Relevant federal district and Second Circuit Authority re Taint Teams
(Based on the search of “taint teams” for all NY federal district courts and Second Circuit as of 10/18/2022)

United States v. Ray

20-cr-110 (LJL) (S.D.N.Y. Nov. 22, 2021)

If the defense elects not to produce documents and instead rely upon the documents already in the government's possession, the government may use a taint team to review potentially privileged documents to determine whether a privilege attaches. The Court will resolve any questions requiring judicial determination in camera on notice to the defense but outside the presence of the prosecution team.

United States v. Landji

(S1) 18 Cr. 601 (PGG) (S.D.N.Y. Nov. 18, 2021)

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It was not until August 2021 that the Government utilized a taint paralegal to scan and reproduce to defense counsel Defendants' Documents. (Tr. 239) Instead of using a taint team during the period between November 2019 and August 2021 to review Defendants' Documents and to make a determination as to whether any documents were privileged, the Government used an agent and analyst who were part of the investigative team (see Tr. 133, 179) to scan these documents in preparation for producing them in discovery. Although in January 2020, AUSA Hellman instructed Agent Waters not to review Defendants' Documents, that warning came months after the documents had been scanned, and did not involve all of the DEA and USAO personnel working on the case. (Tr. 237) AUSA Hellman's failure to recognize the need to implement a taint team earlier, and to take appropriate steps to ensure that members of the investigative team were not exposed to privileged material, suggest a lack of appropriate training at the USAO concerning the handling of potentially privileged material.

United States v. Avenatti

559 F. Supp. 3d 274 (S.D.N.Y. 2021)Cited 3 times1 Legal Analyses

Avenatti's motion is without merit. First, the use of a "filter team" to review Avenatti's communications in the first instance does not call for suppression of any — let alone all — of the seized communications. Judge Gardephe approved that procedure in the warrant, and the Government was entitled to rely on that approval. See United States v. Leon , 468 U.S. 897, 920-21, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984). More fundamentally, "[t]he use of a filter team is a common procedure in this District and has been deemed adequate in numerous cases to protect attorney-client communications." In re Search Warrants Executed on Apr. 28, 2021 , No. 21-MC-425 (JPO), 2021 WL 2188150, at *2 (S.D.N.Y. May 28, 2021) (citing United States v. Blakstad , No. 19-CR-486 (ER), 2020 WL 5992347, *8 (S.D.N.Y. Oct. 9, 2020) ; United States v. Ceglia , No. 12-CR-876 (VSB), 2015 WL 1499194, *1 (S.D.N.Y. Mar. 30, 2015)); see also, e.g. , United States v. Yousef , 327 F.3d 56, 168 (2d Cir. 2003) ("[T]he Government established an effective firewall to prevent disclosures to the Government's trial attorneys of trial strategies or confidential communications between [the defendants] and their attorneys."), overruled on other grounds by Montejo v. Louisiana , 556 U.S. 778, 129 S.Ct. 2079, 173 L.Ed.2d 955 (2009) ; United States v. Nunez , No. 12-CR-778-2, 2013 WL 4407069, at *1 (S.D.N.Y. Aug. 16, 2013) (noting that, "[a]t the Court's direction, a Government ‘Wall Assistant’ " had reviewed seized emails involving the defendant for claims

of privilege); United States v. Winters , No. 06 Cr. 54, 2006 WL 2789864, at *2 (S.D.N.Y. Sept. 27, 2006) (noting that the proposed use of " ‘wall Assistant’ adequately protects the defendant's asserted privilege"); United States v. Grant , No. 04-CR-207 (BSJ), 2004 WL 1171258, at *2 (S.D.N.Y. May 25, 2004) (approving review by a filter team in the first instance of documents "lawfully seized pursuant to a valid warrant"). Put simply, where, as here, material is "already in the government's possession ... the use of the taint team to sift the wheat from the chaff constitutes an action respectful of, rather than injurious to, the protection of privilege." In re Grand Jury Subpoenas , 454 F.3d 511, 522-23 (6th Cir. 2006).

United States v. Drago

18-CR-394 (GRB)(AYS) (E.D.N.Y. Jul. 15, 2021)

The Court turns to discuss below events that took place after the execution of the Warrant, including the gathering of evidence in support of the Kayla investigation. At no point after the execution of the Warrant did the Government put together a “taint” team, or make any effort to determine whether the information gathered post-Warrant was in any way tainted by information obtained as a result of the Warrant's execution. (Tr. 188.) However, Agent McCue testified that most of the agents involved in the investigation never looked at any of the search warrant materials. (Tr. 189.)

United States v. Messalas

17-CR-339 (RRM) (E.D.N.Y. Apr. 4, 2020)Cited 1 times

In moving to compel discovery, Messalas seeks information on five distinct topics: (1) details regarding the Government's "'taint team' review of Mr. Messalas's email"; (2) information related to why the Government's undercover agent "was not able to advance the investigation by meeting with other alleged co-conspirators"; (3) information "as to why the SEC declined to pursue any case against Mr. Messalas relating to the conduct charged in this case"; (4) information regarding "why the government's investigation of Mr. Messalas in 2010 and 2011 did not result[] [in] any criminal charges"; and (5) "information known to the government at the time of the submission of the Wiretap Affidavit concerning the CW that was not presented to the authorizing district judge." (Suppression Mot. at 39-40.)

Carpenter v. Comm'r

No. 3:13-cv-563 (SRU) (D. Conn. Mar. 29, 2018)

Due to an ongoing civil investigation of NOVA and Benistar, it was anticipated that the Simsbury site would contain "attorney/client type documentation". (Search Warrant Plan, at IRS00018.) The Search Warrant Plan thus called for a dedicated "taint team", comprising agents who were not otherwise involved in the investigation, who would review any documents that were potentially privileged, in order to determine if they should be seized. (Search Warrant Plan, at IRS00018; Schrader Dep. at 119:22-121:1.)

In re 650 Fifth Ave.

08 Civ. 10934 (KBF) and all member and related cases (S.D.N.Y. May. 15, 2017)

The evidence at the suppression hearing indicated that certain documents protected by the attorney-client privilege were inadvertently seized. The Court credits the testimony of the witnesses that there were no affirmative attempt to seize such materials but, as it turned out, certain such items were within the other materials taken. The Court credits the testimony of case agent Alexander that when, during his subsequent review of seized documents, he identified a document potentially subject to the privilege, he would isolate it for the taint team. The Court specifically finds that while this process was by no means perfect, it was conducted in good faith and according to practices within the district at the time. (See, e.g., Tr. 525:14-527:15 (Alexander).)

Intellipayment, Llc. v. Trimarco

No. 15-CV-01566 (JFB)(GRB) (E.D.N.Y. Mar. 29, 2016)Cited 8 times

Nevertheless, the disqualification of counsel "is a matter committed to the sound discretion of the district court." Cresswell v. Sullivan & Cromwell, 922 F.2d 60, 72 (2d Cir. 1990). A federal court's power to disqualify an attorney derives from its "inherent power to 'preserve the integrity of the adversary process,'" Hempstead Video, Inc. v. Inc. Vill. of Valley Stream, 409 F.3d 127, 132 (2d Cir. 2005) (quoting Bd. of Educ. v. Nyquist, 590 F.2d 1241, 1246 (2d Cir. 1979)), and "is only appropriate where allowing the representation to continue would pose 'a significant risk of trial taint.'" Team Obsolete Ltd. v. A.H.R.M.A. Ltd., No. 01-CV-1574 (ILG)(RML), 2006 WL 2013471, at *3 (E.D.N.Y. July 18, 2006) (citing Glueck v. Jonathan Logan, Inc., 653 F.2d 746, 748 (2d Cir. 1981)). In exercising this power, courts look for "general guidance" to the American Bar Association ("ABA") and state disciplinary rules, although the Second Circuit has emphasized that "not every violation of a disciplinary rule will necessarily lead to disqualification." Hempstead Video, Inc., 409 F.3d at 132. However, "any doubt is to be resolved in favor of disqualification." See Hull v. Celanese Corp., 513 F.2d 568, 571 (2d Cir. 1975).

United States v. Solnin

12-cr-0040(ADS) (E.D.N.Y. Oct. 23, 2015)Cited 1 times

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Responding to the Government's statements regarding the use of a "taint team," Solnin asserts that other courts have "often . . . questioned" or "outright rejected" the use of such teams. He states that "a taint team member may innocently, deliberately, or inadvertently disclose some piece of information that may lead directly or indirectly to a disclosure of evidence." Significantly, the Court notes that Solnin's reply does not assert that any disclosure, innocent or otherwise, actually occurred in this case.

United States v. Levin

15 Cr. 101 (KBF) (S.D.N.Y. Oct. 5, 2015)Cited 1 times

In April 2011, Magistrate Judge Theodore H. Katz authorized a search warrant for certain premises then doing business under the name United Marketing Associates Corporation ("United Marketing"). (ECF No. 83-2.) Pursuant to the search warrant, documents were seized from United Marketing's offices and computers. (Gov. Br. 2-3.) The Government created a taint team to review the documents seized in the search and to identify and isolate any arguably privileged documents. (Gov. Br. 3.) After the defendants

were subsequently indicted, the Government produced the arguably privileged documents to defense counsel on April 10, 2015. (Gov. Br. 3.) On May 7, 2015, the Court directed the defendants to assert any privilege claims over the documents by May 21, 2015. (ECF No. 60.) Levin's counsel timely provided a privilege log on behalf of Levin and his son, defendant Taylor Levin. (Gov. Br. 3.)

United States v. Baslan

13 CR 220 (RJD) (E.D.N.Y. Jul. 10, 2014)Cited 3 times

The Court assumes familiarity with the background of the case and restates only those facts necessary to decide the motion to dismiss. In brief, CS 2, formerly an inmate at the Metropolitan Detention Center, approached the government with information indicating that Baslan was planning several schemes to obstruct justice. (Gov't Mem. Opp'n 21, ECF No. 81). The schemes included a plan to destroy a data-storage device known as a "DROBO" and blame its destruction on the FBI, along with a plan in which unidentified confederates would exhume children's corpses and place them on the property of a cooperating witness (identified in the motion papers and in the Complaint as CS 1). (Id. at 21-22). In response, the government organized a so-called "taint" team to investigate this suspected obstruction and established a "firewall" between that team and the trial team. (Conference Tr. 12, May 29, 2014); See generally United States v. Yousef, 327 F.3d 56, 166 (2d Cir. 2003) (describing a firewall). The government then instructed CS 2 to continue engaging Baslan. On July 1, 2013 and July .31, 2013, the government provided CS 2 with a recording device. (Gov't Mem. Opp'n 22). Over the course of these two recorded conversations, Baslan discussed certain details of the planned obstruction with CS 2, but also discussed some of his ideas for defending the case. (Id. at 22-30). Those discussions triggered the present motion to dismiss the indictment.

Gurvey v. Cowan, Liebowitz & Latman, P.C.

06 Civ. 1202 (LGS) (HBP) (S.D.N.Y. Jul. 15, 2013)Cited 7 times

Judge's Summary — Denying motion to amend where, among other reasons, plaintiff's numerous misrepresentations "are clearly intended to mislead the Court" and are "evidence of her bad faith"

…appropriate where allowing the representation to continue would pose 'a significant risk of trial taint.'" Team Obsolete Ltd. v. A.H.R.M.A. Ltd., No. 01-cv-1574, 2006 WL 2013471, at *3 (E.D.N.Y. July 18, 2006)…

United States v. Cossette

Civil No. 3:12cr232 (JBA) (D. Conn. Apr. 30, 2013)

• By May 7, 2013, Defendant will identify all statements in the Internal Affairs report and Daily report that he claims are protected by the Garrity privilege to the Government's "Filter" or "Taint" Team. • The Filter Team will file any responsive motions by May 10, 2013.

Daudier v. E&S Med. Staffing, Inc.

12 Civ. 206 (PAE) (S.D.N.Y. Aug. 23, 2012)Cited 1 times

The disqualification of counsel is, however, "a matter committed to the sound discretion of the district court." Cresswell v. Sullivan & Cromwell, 922 F.2d 60, 72 (2d Cir. 1990). A federal court's power to disqualify an attorney derives from its "inherent power to 'preserve the integrity of the adversary

process.'" Hempstead Video, Inc. v. Inc. Vill. of Valley Stream, 409 F.3d 127, 132 (2d Cir. 2005) (quoting Bd. of Educ. v. Nyquist, 590 F.2d 1241, 1246 (2d Cir. 1979)). Disqualification "is only appropriate where allowing the representation to continue would pose 'a significant risk of trial taint.'" Team Obsolete Ltd. v. A.H .R.M.A. Ltd., No. 01-cv-1574, 2006 WL 2013471, at *3 (E.D.N.Y. July 18, 2006) (citing Glueckv. Jonathan Logan, Inc., 653 F.2d 746, 748 (2d Cir. 1981)). "'[A]ny doubt is to be resolved in favor of disqualification.'" Gurney's Inn Resort & Spa Ltd v. Benjamin, No. 10-cv-3993, 2012 WL 2951373, at *5 (E.D.N.Y. July 20, 2012) (quoting Hull v. Celanese Corp., 513 F.2d 568, 571 (2d Cir. 1975)).

Gurney's Inn Resort & Spa Ltd. v. Benjamin

878 F. Supp. 2d 411 (E.D.N.Y. 2012)Cited 7 times

Nevertheless, the disqualification of counsel “is a matter committed to the sound discretion of the district court.” Cresswell v. Sullivan & Cromwell, 922 F.2d 60, 72 (2d Cir.1990). A federal court's power to disqualify an attorney derives from its “inherent power to ‘preserve the integrity of the adversary process,’ ” Hempstead Video, Inc. v. Inc. Vill. of Valley Stream, 409 F.3d 127, 132 (2d Cir.2005) (quoting Bd. of Educ. v. Nyquist, 590 F.2d 1241, 1246 (2d Cir.1979)), and “is only appropriate where allowing the representation to continue would pose ‘a significant risk of trial taint.’ ” Team Obsolete Ltd. v. A.H R.M.A. Ltd., No. 01 CV 1574(ILG)(RML), 2006 WL 2013471, at *3 (E.D.N.Y. July 18, 2006) (citing Glueck v. Jonathan Logan, Inc., 653 F.2d 746, 748 (2d Cir.1981)). In exercising this power, courts look for “general guidance” to the American Bar Association (“ABA”) and state disciplinary rules, although the Second Circuit has emphasized that “not every violation of a disciplinary rule will necessarily lead to disqualification.” Hempstead Video, Inc., 409 F.3d at 132. However, “any doubt is to be resolved in favor of disqualification.” See Hull v. Celanese Corp., 513 F.2d 568, 571 (2d Cir.1975); see also Nichols v. Vill. Voice, 99 Misc.2d 822, 826, 417 N.Y.S.2d 415 (1979).

United States v. Jacques

684 F.3d 324 (2d Cir. 2012)Cited 29 times

Judge's Summary — Holding that Sixth Amendment right to counsel was not violated where defendant “shared information on his own initiative and on his own terms”

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After these meetings, the taint team sent copies of Jacques's packet of instructions and transcripts of the phone calls to Jacques's defense counsel, along with a letter explaining the events and giving counsel ten days to object before the taint team provided the materials to the prosecution. The defense did not object within the ten days.

United States v. Ghavami

882 F. Supp. 2d 532 (S.D.N.Y. 2012)Cited 36 times2 Legal Analyses

Judge's Summary — Holding that opinion work product "is entitled to virtually absolute protection"

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During the course of its investigation, the government accumulated vast quantities of information, and it has produced to the defendants in discovery more than 600,000 audio files, including recorded telephone conversations from trading desks and consensual recordings. (Letter of Kalina M. Tulley, Neville S. Hedley, and Jennifer M. Dixton dated Oct. 7, 2011, at 3). In some instances, the government's “taint team” redacted material from the recordings based on claims of attorney-client privilege and work product protection asserted by third parties before making these recordings available to the government's trial attorneys and to the defendants.

United States v. Metter

860 F. Supp. 2d 205 (E.D.N.Y. 2012)Cited 34 times1 Legal Analyses

Judge's Summary — Holding that the defendant's “pre-trial challenge to the appropriateness of venue as to Counts 1-5 [was] frivolous” because, “[i]n Counts 1-5, the Superseding Indictment state[d] that the conduct at issue occurred ‘within the Eastern District of New York and elsewhere'”

On February 4, 2011, the parties appeared before the Court for another status conference. (See Transcript of Feb. 4, 2011 Status Conference (“2/4/11 S/C Tr.”), attached as Ex. 11 to the Fritz Aff.) At that conference, the government represented that it would produce to defendants a list of the computers and emails seized pursuant to the search warrants by March 2011. (Id. at 7.) With respect to the imaged, seized hard drives and email accounts, the government indicated that it intended to set up a “taint team” to review that imaged evidence for any privilege issues. (Id. at 19.) The defendants agreed to provide the government with a list of attorneys for the government's privilege review within one week of the status conference. (Id. at 20.) The Court exhorted the parties to work together to resolve these issues. (Id. at 20–21.)

My First Shades v. Baby Blanket Suncare

No 08-CV-4599 (JFB) (ARL) (E.D.N.Y. Feb. 16, 2012)Cited 2 times

Nevertheless, the disqualification of counsel "is a matter committed to the sound discretion of the district court." Cresswell v. Sullivan & Cromwell, 922 F.2d 60, 72 (2d Cir. 1990). A federal court's power to disqualify an attorney derives from its "inherent power to 'preserve the integrity of the adversary process,'" Hempstead Video, Inc. v. Incorporated Vill. of Valley Stream, 409 F.3d 127, 132 (2d Cir. 2005) (quoting Bd. of Educ. v. Nyquist, 590 F.2d 1241, 1246 (2d Cir. 1979)), and "is only appropriate where allowing the representation to continue would pose 'a significant risk of trial taint.'" Team Obsolete Ltd. v. A.H.R.M.A. Ltd., No. 01 CV 1574 (ILG)(RML), 2006 WL 2013471, at *3 (E.D.N.Y. July 18, 2006) (citing Glueck v. Jonathan Logan, Inc., 653 F.2d 746, 748 (2d Cir. 1981)). In exercising this power, courts look for "general guidance" to the American Bar Association ("ABA") and state disciplinary rules, although the Second Circuit has emphasized that "not every violation of a disciplinary rule will necessarily lead to disqualification," Hempstead Video, Inc., 409 F.3d at 132.However, "any doubt is to be resolved in favor of disqualification." See Hull v. Celanese Corp., 513 F.2d 568, 571 (2d Cir. 1975); see also Nichols v. Vill. Voice, 99 Misc. 2d 822, 826, 417 N.Y.S.2d 415 (N.Y. 1979).

U.S. v. Dupree

10-CR-627 (KAM) (E.D.N.Y. Nov. 29, 2011)

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After its review of Ms. Nusfaumer's hard drive and flash drives, the government's privilege taint team identified 174 pages of nonprivileged documents that would be disclosed to the prosecution team on November 21, 2011 absent any objections from the defendants. (See ECF No. 437, Letter from Michael Warren.) Unless a vast majority of the documents on Ms. Nusfaumer's drives were privileged, Dupree's claim that he has to review 70 million pages of additional documents is vastly exaggerated. Moreover, the government clarified that the estimated size of the hard drive included empty space. (Response to Exclude Testimony at 3.)

United States v. Dupree

10-CR-627 (KAM) (E.D.N.Y. Nov. 28, 2011)

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After its review of Ms. Nusfaumer's hard drive and flash drives, the government's privilege taint team identified 174 pages of nonprivileged documents that would be disclosed to the prosecution team on November 21, 2011 absent any objections from the defendants. (See ECF No. 437, Letter from Michael Warren.) Unless a vast majority of the documents on Ms. Nusfaumer's drives were privileged, Dupree's claim that he has to review 70 million pages of additional documents is vastly exaggerated. Moreover, the government clarified that the estimated size of the hard drive included empty space. (Response to Exclude Testimony at 3.)

U.S. v. Jacques

768 F. Supp. 2d 684 (D. Vt. 2011)Cited 20 times

Judge's Summary — Concluding that identical claim was premature

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The Government notified defense counsel of the taint team's investigation in a letter dated September 11. In the letter, AUSA Gelber, the attorney leading the taint team, wrote that “the Government was aware that the investigation might inadvertently discover material or communications which should be protected by the attorney-client privilege. Therefore, as soon as the Government learned of Jacques' attempt to obstruct justice, it established a ‘taint’ team to handle the investigation.” ECF No. 226–15. Included with the September 11 letter were the letters and written materials obtained by Garcia during the investigation as well as an audio recording of the July 10 phone call Jacques made to Garcia. AUSA Gelber indicated that, unless defense counsel contacted him within ten days to object, he would turn the enclosed materials over to the prosecution team. Id. When defense counsel did not object within the ten-day period,

Relevant federal district and Second Circuit Authority re Taint Teams
(Based on the search of “taint teams” for all NY federal district courts and Second Circuit as of 10/18/2022)

U.S. v. Dupree

781 F. Supp. 2d 115 (E.D.N.Y. 2011)Cited 46 times

Judge's Summary — Holding that "[t]o determine whether a private party acted as a government agent, the court must consider whether the government knew or at least acquiesced in the search and seizure and whether the private searcher intended to assist law enforcement as opposed to simply achieving [her] own ends"

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On this record, the court finds that, as a matter of law, the government followed appropriate procedures with respect to handling potentially privileged documents. United States v. Crim. Triumph Capital Gr. Inc., 211 F.R.D. 31, 43 (D. Conn. 2002) ("The use of a taint team is a proper, fair and acceptable method of protecting privileged communications when a search involves property of an attorney."); United States v. Sattar, No. 02 Cr. 395, 2003 U.S. Dist. LEXIS 16164, at *64 (S.D.N.Y. Sept. 15, 2003) (approving the use of a taint team). Similarly, the court finds that the mere fact that the government obtained privileged information does not mean it violated defendants' Sixth Amendment rights. See United States v. Neill, 952 F. Supp. 834, 840 (D.D.C. 1997) (holding that the Sixth Amendment is violated only if privileged information is intentionally obtained and used to the defendants' detriment at trial). Accordingly, defendants' motions for relief based on the government's seizure of privileged documents are denied.

S.E.C. v. Rajaratnam

622 F.3d 159 (2d Cir. 2010)Cited 52 times2 Legal Analyses

Judge's Summary — Holding that the Court lacks jurisdiction to review interlocutory "discovery orders allegedly adverse to a claim of privilege or privacy"

This inevitable "tainting" of the team of attorneys is the reason that so-called "ethical walls" are erected to insulate attorneys from conflicts of interest, immunized testimony, or materials that may have been illegally obtained. See, e.g., Hempstead Video, Inc. v. Inc. Vill. of Valley Stream, 409 F.3d 127, 138 (2d Cir. 2005); United States v. Schwimmer, 882 F.2d 22, 26 (2d Cir. 1989); cf. Grand Jury Subpoena of Ford v. United States, 756 F.2d 249, 254 (2d Cir. 1985); United States v. Supere, 531 F.2d 63, 66 (2d Cir. 1976). Indeed, the SEC has offered to establish a "taint" team of attorneys that would review the wiretap materials until the suppression motion had been decided. See, e.g., United States v. Lentz, 524 F.3d 501, 516 n. 3 (4th Cir. 2008). Appellants, on the other hand, have not suggested they would establish such a "taint" team, which is quite understandable given the necessary expense that would be involved.

U.S. v. Pearson

1:04-CR-340 (N.D.N.Y. May. 24, 2006)Cited 2 times

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Defendant has not provided any particulars of the material that is now purportedly "lost," and the Government has asserted that it returned, unaltered, all of the seized material other than the encrypted files. Thus, it may be that the encrypted files contain some type of "exculpatory evidence" or trial preparation material that Defendant now believes is lost. The Court finds that the best way to resolve this matter is to have the Defendant, his attorneys, and the Government's "taint team" present during an in camera hearing at which time the Defendant will provide a more definite statement as to the particular location of the material he claims is lost, and the purported location of the material before the December 1, 2005 search. If the material is contained on the encrypted files and if the password is not otherwise required to be produced (see discussion below regarding Defendant's Fifth Amendment challenge to the trial subpoena, infra), Defendant can choose to voluntarily provide the password for the file or files he contends contains exculpatory material and/or trial preparation material. The files will be reviewed in the presence of the participants to this hearing. If the material is exculpatory, it will be provided to Defendant and the taint team will be ordered not to divulge the information to the Government's trial team. Under such circumstances, the Court will determine what remedy, if any, Defendant is entitled to. If Defendant asserts that there exists some other exculpatory evidence or trial preparation material other than which might be contained on the encrypted files, then he should be prepared to present evidence of this material at this hearing. The Government's "taint team" will then respond to the arguments and/or factual assertions, and the Court will rule accordingly. The "taint team" will be ordered not to divulge to the trial team the nature of the alleged "lost" material.

United States v. Taveras

233 F.R.D. 318 (E.D.N.Y. 2006)Cited 12 times

Judge's Summary — Declining to appoint firewall counsel and delaying Government examination of defendant until after guilt phase because of danger of firewall breach and minimal delay caused by later examination

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Examination by a government expert after a verdict of guilt, if any, would diminish the threat to defendant's constitutional protections. But see John G. Douglass, Confronting Death: Sixth Amendment Rights at Capital Sentencing, 105 Colum. L.Rev.1967, 1972 (2005) (arguing that " the whole of the Sixth Amendment applies to the whole of a capital case, whether the issue is guilt, death eligibility, or the final selection of who lives and who dies"). It would also obviate the need for the unwieldy taint team procedures proposed by the parties.

U.S. v. Sattar

02 Cr. 395 (JGK) (S.D.N.Y. Sep. 15, 2003)

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The use of a Government taint team to provide redacted versions of the materials is particularly appropriate with respect to these materials. The materials are being redacted to excise any attorney —

client or work product materials with respect to Sheikh Abdel Rahman. There is no suggestion that these materials contain communications where the defendants on trial were seeking legal advice. Even in those cases, taint teams have been used to assure that the defendants' privileged communications will not be used by the Government against them. See, e.g., Neill, 952 F. Supp. at 841 (finding that the Government met its burden of rebutting presumption of harm from use of taint team).

United States v. Triumph Capital Group, Inc.

211 F.R.D. 31 (D. Conn. 2002)Cited 64 times1 Legal Analyses

Judge's Summary — Stating that "[t]he use of a taint team is a proper, fair and acceptable method of protecting privileged communications when a search involves property of an attorney"

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The taint team was comprised of AUSA Mark Califano (" Califano"). SA Rovelli, the CART Agent who conducted the search of the hard drive, was not a member of the taint team.

U.S. v. Stewart

No. 02 Cr. 395 (JGK) (S.D.N.Y. Jun. 11, 2002)Cited 11 times

Judge's Summary — Describing concerns associated with searches involving likely privileged materials in search of criminal defense lawyers' offices and evaluating and outlining procedures used by courts to safeguard attorney-client privilege and Sixth Amendment right to counsel

…59; see also Neill, 952 F. Supp. at 834 n. 14 ("[T]here is no doubt that, at the very least, the `taint team' procedures create an appearance of unfairness."). D. The government argues, finally, that the…