximately 2,628,000 pages to date. Less than 1,000 exhibits submitted by the Government were tendered and admitted into evidence which is one page

tendered and admitted out of every 6,000 pages (minimum of 6 million pages were produced by the Government to the Defendant).

b) Motion for Release of Brady Materials for Discovery and Inspection filed on July 23, 2013 (Doc. 84) based on *Brady, Giglio,* 18 U.S.C. § 3500, Fed. R. Crim. Proc. 12(b)(4) and F.R.C.P. 16. This Motion Requested the Rule 16, *Brady* and *Giglio* information, including, but not limited to, inspection, copying or photographing of any written or recorded statements of Defendant, memoranda of such statements and statements made, all possible witnesses for "Disclosure of Exculpatory evidence" for the Defendant or evidence tending to show Defendant's acts were not knowingly done as part of a conspiracy or without the knowledge of a conspiracy, and disclosure of all conduct and injuries relevant to the crimes alleged in Indictment against the Defendant. An unspecified number of documents on CD were again shipped to the Defendant's Counsel on or about June 17, 2013 and another CD on July 17, 2013, without indexing or any search capability, crippling the Defendant's chances of preparing her Defense and insuring a Trial by Ambush, all deliberately and willfully done in violation of *Brady* and *Giglio*.

c) Motion for Jencks Act Materials filed on July 23, 2013 was based on 18 U.S.C. § 3500 (Doc. 85). This Motion requested the statements of any witness which related to the subject matter concerning the Defendant pursuant to *Jencks* Act, Title 18 Section 3500 USC.

d) Motion for Release of Brady Materials Discovery filed on August 16, 2013 was based on *Skilling, Rickets, Salyer, and SEC.* (Doc. 98). United States v. Skilling, 554 F.3d 529, 576-77 (5th Cir. 2009). Emmett v. Ricketts, 397 F. Supp. 1025, 1043 (N.D. Ga. June 17, 1975). United States v. Salyer, No. CR. S-10-0061 LKK (GGH), 2010 U.S. Dist. LEXIS 77617, 2010 WL 3036444. SEC v. Collins & Aikman Corp., 256 F.R.D. 403 (S.D.N.Y. 2009). This Motion again summarized the estimated 2-1/2 to 3 million documents already received and the latest release of

approximately 2,840 additional documents or more sent on one CD and another hard drive with an unknown amount of documents from the Department of Justice that was supposed to be released but did not arrive. Once again, the documents were produced unorganized, unindexed and unsearchable, making the production meaningless to the Defendant to prepare a Defense as it appears that they were deliberately shipped as a raw data dump with Trial scheduled to commence a few months away on February 10, 2014. The Defendant, therefore, had no hope of searching through the mass of non-relevant documents in time, which violated the Defendant's Due Process clearly in violation of the 5th, 6th and 14th Amendments and *Brady* and *SEC*. In comparison the Federal Court required measures for Civil Discovery, in which the SEC's mass of unlabeled and unorganized documents were an "undue hardship" on the Defendants who had to search through 10 million documents and, therefore, ordered SEC to produce and identify specific documents, although Wilkerson was never granted such an Order. The Government's Response stated it would produce a Bates Index Reference Guide to the Defendant and that the production was in a "load ready format". Both statements were deliberately not truthful and misled the Court and the Defendant, as the documents were not "load ready". The Defendant had to obtain the services of an IT Specialist who spent many man-hours getting the CD's and hard drives in a format to load into the search software which was finally obtained on loan to the Defendant in the spring of 2014. (Note: The "Bates Index" was not provided to the Defendant for another three months after additional requests to the Government.) The Defendant was then searching through 3-1/2 to 4 million documents, which denied her Due Process pursuant to the 5th, 6th and 14th Amendments.

e) Motion for List of Government Witnesses (Doc. 108) and Amended Motion (Doc. 109) filed on October 17, 2013 was based on *Campagnuolo, Mosely* and *Dowling*. The Motion was filed requesting the Government disclose the list of witnesses as per *Campagnuolo*. This Motion also

stated that the Defendant now had received more than 3-1/2 to 4 million unorganized and unindexed documents in production and the Government still had not produced the promised "Bates Index Reference Guide" to the Defendant even though the production kept increasing by the thousands. Even if the Defendant had an Index there were many documents produced with **no** Bates Index Numbers assigned, those could not be searched with the software with the upcoming Trial date approaching on February 10, 2014 and being four months past the Discovery deadline. Again, the Government prosecution willfully and flagrantly disregarded *Brady* and the Defendant was deliberately deprived of Due Process in the 5th, 6th and 14th Amendments. United States v. Campagnuolo, 592 F.2d 852, 854 (5th Cir. 1979). United States v. Mosely, 450 F.2d 506 (5th Cir. 1971); Dowling v. United States, 348 F.2d 594 (5th Cir. 1975).

f) Motion for Release of Brady Materials (Doc. 111) filed on October 25, 2013 was based on *Brady, Giglio, Jencks,* and *Kyle,* Fed. R. Crim. Proc. 16, Fed. R. Crim. Proc. 12, Fed. R. Crim. Proc. 26.2, and U.S.S.G. § 6B1.2, Commentary. This Motion again requested all *Brady* materials and evidence addressed in the Court's Standing Pre-Trial Order, as well as, compliance with Fed, R. Evid. 404(b), Fed. R. Crim. Proc. 16, the Federal Rules of Evidence and the U. S. Sentencing Guidelines in an attempt to get the meaningful discovery repeatedly requested in prior Motions in the interest of justice for the Defendant all to no avail. Kyle v. Whitley, 514 U.S. 419 (1995). United States of America v. Nabors, 707 F.2d 1294 (11th Cir. 1983). Fed. R. Evid. 404(b). Fed. R. Crim. Proc. 26.2 and 12(b)(4).

g) Reply to Government's Response Regarding Docs. 108, 109 and 111 was based on *Brady, Giglio, Skilling* and Fed. R. Crim. Proc. 16 and filed on November 27, 2013. The Reply reiterates the Motions the Defendant was forced to file in an attempt to obtain *Brady* materials and meaningful discovery that was buried in millions of unsearchable documents with **no** Bates Index

provided. The Government produced the 9th PCA Production to the Defendant of four additional CD's of an unknown number of documents on November 1, 2013 five months past the Discovery deadline and still had not provided the promised Bates Index. The Government had not provided meaningful Discovery since it was all buried in the data dump of non-relevant documents to the Two Counts in her Indictment. The Government finally produced a Bates Index in mid-December 2013, two months before the upcoming Trial scheduled for February 10, 2014 but the Defendant was not able to speed read and search more than 3-1/2 to 4 million documents received within two months. This was just another example of the repeated willful misconduct and egregious *Brady* violations perpetrated by the Government prosecution team.

h) Motion to Dismiss or Alternatively for Continuance and Sever and Compel Meaningful Discovery (Doc. 223) filed on July 18, 2014 based on violations of the 5th, 6th & 14th Amendments, Fed. R. Crim. Proc. 16, *Brady, Giglio* and Post *Stevens* Discovery Abuses with Trial date having been reset to begin July 14, 2014. This Motion asked for a Dismissal of the case against the Defendant due to the numerous and blatant *Brady* violations deliberately perpetrated against the Defendant by the Government prosecution and was one more attempt by the Defendant to obtain meaningful discovery from the prosecution team since Trial was continued until July 28, 2014. The Defendant had just received another unorganized 100,000 documents with **no** Bates numbers assigned in production on July 1, 2014, as well as, several production releases in June 2014 of thousands of documents more than a year after the Discovery deadline of July 17, 2013. The Defendant could not possibly search through all of the last production releases since Trial was now scheduled for July 14, 2014. Since the Defendant had to search through millions of documents already received, any Discovery received on the eve of Trial would never be read in time, preventing her from using it in her defense.

THEREFORE, the Defendant prays that in light of the foregoing authorities and Brief In Support of the Defendant's Motion and attached Exhibits A through O that the Court enter an Order to investigate these issues as set out and grant the Defendant's Motion to Dismiss the Indictment on Count 73 based on Prosecutorial Misconduct, or in the alternative Motion for a New Trial, Discovery and an Evidentiary Hearing, as well as, compelling the original diary of Agent Gray for forensic examination.

Respectfully submitted this 30th day of August, 2015.

/s/ Thomas G. Ledford
Thomas G. Ledford
Attorney for Defendant,
Mary Wilkerson
State Bar No.: 443087

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION

UNITED STATES OF AMERICA	* CRIMINAL NO. 1:13-CR-00012-WLS-TQL-4 * VIOLATIONS: * 18 U.S.C. SECTIONS 1505 * * *
MARY WILKERSON,	* CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing MOTION TO DISMISS INDICTMENT DUE TO PROSECUTORIAL MISCONDUCT OR IN THE ALTERNATIVE A NEW TRIAL, DISCOVERY AND AN EVIDENTIARY HEARING, with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the Honorable Kenneth Alan Dasher, Assistant United States Attorney, Honorable Patrick H. Hearn, Trial Attorney, U. S. Department of Justice and the Honorable Megan Englehart, Assistant United States Attorney and All Counsel of Record and parties.

This 30th day of August, 2015.

/s/ Thomas G. Ledford
Thomas G. Ledford
Attorney for Defendant,
Mary Wilkerson
State Bar No.: 443087

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Tom Ledford

From: Tom Ledford <tom@theledfordlaw.com>
Sent: Friday, June 13, 2014 5:03 PM
To: 'Dasher, Alan (USAGAM)'
Subject: RE: U.S. v. Mary Wilkerson

Patrick, Alan:

If no Transcript of Mary's statement about Positives (Count 73), are there any recordings, writings, or memos of Mary allegedly saying she did not know of any Positives? If so, please provide to me. Thanks.

Tom Ledford

-----Original Message-----
From: Dasher, Alan (USAGAM) [mailto:Alan.Dasher@usdoj.gov]
Sent: Tuesday, May 13, 2014 6:39 AM
To: Tom Ledford
Cc: Hearn, Patrick H. (CIV)
Subject: Re: U.S. v. Mary Wilkerson

There is no transcript.

Sent from my iPhone

> On May 12, 2014, at 7:43 PM, "Tom Ledford" <tom@theledfordlaw.com> wrote:
>
> Patrick, Alan:
>
> Is there a transcript of Mary's statement about Positives
> as pertains to Count 73 of the Indictment? If so, please produce it or
> give Bates Number of transcript. Thanks.
>
> Tom Ledford
>
>
> -----Original Message-----
> From: Dasher, Alan (USAGAM) [mailto:Alan.Dasher@usdoj.gov]
> Sent: Friday, May 09, 2014 11:41 AM
> To: Tom Ledford
> Cc: Hearn, Patrick H. (CIV)
> Subject: RE: U.S. v. Mary Wilkerson
>
> One of the CD/DVDs was specifically identified in one of the discovery
> letters as containing all of the reports of all interviews. Please
> refer to that.
>
> -----Original Message-----
> From: Tom Ledford [mailto:tom@theledfordlaw.com]
> Sent: Friday, May 09, 2014 11:03 AM

> To: Dasher, Alan (USAGAM)
> Cc: Hearn, Patrick H. (CIV)
> Subject: RE: U.S. v. Mary Wilkerson
>
> Alan:
>
> Would you provide me with the Bates Numbers of the Transcripts
> and any interviews of the Possible Witness (Including Defendants and
> Unindicted
> Co-Conspirators) and Mary Wilkerson which were reduced to writing so
> that my Office can locate them? Thanks.
>
> Tom Ledford
>
> -----Original Message-----
> From: Dasher, Alan (USAGAM) [mailto:Alan.Dasher@usdoj.gov]
> Sent: Friday, May 09, 2014 7:58 AM
> To: Tom Ledford
> Cc: Hearn, Patrick H. (CIV)
> Subject: Re: U.S. v. Mary Wilkerson
>
> Tom: you have been furnished with reports of all interviews to date,
> although you are not even entitled to them except to the extent they
> may contain Brady material. There are no recorded statements, other
> than the change of plea hearings of Mr. Kilgore and Mr. Lightsey,
> which are matters of public record which are just as available to you
> as they are to us. Alan Sent from my iPhone
>
> On May 9, 2014, at 7:43 AM, "Tom Ledford"
> <tom@theledfordlaw.com<mailto:tom@theledfordlaw.com>> wrote:
>
> Gentlemen:
>
> Please furnish me with any Transcripts and/or Statements of
> Possible Witness (Including Defendants and Unindicted Co-Conspirators)
> and Mary Wilkerson made at anytime during the investigation of this
> case up to the present. Thanks.
>
> Tom Ledford
>

DOC. 447

BRIEF ON
MOTION FOR
PROSECUTORIAL MISCONDUCT

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION

UNITED STATES OF AMERICA	* CRIMINAL NO. 1:13-CR-00012-WLS-TQL-4 * VIOLATIONS: * 18 U.S.C. SECTIONS 1505 *
MARY WILKERSON, Defendant.	* DEFENDANT'S BRIEF IN SUPPORT OF THE * MOTION TO DISMISS THE INDICTMENT * ON COUNT 73 DUE TO PROSECUTORIAL * MISCONDUCT, OR, IN THE * ALTERNATIVE, MOTION FOR A NEW * TRIAL, DISCOVERY AND AN * EVIDENTIARY HEARING

COMES NOW, the Defendant, MARY WILKERSON, by and through her attorney of record and files this her Brief in Support of the Motion to Dismiss the Indictment on Count 73 Due to Prosecutorial Misconduct, or, in the Alternative, Motion for a New Trial, Discovery and an Evidentiary Hearing with attached Exhibits A through O.

BRADY VIOLATIONS - DATA DUMP & BURYING EXCULPATORY EVIDENCE

1.

The Defendant shows that the providing of such a voluminous number of documents without any indexing or linking of the documents for an extensive period of time so near to Trial was equivalent to providing no Discovery at all since searching through millions of unorganized documents was akin to "hunting for a needle in a haystack" which essentially buried the exculpatory and impeachment information in the numerous data dumps of materials before Trial preventing the Defendant from preparing an adequate defense. The Bates Index was not provided for nine months after the Indictment and the Defendant incurred many impediments in attempting to search through the batches as they were produced over a year and a half, at the eve of Trial and after the Trial began on July 28, 2014. In light of the deliberate production delays and disorganized unindexed evidence and hidden significant exculpatory evidence which had **no**

Bates Index numbers clearly shows egregious Willful Misconduct on the part of Government prosecution and the Defendant was severely handicapped in accessing the exculpatory and relevant evidence against her. Brady v. Maryland, 373 U.S. 83 (1963). Fed. R. Crim. Proc. 16. U. S. v. Theodore F. Stevens, 593 F. Supp. 2d 177 (D.C. 2009). SEC v. Collins & Aikman Corp., 256 F.R.D. 403 (S.D.N.Y. 2009).

2.

The Defendant by and through Counsel shows that a majority of the 6 to 8 million or more pages of Discovery documents finally received were released in numerous batches well past the Discovery deadline of July 17, 2013 without indexing, organization, no load ready format and without indexing she was unable to use the Concordance software which prevented Due Process for Wilkerson to prepare a defense for Trial which began July 28, 2014 in violation of the 5th, 6th and 14th Amendments and prevented a fair and impartial Trial for the Defendant and resulted in Trial by Ambush. Brady v. Maryland, 373 U.S. 83 (1963). Theodore F. Stevens, 593 F. Supp. 2d 177 (D.C. 2009). Fed. R. Crim. Proc. 16. SEC v. Collins & Aikman Corp., 256 F.R.D. 403 (S.D.N.Y. 2009).

3.

The Defendant shows that the Government has had five years or more to obtain and analyze said evidence in this case and to prepare for Trial and for the Government to release Discovery to the Defendant in so many voluminous packages long past the deadline of July 17, 2013 for over a year and a half, up to and through the Trial, denied the Defendant of Due Process by such flagrant abuses of Discovery showing an egregious and willful *Brady* violation, as well. Brady v. Maryland, 373 U.S. 83 (1963). U. S. v. Theodore F. Stevens, 593 F. Supp. 2d 177 (D.C. 2009). Fed. R. Crim. Proc. 16.

4.

The Defendant shows that a Hearing before this Honorable Court was held on Defendant's previous Motion to Dismiss due to the release of the 100,000 files less than two weeks before the scheduled Trial date of July 14, 2014. After the Hearing the Trial was continued to July 28, 2014. The Government prosecutors deliberately and blatantly misrepresented to the Court that the files were easily accessible with the Concordance Software using relevant search terms. This was not factual as the latest 100,000 files did not even have databases already created and did not have identifiable Bates Numbers, thereby, requiring a laborious and slow process of setting up multiple data bases, searching that particular data dump of Discovery and reading them manually page by page, which was not even possible before the Trial date of July 28, 2014 since the Concordance Software could not be used to search without the relevant terms or Bates Numbering. This was another deliberate and flagrant *Brady* violation perpetrated by the Government prosecution team which provided materials unaccessible by the Defendant less than two weeks before the Trial date and over a year past the Discovery deadline which resulted in Trial by Ambush and violated Due Process for a fair and impartial Trial and was more pervasive than *Stevens* and *SEC*. Brady v. Maryland, 373 U.S. 83 (1963). U. S. v. Theodore F. Stevens, 593 F. Supp. 2d 177 (D.C. 2009). SEC v. Collins & Aikman Corp., 256 F.R.D. 403 (S.D.N.Y. 2009) Rule 16 of the Federal Rules of Criminal Procedure.

5.

On July 14, 2014, two weeks before the reset Trial date of July 28, 2014, the Defendant was served with another Discovery package from Josh Burke, Taint Attorney, Department of Justice, Washington, D.C., which required a password to access a portion of said Discovery

which was not provided to the Defendant until July 17, 2014 by E-mail after the Defendant's request. In essence the Defendant was effectively prevented from searching through an apparent voluminous amount of documents less than two weeks before the Trial date of July 28, 2014, which was another willful *Brady* violation since Wilkerson could not read through the mass volume of documents to find the exculpatory evidence in such a short amount of time. The Government prosecution team had deliberately withheld documents without a password until the eve of Trial which prevented Wilkerson from determining if there were any vital exculpatory documents in the package that could be utilized for her Defense, therefore, she was essentially blind-sighted with another mass of disorganized documents that needed the data base setup and loaded into the software before the documents could even be reviewed if they had a Bates Number. Brady v. Maryland, 373 U.S. 83 (1963). Theodore F. Stevens, 593 F. Supp. 2d 177 (D.C. 2009). SEC v. Collins & Aikman Corp., 256 F.R.D. 403 (S.D.N.Y. 2009). Fed. R. Crim. Proc. 16.

6.

The Government had a Due Process obligation to make Pre-Trial Disclosures to Wilkerson and in this case where there was such a large volume of Discovery, it should have taken steps to make the information usable for the Defendant in a timely manner to prepare for Trial before the Discovery deadline and not bury key essential exculpatory and impeachment information, as well as, relevant evidence in the data dump, when there was no possibility for the Defendant to locate or search through the documents before Trial. The Government produced some six (6) to eight (8) million plus pages of documents to Wilkerson, yet tendered and had admitted approximately 1,000 documents into evidence at trial (99.9996% of production documents were not tendered and admitted) and apparently *only one page* (Government Exhibit

#837) a scratch note was utilized for the Indictment of Count 73. She could not possibly search, locate and find the key pieces of exculpatory evidence before her Trial since they were deeply buried in the disorganized data dump of non-relevant documents and disguised by the unrecognizable labeling in the Bates Index or had no Bates Number at all. In comparison to SEC v. Collins & Aikman Corp., 256 F.R.D. 403 (S.D.N.Y. 2009) the Federal Court required measures for Civil Discovery, in which the SEC's mass of unlabeled and unorganized documents produced placed an "undue hardship" on the Defendants to search through 10 million documents and thereby ordered the SEC to produce and identify specific documents. Brady v. Maryland, 373 U.S. 83 (1963). Rule 16 of the Federal Rules of Criminal Procedure. The Government did not produce or identify the exculpatory evidence, never did not meet with Defense to discuss exculpatory Discovery and the production was never produced in a timely manner and therefore, an undue hardship was placed on the Defendant without relief.

7.

Count 73 was based upon the corner of a page in Investigator Janet Gray's diary or notebook which clearly did not state what she purported it said (Government Exhibit 837). In Count 73, the Indictment states that "After S. Parnell told the inspector that if any samples had come up positive, WILKERSON would know, but he had no knowledge of any, the FDA Inspector asked WILKERSON if she had any knowledge of any positives. WILKERSON said to the FDA Inspector that earlier in the year she was not working in QA and that she was not aware of any positives." Yet FDA Investigator Gray had no official documentation or memoranda of an interview of any alleged conversation and no recordings nor was any evidence ever produced from the key government witnesses to corroborate Agent Gray's testimony referencing the scratched notes on the corner of a copy of a page from a purported "diary", now known to be

Government Exhibit #837 that Gray stated came from her "diary". The Defendant was deprived of the opportunity to review and forensically examine the original "diary" which was never produced, as well as, the copy of the page from the diary since it was so well hidden in the data dump of millions of documents prior to Trial. In fact, Wilkerson had not located or found this significant page from the diary in the 6 to 8 million of pages of documents produced prior to Trial and still would not have found the page if an attorney representing a Co-Defendant had not e-mailed her a copy during Trial. Wilkerson did not know that this page was the only essential evidence considered for Count 73, therefore, the Government prosecution team committed another *Brady* violation of burying key essential exculpatory and relevant evidence successfully preventing Wilkerson from preparing any Defense to Count 73 insuring a Trial By Ambush. Wilkerson was deprived of the opportunity of reviewing, examining and impeaching Investigator Gray on the highly questionable credibility of the said page since its content never matched the contents of the Indictment and the original "diary" was never produced for examination. Just recently, Wilkerson has had the page from the Gray's diary (Government Exhibit #837) examined by a Forensic Examiner, Farrell Shiver, Shiver Nelson, Woodstock, Georgia and is attaching his Affidavit concerning his forensic examination of this page hereto as Exhibit "B" directly taken from the Government's production disk to the Defendant. The CJA request for authorization of payment for the services of the Forensic Examiner was denied by the Court, so her counsel obtained the services of the forensic examiner out of pocket. It will be noted that the page is suspiciously missing blank spaces where words and sentences are incomplete, which creates reasonable doubt as to the validity of the page in the diary showing possible redactions were made. Brady v. Maryland, 373 U.S. 83 (1963). Giglio v. United States, 405 U.S. 105

(1972). U. S. v. Theodore F. Stevens, 593 F. Supp. 2d 177 (D.C. 2009). Rule 16 of the Federal Rules of Criminal Procedure.

8.

The FDA Investigator and Government Prosecution team knew that Wilkerson was not in Quality Assurance in early June 2008 or September 2008 when the alleged tainted lots of "positives" were allegedly shipped and/or reshipped out as per the testimony of Samuel Lightsey at Trial (without the benefit of a Trial Transcript) and on the FDA Situation Report. Raymond Kimbrel's Memorandum of Interview with the FDA/FBI which had no Bates Number in the data dump states that he was interim plant manager and worked with Catina Hardrick, who transferred the laboratory reports to a PCA form and gave it to the shipping manager. (See Raymond Kimbrel Interview – Exhibit "C" and FDA Situation report Exhibit "D"). With the Government's knowledge that Wilkerson was not in QA and merely a secretary when these suspect Lots were tested and alleged shipments went out, the Government prosecutors, along with the FDA Investigators have seriously put the integrity of this entire investigation and judicial procedure into question since these exculpatory documents proving the timeline exclusion were so well hidden like a "needle in a haystack". The testimony of Samuel Lightsey, Daniel Kilgore at Trial and FDA/FBI Transcript of Interview of Raymond Kimbrel, clearly show the PCA management knew Wilkerson was not trained in Quality Assurance, not qualified for the job and no one made any plans to train Wilkerson. Shortly after Lightsey took over as plant manager in July 2008, he initiated removing Wilkerson from QA back to the position of secretary and did not include her on many e-mails concerning test results. (See Exhibit "E"). United States v. Corbin, 734 F.2d 634, 650 (11th Cir. 1984). United States v. Lincoln, 630 F.2d

1313, 1319 (8th Cir. 1980). Giglio v. United States, 405 U.S. 105 (1972). U. S. v. Theodore F. Stevens, 593 F. Supp. 2d 177 (D.C. 2009).

SCHEMING TO KEEP A WITNESS AND BRADY INFORMATION AWAY FROM THE DEFENSE

1.

On May 19, 2014, Defense counsel for Wilkerson, e-mailed the Government prosecutors asking for the Transcript, video or recording of any type in which Wilkerson was interviewed at any time. The Assistant U. S. Attorney Dasher answered back on an e-mail emphatically denying the existence of any Transcripts of interviews stating "There is no Transcript", a copy of which e-mail is attached hereto as Exhibit "F". Wilkerson has determined that this is not the truth now, as she has since Trial located such a "Transcript" or Memorandum of her interview with the FDA/FBI in Atlanta, Georgia as apparently some time later Wilkerson did locate the Transcript of her Memoranda of Interview dated 9/6/09, a copy of which is attached as Exhibit "G". Even during Trial there was an attempt to search and locate the interview since it would discredit the credibility of Agent Janet Gray's claim that Wilkerson lied about positive test results for salmonella. This "Transcript" of Wilkerson's interview did not have a Bates Number assigned to it and could not be searched or located through use of Concordance Software as it was so well hidden in the massive data dump and prevented Wilkerson from using it at Trial. The Government prosecutors had emphatically denied its' existence in the e-mail to Defense counsel on May 13, 2014 as Wilkerson did finally get a copy too late to use at Trial. The Defendant has now also located the Memorandum of Interview of Raymond Kimbrel, who clearly stated that Catina Hardrick, QA Lab Technician handled all of the COA's, test results, processing and notification of same, attached hereto as Exhibit "C" before, during and after Wilkerson was in QA. Brady v. Maryland, 373 U.S. 83 (1963). Giglio v. United States, 405

U.S. 105 (1972). U. S. v. Theodore F. Stevens, 593 F. Supp. 2d 177 (D.C. 2009). Rule 16 of the Federal Rules of Criminal Procedure. The Court requires the production of any actual transcripts, FBI memoranda of Interviews (FD302), original documents and raw notes made in the investigation of the case. Wilkerson's Counsel not having timely benefit of the Transcript of the Interview of Wilkerson in Atlanta could be said to have limited his ability to effectively cross-examine Agent Gray whereby it could have been shown that Wilkerson's statement to Gray, which was the basis of Count 73, was so speculative and unclear that it could not have been said to have the "natural and probable effect" of Obstructing Justice. U. S. v. Aguilar, et. al., Case No. CR-10-1031 (A)-AHM, (C.D.Cal.2011). U. S. v. Brown, 303 F.3d 582, 593 (5th Cir. 2002), cert. denied, 537 U.S. 1173, 123 S. Ct. 1003. Williams v. Whitley, 940 F.2d 132, 133 (5th Cir. 1991). Conley v. U.S., 415 F.3d 183, 188-89 (1st Cir. 2005). U. S. v. Harrison, 524 F.2d 421, 427 (D.C. Cir. 1975).

2.

The Government prosecution team did not indict a key person actively involved in the "Conspiracy Scheme" at PCA, Raymond Kimbrel, who was interviewed by the FBI, FDA and Assistant U. S. Attorneys and he did not testify at Trial nor was he cross-examined. The Transcript of his interview with the FBI had no Bates Numbers assigned and was well hidden in the massive data dump. This FBI Interview of Kimbrel (Exhibit "C") would have been exculpatory and essential to impeach the testimony and credibility of Investigator Janet Gray at Trial since it conflicted with the accuracy of the Indictment of Wilkerson on Count 73. According to the interview, Kimbrel admitted running the warehouse/shipping and QA before Wilkerson took the QA Manager position up until June 16, 2008 with the assistance of Catina Hardrick, lab technician, the period of a time in early June 2008 when a suspected positive Lot

was shipped out. The FDA Investigators and the Government prosecution team well knew that Wilkerson would not have been involved in any way with this suspect Lot's Certificate of Analysis test results and subsequent shipment, but buried this information and interview without a Bates Index Number in the data dump. Brady v. Maryland, 373 U.S. 83 (1963). Giglio v. United States, 405 U.S. 105 (1972). U. S. v. Theodore F. Stevens, 593 F. Supp. 2d 177 (D.C. 2009). U. S. v. Aguilar, et. al., Case No. CR-10-1031 (A)-AHM, (C.D.Cal.2011). Rule 16 of the Federal Rules of Criminal Procedure.

INAPPROPRIATE RELATIONSHIP WITH MEDIA

1.

The Media vilified and convicted all Defendants long before the Trial with information and details of the investigation, reports provided by Government investigators and prosecution even past Trial. The first civil suit filed by civil attorneys representing alleged victims was filed on January 20, 2009 in the Middle District of Georgia, Albany Division and had information that even the Defendant or public did not have which only the Government could have provided to the civil attorney, William Marler, at that point in time. (See Exhibit "H" – Meunier lawsuit). The civil attorneys had been provided significant and relevant documentation to begin lawsuits in January 2009. It would seem if the civil attorneys could get meaningful and relevant evidence to begin civil suits in January 2009 without a data dump, that the Defendants in this case should have been provided meaningful Discovery. In essence, there is **NO** question that exculpatory evidence pertaining to Defendant Wilkerson was deliberately and flagrantly hidden by the Government prosecution team and shows Willful Misconduct.

2.

The Defendant shows that the News media has been improperly provided excerpts and information from several of the Defendant's **SEALED** Motions, the Government's Response and Defendant's Replies and confidential information in the **Presentence Investigation Reports** of the Defendants and the Government's Response and comments on the PSR's and the Sealed Motions concerning the Jurors as set out in Food Safety News (owned by William Marler) in the article on April 28, 2015 attached hereto as Exhibit "I". The article in Food Safety News dated June 30, 2015 which discusses the Closed Hearings concerning the Jurors conduct during Trial has yet to be unsealed is attached hereto as Exhibit "J" and the Food Safety News article dated August 6, 2015 has excerpts from the Defendants' Presentence Investigation Reports which cite the exact imaginative and speculative numbers of victims and financial losses used by the Government in the PSR's and Defendants' Objections to the PSR's, and discusses the presentencing information and calculations is attached hereto as Exhibit "K". The Defendant would respectfully request an investigation into the source of the leaks. These articles reflect the Government prosecution team's opinion of condemnation of the Defendant for filing *Brady* Motions and show a continual leak of sealed information to the media to inflame the public and incited public opinion to vilify the Defendants insuring a conviction with enhanced Sentencing.

3.

The Government prosecutors filed a Response to the Defendants' Objections to the PSR, titled Government's Brief in Support of Pre-Sentence Reports, which is distinctly a Response to all Defendants' Objections to the PSR's filed on July 22, 2015 as Doc. #435 and was improperly and unethically filed as a "Notice" which is an unsealed document in violation of the F.C.R.P. Criminal Rule 32 and Local Rule 32.2(a) since it involves and discusses the contents of the

PSR's and should have been properly filed under the section "Response to the Objections to the PSR", which self-seals the document by the CM/ECF system. Due to the public filing of this document by the Government the documents can be accessed by the public and the Press nationwide and is a serious violation of Criminal Rules and Procedures. A full version of the Government's Response to the Objections of the Defendants to the PSR's has been uploaded to the Food Safety News website under the "Marler Blog" (by Bill Marler) titled "Sentencing Brief". (See Exhibit "L"). This is another egregious and improper relationship of the prosecutors leaking sensitive and sealed information to the media without regard to rules and procedures and the prosecutors are blatantly gloating in their interviews.

IMPROPER DOCUMENTATION AND HANDLING OF EVIDENCE

It is abundantly apparent that the dumping of so much irrelevant documents on the Defendant in piece mill so unorganized, unindexed and unsearchable over a period of a year and a half was a deliberate and willful intent to prevent Wilkerson from finding the documents that could prove her innocence on Count 73. Many of the millions of documents, as well as, the essential FBI Memoranda of Interviews (FD302's) and FDA Interviews never had Bates Numbers assigned and the infamous page out of Agent Gray's Diary was only a photocopy of a handwritten note buried in the mass. (Handwritten notes are not searchable with the Concordance software). The Government tendered and had admitted approximately 1,000 documents into evidence at Trial (99.9996% of production was not tendered and admitted) and the diary page was Government Exhibit #837. The convoluted production containing at least 6 to 8 million pages of documents issued in so many batches far past the Discovery deadline was deliberately egregious Willful Misconduct and more pervasive than *Brady* and *Stevens*. Brady v. Maryland,

373 U.S. 83 (1963). Fed. R. Crim. Proc. 16. SEC v. Collins & Aikman Corp., 256 F.R.D. 403 (S.D.N.Y. 2009).

According to the FDA Situation Report (Exhibit "D") the credibility of its' investigation becomes highly suspect when by its' findings on Page 8, Lots #7157 through 7206 respectively were actually produced in 2007 according to the Julian date but the FDA reports they were produced in 6/7/08 through 7/16/08, a year's difference in the timeline which would have put these products in production in the time frame of Con-Agra and NO salmonella species was identified. Another serious discrepancy is on Page 6, the Austin Toasty crackers with the Carton Code of April 2008 (sell expiration date) which would have also been likely produced months prior to April 2008 and possibly into 2007, as well, showing a possible Con-Agra connection since it would take months to reach the market after leaving a manufacturing plant when Wilkerson was not in QA.

DENIAL OF TRANSCRIPTS

1.

The Defendant had requested on at least six occasions copies of the Transcripts as an indigent with a CJA Panel attorney. On each occasion she was denied her request. The Defendant has been handicapped in filing her Motions for Dismissal, Motions for Judgment of Acquittal, preparing for Pre-Sentence Investigation Report and upcoming Sentencing, as well as, the present Motion for Dismissal of Count 73 Due to Prosecutorial Misconduct. The Defendant cannot cite each rebuttal, specific testimony, names of witnesses in such a lengthy Trial and the various Hearings as this was considered a "Complex" case, although the Transcripts were apparently available to the Government prosecution team to prepare its responses all along and its' presentations for the Presentencing Hearing. The other Defendants' who retained

representation apparently obtained copies of some of the Transcripts, as well. The Defendant Wilkerson has been denied Due Process of the 5th, 6th and 14th Amendment due to her indigency and inability to pay. Griffin v. Illinois, 351 U.S. 12 (1956). The Defense cannot ethically provide a detailed description how Defense would use specific impeachment, rebuttal or evidence needed by publicly filing a Motion as required by the Court in order to obtain the Transcripts without exposing the Defense's strategy and tactics for her defense which are attorney-client privilege and attorney work product. U. S. v. Horn, 811 F.Supp. 739 (D.N.H. 1992).

2.

Also, Gray's credibility has to be questioned since the context of the conversation itself has two different versions and the Transcript would be crucial in impeaching Gray since the exculpatory evidence was so well hidden. In the report to Congress taken from her E-mail to her supervisor, Robert Neligan, she quoted Stewart Parnell as saying "...surely ***someone*** from the firm (Blakely) would remember...." and it appears that later she inserted the name of Mary Wilkerson in the quote from Stewart Parnell just to make the Indictment of Wilkerson in Count 73 and this did not match her diary either. (See Exhibit "M"). So Agent Gray either was untruthful in her report to Congress which took place shortly after the alleged conversation with Defendant Stewart Parnell or when she reported her notes to the U. S. Attorneys later showing the prosecution team and FDA officials had to be fully aware of these discrepancies. In essence, at some point Investigator Gray apparently inserted Mary Wilkerson's name just to indict her. Investigator Janet Gray's, testimony was not credible and was insufficient to be used as a reason to indict Defendant Wilkerson for Count 73 and the prosecution buried the exculpatory evidence

to impeach Gray in the data dump by hiding the scratch notes on the suspect page from Gray's diary.

DISREGARD FOR DOJ POLICIES, LOCAL ORDINANCES, U. S. CONSTITUTION, BRADY, RULE 16 – PROSECUTORS ABOVE THE LAW

1.

The Court has the supervisory powers to remedy the Willful Misconduct of the Government prosecution and Government investigators in this case by Ordering a New Trial for Defendant Wilkerson on Count 73. The Government prosecution team and the Government's investigators have shown a deliberate and willful indifference to the U. S. Department of Justice Criminal Division Policy Regarding Discovery Practices dated October 18, 2010 and the Discovery Policy for the Middle District of Georgia October 2010, Brady v. Maryland, 373 U.S. 83 (1963). Giglio v. United States, 405 U.S. 105 (1972). U. S. v. Theodore F. Stevens, 593 F. Supp. 2d 177 (D.C. 2009). Rule 16 of the Federal Rules of Criminal Procedure. These policies require that Federal Prosecutors must comply with the policies set for above, a few of these polices are: (1) ...all discoverable material is appropriately identified and preserved", (2) "It is the obligation of Federal Prosecutors to seek all exculpatory information from all members of the prosecution team. USAM § 9-5.001. This search also extends to information CRM attorneys are required to disclose under Federal Rules of Criminal Procedure 16 and 26.2 and the *Jencks* Act." (3)...To insure that all discovery is disclosed in a timely basis." and (4) Exculpatory information, regardless whether the information is memorialized must be disclosed to the Defendant promptly after Discovery." The result of this blatant misconduct could cause the loss of liberty and property of Mary Wilkerson which is one of the greatest cost that an innocent woman, who is a wife and mother raising two minor children, can pay as a citizen of the United States of America.

As a citizen of the United States, Wilkerson deserved a fair and impartial trial and deserved to be presumed innocent until proven guilty. Wilkerson has been denied both of these inalienable rights as she was convicted by the Government's failure to timely produce exculpatory evidence hidden in the data dump and by the Government's spoon fed media long before Trial and therefore, could not and did not receive a fair and impartial Trial.

2.

Wilkerson was unable to locate the vital exculpatory evidence prior to Trial for her Defense on Count 73, since it was deliberately buried as unindexed documents in millions of unorganized documents produced by the Government prosecution over a period of a year and a half, some of which production was so late she never had the opportunity even to review prior to Trial so as to properly prepare her Defense, denying her Due Process. She received two essential exculpatory documents during Trial from a Co-Defendant's counsel which did not give her the opportunity to examine and utilize them in time to prepare her defense. U. S. v. Fahie, 419 F3d, F255.

3.

The Defendant had complained and requested the exculpatory evidence by virtue of multiple Motions to no avail. The blatant truth is the Defendant will never know if she even received all of the exculpatory evidence or not and to the present date she has not found all of those documents in the data dump, which makes the integrity of the Government prosecution team's case suspect and lacking the merit and ethics of a fair and impartial Trial. The Defendant firmly believes that the Government should have to abide by the U. S. Department of Justice Discovery Policy, October 2010, and the Middle District of Georgia Discovery Policy, October 2010, and the Government prosecution team and investigators handling of this case should be

thoroughly investigated and all culpable parties held accountable to a higher level of authority, disciplinary review, any and all sanctions and, possible criminal prosecution that is appropriate for the flagrant disregard for all of the misconduct set out herein. Clearly, this has been a prosecution by any means necessary. United States v. Omni International Corporation, 634 F. Supp. 1414 (D.Md. 1986). U. S. v. Aguilar, et. al., Case No. 10-1031(A)-AHM, (C.D. Cal. 2011).

4.

The Government has either not provided or hidden the medical records of the more than 700 alleged victims in order to prevent a review, rebuttal and cross examination of victim impacts which the Government may utilize for Sentencing Enhancement without being Tried before a Jury. More than 700 alleged victims were not on the Evidence Disk provided by the Government at the PreSentence Hearing on July 1, 2015 and July 2, 2015. Wilkerson has only recently inadvertently found one medical record in the data dump through her IT Specialist, Chris Hall, that was unidentifiable due to the complete redaction of any search name or term and it had no Bates number. (See Statement of Chris Hall, Exhibit "A") It was also determined that the Bates Index has no medical records on the list. The eight medical records produced on the Pre-Sentence Evidence disk were the product of a civil attorney's Demand to the Insurer for Settlement and was a civil litigation biased product. The Government did not investigate any claim according to any proper protocol but instead presented untried and unverified documents based on speculation and/or claim forms only recently obtained since June to August 2015 which it submitted to the U. S. Probation Office for Sentencing Enhancement.

CON-AGRA COVERUP

While the investigators from the FDA, Department of Justice and Government prosecutors diligently pursued PCA, Blakely, Georgia for introducing salmonella typhimurium into interstate commerce, the Government apparently had little or no interest in investigating and pursuing any criminal charges on Con-Agra, which positive salmonella poisonings apparently begin in 2004 prior to allegations against PCA and overlapped during some of the same time period into 2008. The Government investigators instead delayed releasing the Plea Agreement with Con-Agra until May 20, 2015, long after the PCA Trial and convictions. In the Con-Agra Plea Agreement, a copy of which is attached hereto as Exhibit "N" and the DOJ Press Release on its website, a copy of which is attached hereto as Exhibit "O", Con-Agra had no individual persons charged or indicted and only the corporation was required to pay a fine. The Government's deliberate neglect to diligently investigate and pursue Con-Agra, owned by a mega-corporation, within the Statute of Limitations not only showed bias and prejudice in the handling of the investigation, as well as, in it's lack of pursuit of any criminal charges to be filed against any individual employees. Unlike PCA, no individual was charged or indicted and the Government had no intentions of doing so. Con-Agra was only fined as a corporation and was not held accountable for any alleged "victim impact" for any individual that may have been sickened or died or for any company that may have incurred financial losses nor was the media fed a significant amount of information and misinformation by the Government to inflame the public's fury for a frenzy of civil lawsuits. There is a distinct and obvious disparity in the investigation of the "mega-corporation" that owns Con-Agra with a more difficult chain of command to pursue than the small company owned and operated by the executives that became the infamous names with faces as reported in the media and the criminal prosecution of

Wilkerson and others connected to PCA. If Con-Agra had been thoroughly investigated, it is questionable if all of the alleged people who reported an illness could have all been linked to PCA, as some would have been linked to Con-Agra instead, but the alleged victims were never asked if they consumed a Con-Agra product, under various labels. The Government's websites for DOJ, FDA and CDC, etc. only asked if anyone had been sickened over the past year by peanut butter or by-products, which was reported by these sites as a "PCA salmonella typhimurium" outbreak. It is even questionable if Con-Agra itself had any impact from the investigation of PCA since it had its own contamination to deal with PCA to have a claim for a loss when given the opportunity. It is also poignant to note that Agent Janet Gray was the FDA Investigator of the Con-Agra event, as well.

WHEREFORE the Defendant prays that the an investigation into these violations by the Government prosecutors and all culpable investigators to be initiated by a team of special prosecutors appointed in this matter and the Court issue an Order to overturn her conviction and Dismiss the Indictment of Count 73 against the Defendant, Mary Wilkerson, due to the repetitive egregious violations of the 5th, 6th and 14th Amendments, Rule 16 of the Federal Rules of Criminal Procedure and the egregious Post *Stevens* Discovery Abuses in violation of Brady v. Maryland, 373 U.S. 83 (1963), and U. S. v. Theodore F. Stevens, 593 F. Supp. 2d 177 (D.C. 2009), which continued until sentencing without any regard for Due Process of the law, the U. S. Constitution, the U. S. Department of Justice Criminal Division Policy Regarding Discovery Practices dated October 18, 2010 and the Discovery Policy for the Middle District of Georgia October 2010. The Defendant Wilkerson prays that the Court remedy the Willful Prosecutorial Misconduct issuing an Order to Dismiss the Indictment on Count 73 due to Prosecutorial Misconduct or, in the alternative for a New Trial and a Discovery and Evidentiary

Hearing pertaining to the Guilty verdict against the Defendant, Mary Wilkerson on Count No. 73 for the reasons setout herein and compel the production of the original diary of Agent Janet Gray for official forensic examination. United States v. Chapman, 524 F.3d 1073 (9th Cir. 2008). U. S. v. Hasting, 461 U.S. 499, 505, 103 S.Ct. 1974, 1978 (1983). United States v. Lyons, 352 F. Supp. 2d 1231, 1251-52 (M.D. Fla. 2004).

This 30th day of August, 2015.

/s/ Thomas G. Ledford
Thomas G. Ledford
Attorney for Defendant,
Mary Wilkerson
State Bar No.: 443087

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION

UNITED STATES OF AMERICA	* CRIMINAL NO. 1:13-CR-00012-WLS-TQL-4 * VIOLATIONS: * 18 U.S.C. SECTIONS 1505 * * *
MARY WILKERSON,	* CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing BRIEF IN SUPPORT OF THE MOTION TO DISMISS INDICTMENT DUE TO PROSECUTORIAL MISCONDUCT OR IN THE ALTERNATIVE A NEW TRIAL, DISCOVERY AND AN EVIDENTIARY HEARING, with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the Honorable Kenneth Alan Dasher, Assistant United States Attorney, Honorable Patrick H. Hearn, Trial Attorney, U. S. Department of Justice and the Honorable Megan Englehart, Assistant United States Attorney and All Counsel of Record and parties.

This 30th day of August, 2015.

/s/ Thomas G. Ledford
Thomas G. Ledford
Attorney for Defendant,
Mary Wilkerson
State Bar No.: 443087

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APPENDIX P

Motion for Prosecutorial Misconduct
Exhibit G
Doc. 446@G

Food and Drug Administration
OFFICE OF CRIMINAL INVESTIGATIONS
MEMORANDUM OF INTERVIEW

CASE NUMBER: 2009-ATG-723-0194

CASE TITLE: PEANUT CORPORATION OF AMERICA

DOCUMENT NUMBER: 135955

PERSON INTERVIEWED: Mary A. Wilkerson

PLACE OF INTERVIEW: Atlanta, Georgia

DATE OF INTERVIEW: 09/16/2009

TIME OF INTERVIEW: 10:00 a.m.-3:30 p.m.

INTERVIEWED BY: SA Richard Hartline

OTHER PERSONS PRESENT: FBI SA Cindy Allard, AUSA's Alan Dasher, Marietta Geckos, and Megan Englehart

Mary Wilkerson was interviewed at the Summit Building in Atlanta, Georgia regarding her prior employment at the Peanut Corporation of America (PCA) facility in Blakely, Georgia. Wilkerson was accompanied by her attorney, Joseph Burby.

Mary A. Wilkerson: Date of Birth, [redacted]; Social Security Number [redacted] Home Address, 74 Hill Street, Edison, Georgia 39846; Cellular telephone, (229)308-4594; a white female was interviewed and voluntarily provided the following information.

Wilkerson stated she was originally hired by Casey's Food in 2001 and eventually quit for a three or four month period at the end of 2001. She said during that time, Casey's Food, which was located in Blakely, Georgia, became the Peanut Corporation of America (PCA). Wilkerson said that in April 2002, she began working at PCA as a receptionist. Wilkerson stated that in 2004, she became responsible for accounts receivable and helping PCA employee, Jeff McFay, with quality control and inventory issues. She said that during that same time, she also pulled orders for PCA customer Dollar General. Wilkerson said in March 2008, she was promoted to Quality Assurance Manager by PCA Owner Stewart Parnell. She said the offer occurred during one of Parnell's visits to the Blakely, Georgia, facility and that he was accompanied by Jesus "Chuy" Garrocho, the plant manager of the PCA facility in Plainview, Texas. Wilkerson stated Parnell told her that she would receive training in quality assurance upon accepting the position; however, she said she only received on-the-job training from PCA lab personnel Brenda Dunwood and Catina Hardrick. Wilkerson said by accepting the quality assurance position, her weekly salary increased from $502.00 to $720.00.

Wilkerson said she attended a vocational school for approximately two years and studied information services and administration. She said she had no qualifications for the quality assurance position at PCA.

Wilkerson said there was a manual known as the "PCA Bible" that described how the plant operates. She stated she trained herself in the operations of the facility by reading this manual. Wilkerson said Chuy Garrocho also visited the facility and taught her about the operation of the plant and some GMP procedures.

Wilkerson stated she became the quality assurance manager while Raymond Kimbrel was the acting plant manager. She said Kimbrel became the acting plant manager after Danny Kilgore left PCA and before Sammy Lightsey arrived in 2008. She said she was the quality assurance manager for approximately one

DEFENDANT'S EXHIBIT G

month while Kimbrel was the acting plant manager, but primarily held the position while Lightsey was the manager.

Wilkerson said that after her promotion, her duties at PCA also included performing internal audits that consisted of walking through the plant, checking the sanitary conditions, and making sure everything was running correctly. Wilkerson said she would write down her findings and fax them to Stewart Parnell at the PCA headquarters in Lynchburg, Virginia. Wilkerson provided the following examples of her findings: white pans and blue pans, which are used for different manufacturing purposes and should remain separated, were not cleaned and hung on racks together; general messiness in the facility; and empty pallets scattered throughout the plant.

Wilkerson said her responsibilities as the quality assurance manager also included overseeing the lab personnel, as well continuing to work in the front office with administrative duties, and as a receptionist. Wilkerson stated that in approximately August 2008, Sherry Davis was hired as the receptionist for PCA, and Wilkerson was responsible for training her.

Wilkerson was asked about the procedure for collecting samples for laboratory analysis. She said the PCA lab personnel collected samples from each manufacturing line every hour. Wilkerson said Catina Hardrick collected samples from the peanut butter production line, and Brenda Dunwood collected samples from the peanut roasting line. Wilkerson said she occasionally helped collect samples if, for instance, four lines of production were running at the same time. Wilkerson stated one sample for each line was sent to an outside lab for testing and one sample from each line was kept at PCA as a retained sample. Wilkerson said if a presumptive positive test for salmonella was received, the retained sample was submitted to the lab for further testing. She said samples from the roaster were packaged in a sterilized bag, and samples from the peanut butter room were packaged in a sterilized jar. Wilkerson stated that both the bags and jars were marked with lot numbers for identification. She said that initially, if PCA's customer did not require a Certificate of Analysis (COA), samples were not collected for their product. Wilkerson said after Sammy Lightsey was hired as the plant manager, he changed the procedure so that samples were collected for everything produced. She stated that it took 3 days to receive test results from the outside laboratories. Wilkerson said PCA always followed proper testing procedures and COA's were never falsified or altered.

Wilkerson was asked to identify the laboratories used by PCA to test their products. She said the samples were sent to J. Leek Associates ("JLA") if testing was required during the week, and Deibel Labs ("Deibel") if they needed the product tested on the weekends. Wilkerson said at that time, PCA believed that JLA did not test on the weekends, and therefore sent the samples to Deibel for weekend testing. She said if a presumptive positive test was received from JLA during the week, and the weekend was approaching, the retained sample would be sent to Deibel for retesting. Wilkerson stated that eventually she called JLA and learned that they did perform testing on the weekend.

Wilkerson stated that on occasion, Deibel called her on the weekends and notified her that a presumptive positive test for salmonella was obtained, and asked her if she wanted them to retest left over product from the same sample. Wilkerson said if JLA emailed or called during the week with a presumptive positive test for salmonella, they would ask if PCA wanted leftover product to be retested, or if PCA wanted to submit the retained sample for testing. Wilkerson stated that she does not know of one occasion where product was sent to a customer, a presumptive positive was received, and there was not a retained sample to use for retesting. Wilkerson said that she only knows about samples being retested one time, and cannot remember when a sample was retested more than that.

Wilkerson said initially, lab results were sent via email and/or fax to many PCA employees, including Shipping Manager Joe Sams. But Wilkerson said the procedures were eventually changed so that only the operations manager and the quality assurance and laboratory personnel received the results. Wilkerson said laboratory employee Catina Hardrick often checked the computer for the lab results and transferred the information to the PCA Certificate of Analysis (COA). She said Hardrick often knew about positive test results before she (Wilkerson) did. She stated it was Sammy Lightsey's responsibility to notify Stewart Parnell of any positive salmonella test results. Wilkerson said however, she does remember notifying Stewart Parnell of a positive

test result on one occasion and Parnell responded that he deals with this once a week. Wilkerson said she was never told by anyone to hide or conceal any positive salmonella test results.

Wilkerson stated that on occasion, after receiving a presumptive positive test result, Sammy Lightsey telephoned Michelle and/or Stephanie at JLA who informed him to reference the FDA website for directions on how to handle the situation. Wilkerson said the FDA website instructed them to divide the product into 4 sections and collect 15 samples from each section, a total of 60 samples. She said PCA then combined the15 samples into 4 composite samples, one from each section, for submission to the laboratory. Wilkerson said the suspect product was placed on hold at PCA while further testing was performed. She stated that each time they performed the aforementioned testing, a negative result was received. Wilkerson stated that neither JLA nor Deibel ever told her they couldn't retest a product after receiving a positive salmonella test result. She said she felt like the positive test results were a result of lab error and/or cross contamination.

Wilkerson said product was only shipped to customers before the test results were received only if the customer signed a release. She said after the test results were received by PCA, they notified the customer. Wilkerson stated Shipping Manager Joe Sams annotated the bill of ladings for those particular customers when the test results were pending.

Wilkerson said there was a clipboard in PCA's laboratory that listed the products that were placed on hold for further testing.
Wilkerson stated customers who did not require a COA were not notified of presumptive positive test results, but were only notified if a confirmed positive result was received. She said if the customer did require a COA and a presumptive positive test was received, the customer signed a COA Pending form pending the additional testing. Wilkerson said she never contacted the customers, and that Sammy Lightsey and Danny Kilgore were the only employees in Blakely that contacted the customers. Wilkerson stated that in August 2008, Grey Adams told the PCA employees in Blakely that all customer questions and concerns were to be directed to PCA's headquarters in Lynchburg, Virginia.

Wilkerson was asked if any product was ever destroyed due to a confirmed positive salmonella test result. She said she remembers one occasion when medium chopped peanuts that tested positive for salmonella were taken to a hog farmer by Raymond Kimbrel (lot 8268). Wilkerson stated that some of the medium chopped peanuts were sent to customers, and she does not know if those customers were notified or if they returned the product. Wilkerson said peanut meal was also produced on the same day, but the meal tested negative for salmonella. She described peanut meal as the left over product from producing medium chopped peanuts.

Wilkerson said that initially, if the same product was produced for more than one day, the first day of production was used as the lot number. She said Sammy Lightsey changed the procedure so that each day of production received a separate lot number. Wilkerson said she does not recall any lots being re-numbered or combined.

Wilkerson said Jeff McFay was responsible for quality assurance before she was promoted, but he (McFay) was fired after some type of altercation with a customer.

Wilkerson said if she observed a product that she believed did not meet specifications, such as color, she would notify Sammy Lightsey who made the final decision as to whether the product would be shipped.

Wilkerson stated she felt as though the PCA facility was not cleaned enough. She said Annie Bristow had janitorial responsibilities at PCA, but also worked in the production area on occasion. Wilkerson said that a document did exist at PCA detailing what needed to be cleaned and how often. She said the granulation machine was cleaned everyday, and the springs were changed, but the cleaning was usually not documented. Wilkerson stated that if the roaster was being changed from producing seasoned product to unsalted product, a blower was used to clean the equipment and remove the seasoning.

Wilkerson was asked about specific instructions given by Owner Stewart Parnell. She said as an example,

Happy Apple was a customer who placed very large orders that consisted of a full truck load. Parnell would instruct them to stop all production and fill the Happy Apple order.

Wilkerson said her job was very stressful and she was pulled in many different directions.

Wilkerson stated she does not know anything about the kill process.
Wilkerson stated she believed that a presumptive positive salmonella test result meant "maybe" and the testing was not complete. She said she had no idea at the time (before the publicity regarding the salmonella outbreak) what caused salmonella. She stated she now knows that water and cleanliness are causes.
Wilkerson stated that while she was employed at PCA, she was unaware of the cause of the salmonella problem at ConAgra Foods.

Wilkerson was asked about rain water leaking into the PCA facility. She said that prior to 2007, rain water leaked into a bin that fed the roaster. Wilkerson said that in 2006, Royster's (David Royster, PCA headquarters) group tried to fix the roof and were unsuccessful. She said they later tried again and the major leaks stopped, but rain water began leaking through the skylights. Wilkerson said the water continued through 2008 while Sammy Lightsey was the plant manager. She said she took pictures of the leaking problems and emailed them to Stewart Parnell in 2008. She stated that on one occasion, after it rained, a forklift driver lost control of the forklift due to the wet floors, and hit employee Penny Cribb, who filed a workers compensation claim. She stated that while the roof was being repaired, employees found three or four dead mice near the roaster, and occasionally, they found dead mice in other areas of the plant. She said other than that, there was not a problem regarding pests. Wilkerson said Steve Hutto was the maintenance manager at PCA.

Wilkerson was asked why PCA switched from using JLA to using Deibel exclusively. She said that in August or September 2008, she compared the costs of both labs and discovered that Deibel charged $50.00 to $60.00 less per test than JLA and she made the decision to change. Wilkerson said she discussed the cost issue with Sammy Lightsey and Grey Adams before making the decision. She said PCA sent samples to Deibel via UPS next day delivery, so the fact that JLA was much closer to the PCA facility was not a factor. She said she never heard that PCA allegedly switched to Deibel because they were receiving too many positives from JLA.

Wilkerson said she did not know about the positive salmonella test results that were received prior to 2008, and that she only learned of them during the FDA inspection 2009.

Wilkerson said Owner Stewart Parnell visited the PCA facility in Blakely, Georgia approximately four or five times per year.

Wilkerson was asked about the email Stewart Parnell sent to all of the PCA employees after the salmonella outbreak where he said there has never been any salmonella discovered at PCA. She said Parnell knew about the previous positive salmonella test results prior to sending that email.

Agent's note: the interview was suspended from 1:05 p.m. to 2:05 p.m.

Wilkerson said she had a personal relationship with Danny Kilgore from the summer of 2007 through February 2009, and last spoke to him in March 2009.

Wilkerson was asked about the tanker trucks used to transport PCA product. She said the trucks were owned by Michael Parnell, Stewart's brother and the owner of P.P. Sales, a broker of PCA product, to transport peanut paste solely to Kellogg's. She said product was shipped to Kellogg's every Tuesday and Thursday from the PCA facility in Blakely. Wilkerson said she remembers when the piston on a tanker truck failed and the truck was washed out with water while it was parked on the side of the PCA building. She said the water, which smelled terribly, ran onto the property of their neighbor. Wilkerson said she notified Stewart Parnell of the incident. Wilkerson said that in September 2008, PCA did receive a positive salmonella test on a shipment of peanut paste intended for Kellogg's. She said the shipment, which was already pumped into the tanker truck, was pumped back into a holding tank inside the facility. The peanut paste was then put into 50 gallon

drums and held for a couple of months. Wilkerson stated that during the time it was stored, the peanut paste tested negative by JLA. She said Michael Parnell paid for the testing and that he only used JLA. She said the peanut paste was eventually reworked into other products, including pet food paste and King Nut Peanut Butter.

Wilkerson was asked if she told an FDA Consumer Safety Officer during the inspection in 2009 that she did not know of any positive salmonella test results. She said she does not remember saying that because she obviously knew about the test results.

Wilkerson was asked about inspections performed at PCA by outside agencies. She said if they knew about the inspection in advance, they closed the plant and cleaned in preparation.

Wilkerson was asked about a letter to PCA from Dot Foods regarding prison inmates in Rankin County who got sick after eating peanut butter and jelly sandwiches. The letter referenced an insurance claim. Wilkerson said she was not familiar with that incident, and that Miss Peggy (Peggy Harper) would have handled the insurance claim and Stewart Parnell would have known about it.

Wilkerson was asked about products shipped between the PCA facilities in Blakely, Georgia and Plainview, Texas. She said Blakely sent peanut butter and honey roasted peanuts to Plainview, and the Plainview facility sent their extra peanut meal to Blakely to be used in the production of peanut butter. Wilkerson said the Plainview facility did not produce peanut butter.

Agent's note: Wilkerson and her attorney provided seventy-seven (77) pages of PCA-related documents, which she had in her possession, to investigators. The documents will be maintained in the case file. Wilkerson also stated she previously took photographs of the leaking rain water and forwarded them to Stewart Parnell. Wilkerson said she would provide the photographs to investigators (through her attorney) in the near future.

NAME-TITLE _____ **NAME-TITLE** _____
Richard Hartline, Special Agent

DATE 09/25/2009 **DATE**

APPROVED: _____
Robert M. Hiser, Resident Agent in Charge

DATE: 9/26/09

DISTRIBUTION: ATG: Original and 1cc
MIF: 1cc
IOD: 1cc

ATTACHMENTS: N/A

APPENDIX Q

Motion for Prosecutorial Misconduct
Exhibit B2
Doc. 446@B2

Exhibit B

FDA CSO

Janet Gray

(PCA notes)

but did produce 200
cases on 8/11.

but refer
of lot [illegible] amt - to 8224
182 cases Loft House.
on 8/15

8/29 36 cases Loft
House.

8/12/08 produced [illegible] SM
product that was lot
coded as [illegible], but
was actually produced
on 8/12/08 but given
August 11 lot code.

117 cases
item 53 1020
#35 Cream
St. P B
Sammy on mac [illegible] 1/2006 -
until he started July 08
[illegible] him to [illegible].
[illegible] - [illegible] on phone - S.P.

SAID he didn't know of any!
[illegible] remember that [illegible] no.
System was flushed
at that time. [illegible]
flushed.
Roasted at Cordele.
PCA [illegible] 08080603

dumped 24,020 lbs
of paste

2,271 lbs of
8221 [illegible] PB
butter stock: [illegible]
on 8/8.

Also put in SM
rework product
9 boxes of 551050
50 lbs creamy stabil.
rework. PB
lot # 8123.

item
17 cases of 551053
lot # 8203 of 50 lb
creamy stabilized PB
produced on 7/21

APPENDIX R

Email – Wilkerson to PCA Staff
"HOLD"
Doc. 457@A

Quality Assurance

From: Stewart Parnell [stewart.parnell@peanutcorp.com]
Sent: Friday, June 06, 2008 3:47 PM
To: 'Mary Wilkerson'; 'raymond kimbrel'; 'Joe Sams'
Cc: 'David Voth'; stew.parnell@peanutcorp.com; qa.blakely@peanutcorp.com; 'Mary Wilkerson'; 'Jesus Garrocho'
Subject: RE: LOT# 8155CNPB

thanks Mary, I go thru this about once a week...I will hold my breath .....again...

We need to talk next week about these C of A's

From: Mary Wilkerson [mailto:mary.wilkerson@peanutcorp.com]
Sent: Friday, June 06, 2008 3:11 PM
To: 'raymond kimbrel'; 'Joe Sams'
Cc: 'David Voth'; stew.parnell@peanutcorp.com; qa.blakely@peanutcorp.com; 'Mary Wilkerson'
Subject: LOT# 8155CNPB

LOT# 8155CNPB PUT ON HOLD!!!!!!!!!! I just spoke with Stephanie with J.K.A. this lot is presumptive on SALMONELLA!!!! I have spoke with Joe what is staged to go out today is being pulled. I have spoke with Catina in the lab and she is pulling another sample and sending it to Diebel Labs. We will not know anything on the second test from J.K.A. until Wednesday.

THANKS!!!

Mary Wilkerson
Peanut Corporation
Blakely, GA 39823
P# 800-334-4939
F# 229-723-3411

"Be quick to listen, slow to speak" James 1:19"

1/22/2009