2025-2 EDITION HIGHLIGHTS

United States v. Webster, 127 F.4th 318 (11th Cir. 2025): The court decided that a criminal information filed without a waiver of indictment was "instituted" and tolled the statute of limitations for an indictment obtained more than five years after the charged offenses were allegedly committed. Here, the government was unable to bring an indictment within the time limit in light of the closing of courthouses during the covid pandemic so an information was filed instead. The court concluded that the later indictment related back to the date of the timely filed information based on an exhaustive study of historical jurisprudence going back to 1790. However, it should be emphasized that a cautionary concurrence noted the future possibility for potential prosecutorial manipulation of the statute of limitations.

United States v. Sanders, 133 F.4th 341 (5th Cir. 2025): The court rejected a challenge to the method of selecting grand and petit jurors where the contention was that young voters between the ages of 18 and 21 were a distinct cognizable group systematically excluded because the master wheel was not updated at sufficiently frequent intervals.

In re Cheney, 2024 WL 1739096 (D.C. Cir. 2024): The original order of the district court denying a petition to unseal grand jury documents related to an alleged executive-privilege dispute was properly denied based on the record before it and the protections of Federal Rule of Criminal Procedure 6(e), but after the appeal was filed, the Office of Special Counsel publicly revealed that executive-privilege disputes had occurred during the grand jury investigation; the district court's order was vacated and the case was remanded for the court to reconsider the petition as a result of the Office of Special Counsel's disclosure.

United States v. Age, 136 F.4th 193 (5th Cir. 2025): The court rejected a challenge under the Sixth Amendment and the Jury Selection and Service Act that a grand and petit jury pool were not drawn objectively, mechanically and at random from the inhabitants of the community if "persons of lower economic status" or income less than $50,000 a year were not considered a "distinctive group." The court also rejected the defendant's allegation that African Americans were systematically excluded because of an absolute disparity of 11.84% between the grand jury venire and the population.

In re Sealed Case [No. 24-5089], 144 F.4th 329 (D.C. Cir. 2025): An order allowing the government to prohibit disclosure of any subpoena related to its grand jury investigation for one year did not comply with Stored Communications Act. That order did not provide any meaningful limit on targets of future subpoenas and instead permitted the government to be able to attach a nondisclosure order to any subpoena for user records of any account with any service provider that the government decided was relevant and that disclosure would result in harm. Such power belongs to the court and not to the government.

In re Search of One Device and Two Individuals Under Rule 41, 2025 WL 1587917 (D.D.C. 2025): The District Court emphasized a common law presumption and a First Amendment right of public access to judicial records including search warrants. The government moved to seal an order of the court seemingly forever but it is the court and not the executive that decides unsealing based on six factors stated in *United States v. Hubbard*, 650 F.2d 293 (D.C. Cir. 1980). The court was firm that there are no secret courts and there must be a commitment to maximum transparency.

United States Ex Rel Long v. Janssen Biotech, Inc., 2025 WL 1725794 (D.Mass. 2025): The court explored the "functional equivalent" doctrine as a means of extending the attorney-client privilege where certain third party agents of corporate entities, such as consultants, can be the functional equivalent of corporate employees because of their close connection to the entity that would allow communications between such agents and corporate counsel to fall within the scope of the privilege. The assertion of this doctrine must be supported by evidence which was not done here.

United States v. Maxwell, 2025 WL 2048023 (S.D. N.Y. 2025), and *United States v. Maxwell*, 2025 WL 2301281 (S.D. N.Y. 2025): The government requested that grand jury transcripts be unsealed but did not invoke the exceptions listed under Rule 6(e). Instead the government wanted the court to recognize that "special circumstances" existed which could allow the court to exercise its supervisory authority over grand juries it impanels. The government claimed these circumstances were due to rising public interest and demands of Congress. The court considered nine non-exhaustive factors in *In re Petition of Craig*, 131 F.3d 99 (2d Cir. 1997), and two additional ones: (1) the perspectives of the victims and (2) the systemic interest in grand jury secrecy. The court found no special circumstances existed since much of the information was already public and the information was not unique in a grand jury that was not used for investigative purposes

where the only witness was a law enforcement agent who summarized gathered information.

United States v. Epstein, 2025 WL 2407599 (S.D. N.Y. 2025): The defendant was indicted for sex trafficking conspiracy and sex trafficking but was dead before a trial could commence. The government filed a motion to unseal grand jury transcripts and exhibits relating to his alleged sex crimes. Based on its analysis of the nine factors listed in *In re Petition of Craig*, 131 F.3d 99 (2d Cir. 1997), the court concluded that all but one favored continued sealing. The grand jury transcripts and exhibits remained sealed.

United States v. Giraud, 2025 WL 2416737 (D.N.J. 2025): The court found that the signature of a "government" attorney on an indictment for fraud, money laundering and bribery who was actually disqualified from participation or supervision in ongoing criminal cases since she was an Interim United States Attorney acting after expiration of her appointment was an error that was harmless so dismissal of the indictment was not required.