

Larry Younger discusses the latest in the Secret Service controversy with Susan Crabtree of the Washington Examiner.

Exclusive: Agent misled Secret Service

By Susan Crabtree

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An agent in a Florida Secret Service field office misled a disciplinary team about his personal use of an iPad, which was collected as evidence in an open case, according to a first-hand source familiar with the incident. But the team was unable to document the misstatements because a more senior official stepped in to prevent it, the source said. Although the iPad incident appears relatively minor on the surface, it has far broader and more serious implications. The source, who is familiar with the agency's practices — and low morale — cites it as an example of a “culture of cover-up” and a pattern of the agency failing to document agents' untruthful behavior. Such documentation would prevent those agents from testifying in any case, including those that involve threats to the president. In fact, if an agent testifies in a case and he is later found to have a history of making false statements a conviction can be overturned, even against someone who threatened the president. The agent allegedly used the iPad then wiped it clean after the breach of protocol was discovered, the source said. He eventually received a five-day suspension. But a senior Secret Service official struck a side deal with him and prevented him from being formally accused of providing false statements about the infraction, the source said. A supervisor and lower-level officials charged with investigating the case had wanted to document his lack of candor and discipline him for it. Any black mark on an agent's record is the kiss of death for a Secret Service career because it prevents the agent from being able to testify in court against suspected assailants or others accused of posing a threat to the president, the first family or high-level U.S. diplomats. A Supreme Court ruling in *Giglio v. United States*

held that the reliability of a witness in a court case is so important that failing to disclose to a defense counsel any record of lying or criminal arrests, charges or convictions, along with any other issues affecting credibility, justifies a new trial. Several subsequent high-court rulings gave the decision greater influence and reach. The iPads should have been listed in an inventory and held in a secured facility, but investigators believed the agent used one of them for personal use and gave another to an administrative aide, then wasn't truthful in his answers when they pressed him about it, the source said. Internal Secret Service inspectors discovered the agent's alleged misuse of the iPads during a routine inventory inspection. A Secret Service spokesman said the agency “does not discuss alleged internal personnel matters.” Legal experts familiar with *Giglio* requirements argue that any deliberate effort on the part of Secret Service managers to circumvent the law's requirements is illegal and could compromise cases against those accused of posing any kind of danger to the president and

the first family. Liz Newman, the litigation director at the Jeffrey Law Group who has extensive experience in handling Giglio cases, said she isn't aware of other law-enforcement agencies purposely overlooking employees' alleged deceit to avoid similar problems. She said if the Secret Service isn't documenting false statements or lack of candor to avoid losing officers or cutting down their workforce, it demonstrates a larger problem at the agency. "Most agencies take [these requirements] very seriously," she said. "It would be completely wrong and a complete abuse of the trust of the taxpayer" if the Secret Service is engaging in this practice. But she also said that the details of the case could make a difference. If the Secret Service couldn't prove that the agent in question lied about the iPad use, the employee has every right to try to knock the charge down to a lesser one, she said. Because of the requirements to testify in court, any good attorney representing an agent in a disciplinary action against him would try to fight any "lack of candor or false statement charges" first, she said. Newman and other legal experts said knowingly and deliberately avoiding Giglio requirements violates federal law. "Consciously disregarding a known requirement is simply illegal," said Larry Youngner, a partner at the law firm Tully Rinckey, a former military judge advocate with more than two decades of experience, including stints as chief legal counsel to Air Force Special Operations Command in Florida, among other high-level assignments. "It would be denying criminal due process to anyone who those agents testify against in the future and any conviction — even against someone who attacked the president — could be reversed," he added. Youngner also spelled out a separate problem. If the agent wiped the iPad, he argued, then the agency lost important evidence on the device, and the Secret Service could have trouble pursuing a case against someone without that evidence. "If you know they are going to lie to you about wiping the iPad clean, then what else are they going to lie about? It speaks to [an agent's] character for truthfulness." While it's likely that other law enforcement agencies are looking for creative ways to work around the Giglio requirements, experts said they were not aware of any specific cases or evidence of the practice. According to two sources familiar with the practice, however, this example of covering was not isolated. At times over the last several years, when an officer's or agent's behavior was under review for a potential suspension, top managers would determine that the officer lied about some aspect of the case. But rather than charge them with providing inaccurate information, managers would find some alternative agreement to reduce their punishment, sources said. "It's a complete culture of covering up for people," a first-hand source familiar with the practice told the Washington Examiner

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