

1 ryan-c: family of Bundy  
In care of postal address:  
2 Post Office Suite 7447  
Bunkerville, Nevada  
3 Email: C4CFForall@gmail.com  
Cell Phone: (435) 701-1013

4 Sui Juris

5 **UNITED STATES DISTRICT COURT**  
6 **DISTRICT OF NEVADA**

7 UNITED STATES OF AMERICA,

8 Plaintiff,

9 v.

10 RYAN C. BUNDY

11 Defendant.

Case No. 2:16-cr-00046-GMN-PAL

Judge: Gloria Navarro  
Hearing: January 8, 2018  
Courtroom – 7C

**AMENDED MANDATE FOR  
DISMISSAL OF SUPERSEDING  
INDICTMENT**

12 **AMENDED MANDATE FOR DISMISSAL OF SUPERSEDING INDICTMENT**

13  
14 COMES NOW ryan-c: family of Bundy (hereafter ryan-c:) in/on behalf of the  
15 defendant, RYAN C BUNDY; mandating this Court under its manifest duty “to preserve  
16 *judicial integrity by ensuring that a conviction rests on appropriate considerations validly*  
17 *before a jury; and to deter future illegal conduct.” (U.S. v. Chapman, 524 F.3d 1073, 1085*  
18 *(9<sup>th</sup> Cir. 2008), citing U.S. v. Simpson, 927, F.2d 1088, 1090 (9<sup>th</sup> Cir. 1991) and grant an*  
19 immediate dismissal with prejudice of the superseding indictment in the afore-captioned  
20 cause.

21  
22 Executed on December 29, 2017.

*/s/ Ryan c.*  
ryan-c: family of Bundy  
In care of postal address:  
Post Office Suite 7447  
Bunkerville, Nevada  
Email: [C4CFForall@gmail.com](mailto:C4CFForall@gmail.com)  
Cell Phone: (435) 701-1013

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

1 **I.**

2 **BRIEF PROCEDURAL HISTORY**

3 On December 20, 2017, Jury Trial, Day 16, in Case No. 2:16-cr-46-GMN-PAL,  
4 UNITED STATES OF AMERICA versus CLIVEN D BUNDY, RYAN C BUNDY,  
5 AMMON E. BUNDY, and RYAN W. PAYNE. Chief Judge GLORIA M. NAVARRO  
6 ordered a mistrial, further directing the parties to submit briefs in support of their mandates to  
7 dismiss the matter with prejudice on the date and time set-certain January 8, 2018. ryan-c: of  
8 the Bundy family hereby submits his Mandate for an Immediate Dismissal of the Superseding  
9 Indictment, with prejudice, based upon the following argument of points and authorities.  
10

11 **II.**

12 **ARGUMENT OF POINTS AND AUTHORITIES**

13 The Order of the Court of December 20, 2017, as stated in the accompanying  
14 “REPORTER'S TRANSCRIPT OF PROCEEDINGS” (hereafter “RTOP”), EXHIBIT A,  
15 provides for a “mistrial” based upon various provisions of applicable legal standards and  
16 authorities as stated by the Court. ryan-c: hereby incorporates, as though restated herein in its  
17 entirety, all provisions of law and legal standards, and authorities expounded by and through  
18 the Order of the Court, Jury Trial, Day 16, in Case No. 2:16-cr-46-GMN-PAL, UNITED  
19 STATES OF AMERICA versus CLIVEN D BUNDY, RYAN C BUNDY, AMMON E.  
20 BUNDY, and RYAN W. PAYNE.  
21

22 First, Judge Gloria M. Navarro “declared” a mistrial based upon “manifest necessity”.  
23 See “RTOP”, Page 16-23, Line 16, and Page 16-24, Line 4. However, Navarro failed to poll  
24 the parties pursuant to and in conjunction with Fed. R. Crim. P. Rule 26.3, and any such Order  
25 lies contrary to ryan-c: consent, at least his consent minus any comment and input on the  
26 propriety of the order. See Ryan Bundy’s Affidavit in Support of this Mandate.

1 Second, a Complete dismissal with prejudice is necessary due to stated facts in the  
2 Court's Order that the prosecution "subvert[ed] the due process rights that the defendants are  
3 guaranteed by the Constitution" and also the "Sixth Amendment right to confront adverse  
4 witnesses." See US v. Chapman, 524 F. 3d 1073, 1084 - Court of Appeals, 9th Circuit 2008.  
5 See, "RTOP", Page 23, Line 17-18, "...because of the Brady violations because they are  
6 constitutional due process violations".

7 A.

8 **ryan-c: was prepared, but denied, an opportunity to comment, and state his**  
9 **objection as to his consent for mistrial.**

10 At the hearing of December 20, 2017, Jury Trial, Day 16, in Case No. 2:16-cr-46-  
11 GMN-PAL, United States of America versus CLIVEN D BUNDY, RYAN C BUNDY,  
12 AMMON E. BUNDY, and RYAN W. PAYNE, Judge GLORIA M. NAVARRO "Declared"  
13 a mistrial on grounds of "manifest necessity". NAVARRO's Order states her reliance and  
14 alignment with US v. Chapman, 524 F. 3d 1073 - Court of Appeals, 9th Circuit 2008 and  
15 other authorities in reaching her conclusions. However, in regards to a mistrial, Fed R. Crim.  
16 P., Rule 26.3, provides in pertinent part:

17 **Federal Rules of Criminal Procedure 26.3. Mistrial**

18 "Before ordering a mistrial, the court must give each defendant and the government  
19 an opportunity to comment on the propriety of the order, to state whether that party  
20 consents or objects, and to suggest alternatives."

21 Judge Gloria Navarro failed to provide ryan-c: any such opportunity. ryan-c: stood up  
22 near the conclusion of the hearing, and was fully prepared to state an objection, and/or  
23 comment as to his consent to a mistrial; but Ms. Navarro denied his request to speak further  
24 regarding the matter. "RTOP" Page 16-36, Lines 6-9.

25 Additionally, as in Chapman, the government's case to date had been weak, entirely  
26 reliant upon perjured testimony, and the defendants would suffer substantial prejudice if the  
case were retried because "the government and its witness[es] will not make [the same]

1 mistake[s] again." The government should not be permitted "to try out its case identifying any  
2 problem area[s] and then correct those problems in a retrial." US v. Chapman, supra, at 1080.

3 An example of the effect of the aforementioned underlying prejudice is demonstrated  
4 based upon the recent discovery of further Brady violations. See ryan-c:’s Notice of Yet  
5 Another Brady and Giglio Violation and Motion to Dismiss filed December 19, 2017. (ECF  
6 No. 3038) While ryan-c: relied upon the existence of his fathers “Vested Stock Water  
7 Rights”, and the letters which were provided from the State of Nevada, Division of Water  
8 Resources in establishing additional Brady and Giglio violations, the subsequent realization of  
9 the perjured testimony of Mary Jo Rugwell as to her knowledge of the existence of these  
10 “Vested Rights” being likewise exposed, cannot be allowed to give the prosecution an  
11 advantage in retrying this matter in violation of ryan-c:’s Constitutional rights.  
12  
13

14 **Restatement of directive by ryan-c: that the court take judicial notice:** “NOTICE  
15 EXISTENCE OF VESTED WATER RIGHTS BELONGING TO CLIVEN BUNDY,  
16 REGISTERED WITH NEVADA STATE”, (ECF No. 3034). That the Court must take notice  
17 of the fact that there are 11 Proof’s of Appropriation of Vested Stock Water Right Numbers;  
18 V08974, V08975, V08976, V08977, V08978, V08979, V08980, V08981, V08982, V08983,  
19 V08984. There are also letters from Mary Jo Rugwell dated September 30, 2008, and a return  
20 correspondence from the State of Nevada, Division of Water Resources dated October 10,  
21 2008. There is also a letter from State of Nevada, Division of Water Resources, addressed to  
22 Michael M McGreer dated October 1, 2014. There is additional correspondence between  
23 Michael M. McGreer to the State of Nevada Division of Water Resources dated February 21,  
24 2016, and return correspondence from State of Nevada Division of Water Resources to  
25 Michael M. McGreer dated March 27, 2016.  
26

1 The aforementioned documents are on file in this matter and may be Judicially noticed  
2 from within the Court record, or from their filed location with the State of Nevada, Division  
3 of Water Resources.

4 Based upon this stated Argument of Points and Authorities ryan-c: submits that a  
5 dismissal with prejudice of the superseding indictment is not only proper, but necessary “to  
6 preserve judicial integrity by ensuring that a conviction rests on appropriate considerations  
7 validly before a jury; and to deter future illegal conduct.” (U.S. v. Chapman, 524 F.3d 1073,  
8 1085 (9th Cir. 2008), citing U.S. v. Simpson, 927, F.2d 1088, 1090 (9th Cir. 1991), and  
9 hereby directs this Court for an immediate dismissal with prejudice of the superseding  
10 indictment in the afore-captioned cause.  
11

12  
13 **B.**

14 **ryan-c: Moves This Court for A Dismissal of the Superseding Indictment, With**  
15 **Prejudice**

16 The second prong under Chapman provides for dismissal of the indictment for one of  
17 two reasons:  
18

19 “[First, a] district court may dismiss an indictment on the ground of outrageous  
20 government conduct if the conduct amounts to a due process violation. [Second, i]f  
21 the conduct does not rise to the level of a due process violation, the court may  
22 nonetheless dismiss under its supervisory powers”. US v. Chapman, at 1084, Id.  
23

24 Judge Gloria Navarro has authority and duty to dismiss the indictment pursuant to  
25 either/or of the aforementioned reasons, as witnessed by and through her Order of December  
26 20, 2017, where she repeatedly noted violations that “subvert[ed] the due process rights that

1 the defendants are guaranteed by the Constitution" and also the "Sixth Amendment right to  
2 confront adverse witnesses." US v. Chapman, Id. (emphasis added). Judge Gloria Navarro  
3 concluded that these violations, while reviewed individually, provided "collectively" under  
4 "Kyles v. Whitley", that each and every violation was "willful", resulting in "multiple Brady  
5 violations". See "RTOP", Page 16-22, Line 8. These Violations will forever prejudice these  
6 men from receiving a fair trial.

7  
8 Whereby ryan-c: submits that Judge Gloria Navarro has a duty under Chapman to hold  
9 that there was irrefutable "outrageous government conduct", as well as a duty to ultimately  
10 dismiss the Superseding Indictment (ECF #27) "based on the totality of the proceedings  
11 before it, that the Assistant U.S. Attorney [Steven W. Myhre] acted flagrantly, willfully, and  
12 in bad faith"; that he had made "affirmative misrepresentation[s] to the court"; that the  
13 defendants would be prejudiced by a new trial; and that no lesser sanction could adequately  
14 remedy the harm done[,] \*\*\* after witnessing firsthand the AUSA's misrepresentations."

15  
16 Chapman, Id.

17  
18 While the Chapman Court held that a dismissal was proper under the lesser standard  
19 of the District Court's "supervisory powers", ryan-c: submits, this case rises to a much higher  
20 level, a level of gross systematic and perpetual prosecutorial corruption, gross prosecutorial  
21 misconduct and gross malpractice that exceeds, "outrageous government conduct" Chapman  
22 Id. Lead prosecutor AUSA Stephen W. Myhre is demonstrating a continued disregard for  
23 applicable law in prosecution of these cases, resulting in persecution of the individuals as  
24 named (Chapman and now Bundy). Whereby; this Court has a duty to sanction accordingly,  
25  
26

1 including immediate dismissal of this case, with-prejudice, due to the “outrageous  
2 government conduct” by the lead Prosecutor in this matter, Steven W. Myhre, and others.

3 “The United States Attorney is the representative not of an ordinary party to a  
4 controversy; and whose interest, therefore, in a criminal prosecution is not that it shall  
5 win a case, but that justice shall be done. As such, he is in a peculiar and very definite  
6 sense the servant of the law, the twofold aim of which is that guilt shall not escape or  
7 innocence suffer. He may prosecute with earnestness and vigor-indeed, he should do  
8 so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as  
9 much his duty to refrain from improper methods calculated to produce a wrongful  
10 conviction as it is to use every legitimate means to bring about a just one”. (Berger v.  
11 United States, 295 U.S. 78, 88, 55 S. Ct. 629, 633, 79 L. Ed. 1314 (1935).  
12  
13

14 Steven Myhre, a morally bankrupt man and ABA BAR attorney, has shown himself in  
15 this case, as well as the Chapman case, to be a lawyer without “integrity” (ABA Ethics Codes  
16 1-1). Rather than to rely on competence Myhre has resorted to engage himself in “illegal and  
17 morally reprehensible conduct” (ABA Ethics Codes 1-5). His willful actions of fraud and  
18 concealment are evidence that his “respect for the law” is lower than a “platitude” (ABA  
19 Ethics Codes 1-5).  
20

21 Additionally, Steven Myhre, is in violation of each of the AMERICAN BAR  
22 ASSOCIATION’s Disciplinary Rules, DR 1-102(A), Misconduct, “A lawyer shall not:  
23 Violate a disciplinary rule; Circumvent a disciplinary rule through actions of another; Engage  
24 in illegal conduct involving moral turpitude; Engage in conduct involving dishonesty, fraud,  
25  
26

1 deceit, or misrepresentation; Engage in conduct that is prejudicial to the administration of  
2 justice; Engage in any other conduct that adversely reflects on his fitness to practice law”

3 **CONCLUSION**

4 Based upon the aforementioned provisions of applicable law and legal standard, the  
5 Court has a duty to dismiss with prejudice the Superseding Indictment.  
6

7 Executed on the 29<sup>th</sup> of December, 2017

*/s/ Ryan c.*  
ryan-c: family of Bundy  
In care of postal address:  
Post Office Suite 7447  
Bunkerville, Nevada  
Email: C4CFForall@gmail.com  
Cell Phone: (435) 701-1013

11 \* \* \* \*

12 ORDER TO FOLLOW  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26



1 ryan-c: family of Bundy  
2 In care of postal address:  
3 Post Office Suite 7447  
4 Bunkerville, Nevada  
5 Email: C4CFForall@gmail.com  
6 Cell Phone: (435) 701-1013  
7 Sui Juris

8 **UNITED STATES DISTRICT COURT**  
9 **DISTRICT OF NEVADA**

10 UNITED STATES OF AMERICA,  
11 Plaintiff,  
12 v.  
13 RYAN C. BUNDY  
14 Defendant.

15 Case No. 2:16-cr-00046-GMN-PAL  
16 **ORDER**

17 **ryan-c: family of Bundy**, in/on behalf of the defendant, RYAN C BUNDY, having filed a  
18 Mandate to Dismiss with Prejudice the Superseding Indictment in the above captioned matter,  
19 the Court having reviewed the Mandate, attachments thereto, matters of Judicial Notice and  
20 based upon the entire record on file, hereby enters its Order, Findings of fact, and Conclusions  
21 of Law.

22 **Findings of Fact**

- 23 1. The Bundy family continues to ranch and has ranched, and on the Bunkerville/Gold  
24 Butte Range since 1877; and,
- 25 2. The Cliven Bundy family possess prescriptive rights to the beneficial use of the  
26 grazing forage as well as vested rights to the water(s) in the Bunkerville/Gold Butte  
Range since 1877 uninterrupted; and,

- 1 3. Cliven D Bundy owns Vested Rights for Stock Watering purposes on the  
2 Bunkerville/Gold Butte Range ownership is recorded with “the State of Nevada,  
3 Division of Water Resource”.; and,  
4
- 5 4. These Vested Rights belonging to Patriarch Cliven D Bundy are memorialized in/on  
6 the public record with ”the State of Nevada, Division of Water Resources”; evidence  
7 of Appropriation of Vested Stock Water Rights Numbers see: V08974, V08975,  
8 V08976, V08977, V08978, V08979, V08980, V08981, V08982, V08983, V08984;  
9 and,  
10
- 11 5. All agencies, including but not limited to the Bureau of Land management, are aware  
12 of the eleven (11) Vested Rights for Stock Watering purposes on the Bunkerville/Gold  
13 Butte Range belonging to Patriarch Cliven D Bundy as on record with “the State of  
14 Nevada, Division of Water Resources” by and through constructive notice; notice to  
15 the principal is notice to the agent and notice to the agent is notice to the principal.  
16

17 **Conclusions of Law**

- 18 1. Pursuant to and in conjunction with the Order of the Court of December 20, 2017, the  
19 Court finds there are multiple Brady violations. Brady v. Maryland, 373 US 83 -  
20 Supreme Court 1963
- 21 2. Pursuant to and in conjunction with the Order of the Court of December 20, 2017, the  
22 Court finds there are multiple Giglio violations. Giglio v. United States, 405 US 150 -  
23 Supreme Court 1972
- 24 3. Pursuant to and in conjunction with the Order of the Court of December 20, 2017, and  
25 the aforementioned Brady and Giglio violations, the Court further finds the Brady and  
26

1 Giglio violations "subvert[ed] the due process rights that the defendants are  
2 guaranteed by the Constitution" and also the "Sixth Amendment right to confront  
3 adverse witnesses."

4 US v. Chapman, 524 F. 3d 1073, 1084 - Court of Appeals, 9th Circuit 2008

5 **Whereby**, based upon this Court's finding of "flagrant prosecutorial misconduct[.]"  
6 the Court exercises its duty "to implement a remedy for the violation of a recognized statutory  
7 or constitutional right; to preserve judicial integrity by ensuring that a conviction rests on  
8 appropriate considerations validly before a jury; and to deter future illegal conduct." US v.  
9 Chapman, Id. at 1085

10 **IT IS THEREFORE ORDERED** that ryan-c: family of Bundy's Mandate to Dismiss  
11 with prejudice the Superseding Indictment is hereby granted.

12 **IT IS FURTHER ORDERED** that a certificate of appeal-ability is **DENIED**.

13 DATED: January \_\_\_\_\_, 2018.

14  
15  
16  
17  
18 \_\_\_\_\_  
19 GLORIA M. NAVARRO  
20 United States District Judge  
21 District of Nevada  
22  
23  
24  
25  
26

**CERTIFICATE OF ELECTRONIC SERVICE**

The undersigned hereby certifies that she served an electronic copy of the above and foregoing **MANDATE FOR DISMISSAL OF SUPERSEDING INDICTMENT AND ORDER** by electronic service (ECF) to all counsel of record on December 29, 2017.

/s/ Maysoun Fletcher

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**REPORTER'S TRANSCRIPT OF PROCEEDINGS**

**Jury Trial, Day 16 - Case No. 2:16-cr-46-GMN-PAL**

**United States of America**

**versus**

**Cliven Bundy, Ryan Bundy, Ammon Bundy, and Ryan Payne.**

**EXHIBIT A**

2:16-cr-46-GMN-PAL

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,	)	CASE NO. 2:16-CR-46-GMN-PAL
	)	
Plaintiff,	)	LAS VEGAS, NEVADA
	)	DECEMBER 20, 2017
vs.	)	8:30 A.M.
	)	COURTROOM 7C
CLIVEN D. BUNDY (1),	)	
RYAN C. BUNDY (2),	)	JURY TRIAL, DAY 16
AMMON E. BUNDY (3),	)	
RYAN W. PAYNE (4),	)	
	)	
DEFENDANTS.	)	
	)	
	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE GLORIA M. NAVARRO,  
UNITED STATES DISTRICT CHIEF JUDGE

APPEARANCES:  
FOR THE PLAINTIFF:

**STEVEN W. MYHRE, AUSA**  
**DANIEL SCHIESS, AUSA**  
**NADIA JANJUA AHMED, AUSA**  
United States Attorney's Office  
501 Las Vegas Boulevard South, Suite 1100  
Las Vegas, Nevada 89101  
(702) 388-6336

(continued next page)

Court Reporter: Patricia L. Ganci, RMR, CRR, CCR 937  
United States District Court  
333 Las Vegas Boulevard South, Room 1334  
Las Vegas, Nevada 89101  
PG@nvd.uscourts.gov

Proceedings reported by machine shorthand. Transcript produced  
by computer-aided transcription.

1 APPEARANCES CONTINUED:

2 For Defendant Cliven D. Bundy:

3           **BRET O. WHIPPLE, ESQ.**  
4           **JUSTICE LAW CENTER**  
5           1100 S. 10th Street  
6           Las Vegas, Nevada 89104  
7           (702) 257-9500

8 For Defendant Ryan C. Bundy:

9           **RYAN C. BUNDY**  
10           **PRO SE**  
11           2190 East Mesquite Ave.  
12           Pahrump, Nevada 89060

13           **MAYSOUN FLETCHER, ESQ.**  
14           **THE FLETCHER LAW FIRM**  
15           5510 South Fort Apache, Suite 5  
16           Las Vegas, Nevada 89104  
17           (702) 835-1542

18 For Defendant Ammon E. Bundy:

19           **DANIEL HILL, ESQ.**  
20           **HILL LAW FIRM**  
21           228 S. 4th Street, 3rd Floor  
22           Las Vegas, Nevada 89101  
23           (702) 848-5000

24           **J. MORGAN PHILPOT, ESQ.**  
25           **JM PHILPOT LAW**  
          1063 E. Alpine Drive  
          Alpine, Utah 84004  
          (801) 891-4499

For Defendant Ryan W. Payne:

**BRENDA WEKSLER, ESQ.**  
          **RYAN NORWOOD, ESQ.**  
          **FEDERAL PUBLIC DEFENDER'S OFFICE**  
          411 E. Bonneville Avenue, Suite 250  
          Las Vegas, Nevada 89101  
          (702) 388-6577

2:16-cr-46-GMN-PAL

1 LAS VEGAS, NEVADA; WEDNESDAY, DECEMBER 20, 2017; 8:30 A.M.

2 --oOo--

3 P R O C E E D I N G S

4 THE COURT: Thank you. You may be seated.

5 COURTROOM ADMINISTRATOR: This is the time set for Jury  
6 Trial, Day 16, in Case No. 2:16-cr-46-GMN-PAL, United States of  
7 America versus Cliven Bundy, Ryan Bundy, Ammon Bundy, and Ryan  
8 Payne.

9 Counsel, please make your appearances for the record.

10 MR. MYHRE: Good morning, Your Honor. Steven Myhre,  
11 Nadia Ahmed, and Dan Schiess on behalf of the United States.

12 THE COURT: Good morning.

13 MR. WHIPPLE: Good morning, Your Honor. Bret Whipple  
14 on behalf of Mr. Cliven Bundy.

15 THE COURT: Good morning.

16 MR. RYAN BUNDY: Good morning. Ryan C., madam, of the  
17 Bundy family here by special appearance, with Maysoun Fletcher  
18 assisting.

19 THE COURT: Good morning.

20 MR. HILL: Good morning, Your Honor. Dan Hill along  
21 with Morgan Philpot on behalf of Ammon Bundy.

22 THE COURT: Good morning.

23 MS. WEKSLER: Good morning, Your Honor. Brenda Weksler  
24 and Ryan Norwood on behalf of Mr. Payne.

25 THE COURT: Good morning.



—2:16-cr-46-GMN-PAL—

1           The Court has received all of the documents regarding  
2 the motion, response, replies, sur-reply, and response to  
3 sur-reply. And the Court is going to be providing its decision  
4 orally to save time rather than trying to perfect a written  
5 order.

6           I do want to just make a preliminary note that, as  
7 always, please remember that it is not appropriate to express  
8 your opinion either verbally or through body language. This is  
9 a courtroom and not a sporting event, and any disrespectful or  
10 distracting, inappropriate outbursts or body language will be  
11 justification for the Court's security officers or the marshals  
12 to remove you from the courtroom and you may not be able to  
13 reenter the courtroom.

14           All right. Well, there is two different sets of  
15 motions. The first one is Defendant Ammon Bundy's second motion  
16 for mistrial, which is No. 2856, and also Mr. Payne's motion to  
17 dismiss, which is No. 2883 and 2906.

18           (Court conferring with court reporter.)

19           THE COURT: All right. If the folks in the back row,  
20 if you can't hear me at any point, please raise your hand  
21 because I'm being told that the microphone is coming in and out.

22           All right. So first let's begin with the Brady legal  
23 standard. Under Brady, prosecutors are responsible for  
24 disclosing evidence that is both, number one, favorable to the  
25 accused and, number two, material either to guilt or to

2:16-cr-46-GMN-PAL

1 punishment. And this is based on the United States versus  
2 Bagley, B-A-G-L-E-Y. Evidence is material if there is a  
3 reasonable probability that the disclosure of the evidence would  
4 have changed the outcome of the case. A reasonable probability  
5 is a probability sufficient to undermine confidence in the  
6 outcome.

7           Because the definitions of materiality as applied to  
8 appellate review are not appropriate in the pretextual pretrial  
9 discovery context, the Court does rely on the plain meaning of  
10 the evidence favorable to the accused, as discussed in Brady.  
11 The meaning of favorable is not difficult to determine in the  
12 Brady context. Favorable evidence is that which relates to  
13 guilt or punishment and which tends to help the defense by  
14 either bolstering the defense case or by impeaching prosecution  
15 witnesses, and this is pursuant to Giglio.

16           The Court notes that, again, in the pretrial context it  
17 would be inappropriate to suppress evidence because it seems  
18 insufficient to alter a jury's verdict. And, further, the  
19 government, where doubt exists as to the usefulness of the  
20 evidence, is to resolve such doubts in favor of full disclosure.  
21 And this is pursuant to U.S. v. Van Brandy, citing Goldberg.

22           Thus, the government is obligated to disclose all  
23 evidence relating to guilt or punishment which might reasonably  
24 be considered favorable to the defendant's case, citing United  
25 States v. Sudikoff, which is a Central California case.

2:16-cr-46-GMN-PAL

1           Brady asks the question whether the evidence is  
2 favorable -- whether evidence is useful, favorable, or tends to  
3 negate the guilt or mitigate the offense. These are semantic  
4 distinctions without difference in a pretextual context -- in  
5 pretrial context. And I'm citing United States v. Acosta, a  
6 District of Nevada case.

7           Therefore, when determining whether the prosecution has  
8 violated its pretrial or trial obligations, as opposed to post  
9 trial, the Court evaluates whether the evidence is favorable to  
10 the defense, whether it is evidence that helps bolster the  
11 defense case or impeach the prosecutor's witnesses, and the  
12 evidence need not be admissible so long as it is reasonably  
13 likely to lead to discoverable evidence. And this is citing  
14 U.S. v. Price.

15           The failure to turn over such evidence violates due  
16 process, citing *Wearry v. Cain*. *Wearry* is W-E-A-R-R-Y, versus  
17 *Cain*, C-A-I-N, 2016 U.S. Supreme Court case.

18           Someone has a cell phone on. Please turn it off.  
19 Thank you. Nope, it's back on. All right. Thank you.

20           The prosecutor's duty to disclose material evidence  
21 favorable to the defense is applicable, even though there has  
22 been no request by the accused, and it encompasses impeachment  
23 evidence as well as exculpatory evidence, citing *Strickler v.*  
24 *Greene*.

25           In the case of the late disclosure of favorable

2:16-cr-46-GMN-PAL

1 evidence, the Court looks at whether the evidence was revealed  
2 in time for the defendant to make use of it, citing *Bielanski v.*  
3 *County of Kane*. And *Bielanski* is spelled B-I-E-L-A-N-S-K-I.

4 Brady evidence can be handed over on the eve of trial  
5 or even during trial so long as the defendant is able to use it  
6 to his or her advantage, citing *United States v. Warren*,  
7 W-A-R-R-E-N.

8 For claims under Brady, the prosecutor's personal  
9 knowledge does not define the limits of constitutional  
10 liability. Brady imposes a duty on prosecutors to learn of  
11 material exculpatory and impeachment evidence in the possession  
12 of other agencies as well. Brady suppression occurs when the  
13 government fails to turn over even evidence that is known only  
14 to police investigators and not to the prosecutors themselves,  
15 citing *Youngblood v. West Virginia*, which is quoting *Kyles v.*  
16 *Whitley*, and also *Browning v. Baker*.

17 The prosecutor will be deemed to have knowledge of and  
18 access to anything in the possession, custody, or control of any  
19 federal agency participating in the same investigation of the  
20 defendant, citing *United States v. Bryan*, B-R-Y-A-N, Ninth  
21 Circuit case.

22 Exculpatory evidence cannot be kept out of the hands of  
23 the defense just because the prosecutor does not have it, where  
24 an investigating agency does. That would undermine Brady by  
25 allowing the investigating agency to prevent production by

2:16-cr-46-GMN-PAL

1 keeping a report out of the prosecutor's hands until the agency  
2 decided the prosecutor ought to have it, and by allowing the  
3 prosecutor to tell the investigators not to give him certain  
4 information on material unless he asks for them. And this is  
5 citing United States v. Blanco, B-L-A-N-C-O.

6 So the Brady violation has three elements. The first  
7 is that there must be evidence that is favorable to the defense  
8 either because it is exculpatory, helps bolster the defense, or  
9 impeach. Number two, the Government must have willfully or  
10 inadvertently failed to produce the evidence and, three, the  
11 suppression must have prejudiced the defendant. And prejudice  
12 exists when the government's evidentiary suppression undermines  
13 confidence in the outcome of the trial. This is citing Milke v.  
14 Ryan, M-I-L-K-E, v. Ryan, Ninth Circuit case (2013).

15 So the Court is now going to address each piece of  
16 untimely evidence individually and discuss whether or not a  
17 Brady violation has been found. First, I'm grouping together  
18 the information relating to the surveillance camera. So there  
19 are two specific articles here. First is the FBI Law  
20 Enforcement Operation Order, specifically on page 7, and there's  
21 also an FBI 302 report prepared by the FBI about an interview  
22 with Egbert.

23 The Court does find that this information is favorable  
24 to the accused and potentially exculpatory. It does bolster the  
25 defense and is useful to rebut the Government's theory. The

—2:16-cr-46-GMN-PAL—

1 evidence of a surveillance camera, its location, the proximity  
2 to the home, and that its intended purpose was to surveil the  
3 Bundy home as opposed to incidentally viewing the Bundy home,  
4 this information potentially rebuts the allegations of the  
5 defendants' deceit which is repeated in the superseding  
6 indictment numerous times, including the conspiracy count as an  
7 overt act in allegations number 59, 84, 88, and 92 regarding  
8 false representations that were alleged about the Bundys being  
9 surrounded, about the BLM pointing guns at them, and using  
10 snipers.

11           The Court does find that this information was provided  
12 untimely and should have been provided by October 1st, which is  
13 30 days before trial. The Law Enforcement Operation Order is  
14 dated March 28th, 2014, and was available prior to the discovery  
15 deadline of October 1st.

16           Now, the Court also finds that the disclosure was  
17 willful. And, remember, it doesn't matter for this purpose  
18 whether it's willful or inadvertent, but the Court does analyze  
19 that and wants to provide that information to the parties. The  
20 Court does find that it was a willful disclosure/suppression of  
21 this potentially exculpatory, favorable, and material  
22 information because all of the documents were prepared by the  
23 FBI. The operation order was prepared by the FBI on March 28th  
24 of 2014, and the FBI 302 report about the interview with Egbert  
25 was prepared by the FBI. And it reveals that the FBI SWAT team

2:16-cr-46-GMN-PAL

1 placed the surveillance camera, repaired it, relocated it, and  
2 that the FBI monitored the live feed from the camera.

3           Also, the U.S. Attorney's Office was aware of the  
4 camera, at least the latest information based on the Ryan Bundy  
5 interview, and did not follow-up or provide any information  
6 about the reports or the recording that was created. "The  
7 recording" being the notes; not a video recording in the sense  
8 of a tape that can be replayed. But this information that was  
9 created from the camera view was not provided. And, further,  
10 the Government falsely represented that the camera view of the  
11 Bundy home was incidental and not intentional, and claimed that  
12 the defendants' request for the information was a fantastic  
13 fishing expedition.

14           As to the prejudice, the Court does find that this  
15 suppression has undermined the confidence in the outcome of the  
16 case; that the Defense represents that they would have proposed  
17 different jury questions for voir dire; and they would have  
18 exercised their peremptory challenges differently; and provided  
19 a stronger opening statement. The Court notes that Ammon Bundy  
20 did not provide an opening statement so that would not apply to  
21 him, but the other defendants did.

22           (Court conferring with court reporter.)

23           THE COURT: The next group is the BLM, and I have in  
24 quotations which I realize you can't see, snipers. Whether or  
25 not they're snipers or not, whether they're called snipers,

2:16-cr-46-GMN-PAL

1 technically snipers, or not is not the material question here.  
2 The claims made on the -- in the superseding indictment about  
3 the defendants falsely representing snipers is the question and  
4 whether or not there were individuals who could have reasonably  
5 appeared to be snipers whether or not, in fact, they were.

6           So here we have the FBI 302 about BLM Special Agent  
7 Delmolino, and the FBI prepared it. That was prepared by FBI  
8 Agent Willis and drafted March 3rd of 2015, but not provided to  
9 the Defense until November of 2017. There was also new 302s  
10 provided recently on December 15th of 2017. Again, these 302s  
11 are created by the FBI. The first one is a February 9th, 2015,  
12 302 about BLM Special Agent Felix observing the LPOP and then a  
13 May 14, 2014, 302 report created by the FBI about BLM Racker and  
14 whether or not he was assigned to an LPOP, Listening Post  
15 Observation Post.

16           (Court reporter clarification.)

17           THE COURT: I'm sorry. The parties use these acronyms,  
18 and now I have picked them up. And I apologize that I'm using  
19 letters instead of words.

20           So the Court does find that this information provided  
21 in those documents is favorable to the accused and potentially  
22 exculpatory. It does bolster the defense and is useful to rebut  
23 the Government's theory. For example, the March 3rd, 2015, 302  
24 prepared by the FBI provides information regarding BLM  
25 individuals wearing tactical gear, not plain clothes, carrying



—2:16-cr-46-GMN-PAL—

1 AR-15s assigned to the LPOP on April 5th and 6th of 2014, which  
2 bolsters the defense because it potentially rebuts the  
3 indictment's allegations of overt acts, including false  
4 pretextual misrepresentations that the Government claims the  
5 Defense made about snipers, Government snipers, isolating the  
6 Bundy family and defendants using deceit and deception to  
7 normally recruit gunmen.

8           This information was provided untimely. Should have  
9 been provided by October 1st, 30 days before trial. And the  
10 Court does find that the suppression was a willful failure to  
11 disclose because the FBI created these documents. They were  
12 aware of the evidence and chose not to disclose it. And they  
13 were not provided until 11/7/17. And the AUSA, in fact, was  
14 present during the March 3rd, 2015, interview documented by FBI  
15 Agent Willis.

16           And as to the FBI 302 dated February 9th of 2015 about  
17 Felix and the March 14th, 2014, FBI report about Racker, these  
18 were newly provided December 15th of 2017, far after the October  
19 1st deadline, despite the fact they were created much earlier.

20           The Court does find that there is prejudice; that the  
21 suppression has undermined the confidence in the outcome of the  
22 trial; that the Defense represents that they would have proposed  
23 different questions for the jury voir dire, exercised their  
24 challenges differently, and provided a stronger opening  
25 statement. This suppression prevented the Defense from using

—2:16-cr-46-GMN-PAL—

1 the information about these snipers or alleged snipers or  
2 appearance of snipers in their opening arguments. And it is  
3 useful to rebut elements in the indictment. Therefore, the  
4 Court finds that this information does undermine the outcome of  
5 the case in favor of the Defense.

6           The next group is the unredacted FBI TOC log. The  
7 Court does find that this is favorable information, potentially  
8 exculpatory. It bolsters the defense and is useful to rebut the  
9 Government's theory. More specifically, it provides information  
10 about the family being surveilled by a camera, and specifically  
11 lists three log entries using the word "snipers," including  
12 snipers being inserted and that they were on standby.

13           This information, had it been timely provided, would  
14 have been potentially useful to the Defense to rebut the  
15 indictment's overt acts, specifically the allegations regarding  
16 false pretextual misrepresentations being made by defendants  
17 about Government snipers isolating the Bundy family. This  
18 should have been provided by October 1st, which was 30 days  
19 before trial, but it was not.

20           The Court does find that the suppression was willful.  
21 It was a failure to disclose the information knowing that this  
22 information existed, again, because the Government claims that  
23 it was an inadvertent failure to disclose because the report was  
24 kept on a thumb drive inside the TOC vehicle and was not turned  
25 over to the prosecution team. So the "prosecution team" being

2:16-cr-46-GMN-PAL

1 the U.S. attorneys, the prosecutors.

2           However, the law is clear that the Government is still  
3 responsible for information from the investigative agencies, in  
4 this case the FBI. The FBI created the documents, was aware of  
5 the evidence, chose not to disclose it. It was not provided  
6 until November 17th of 2017. And the Court finds further  
7 evidence of willfulness in the fact that the FBI 302 about Brunk  
8 that was created by FBI Agent Pratt on April 14th of 2014  
9 mentions a BLM sniper, but then 10 months later in February,  
10 February 6th of 2015, the FBI -- Agent Willis drafted a new  
11 report, a new 302 report, to clarify that Brunk had never said  
12 he was a spotter for the sniper. And the AUSAs, the  
13 prosecutors, were present at this later interview which was  
14 documented specifically to be held for the purpose of clarifying  
15 the earlier interview answers and whether or not the word  
16 "sniper" had been used.

17           This coupled with the Government's strong insistence in  
18 prior trials that no snipers existed justifies the Court's  
19 conclusion that the nondisclosure was willful.

20           The Court also finds that there was prejudice and that  
21 the suppression does now undermine the confidence in the outcome  
22 of the trial. The Defense represents they would have proposed  
23 different voir dire questions, exercised their challenges  
24 differently, and provided a stronger opening statement. In  
25 fact, the Defense specifically -- and I'm not going to quote,

2:16-cr-46-GMN-PAL

1 but specifically notes which potential jurors provided specific  
2 answers that would have been viewed and weighted differently by  
3 the Defense and how they would have exercised their challenges  
4 differently. Likewise, the Defense states that it would have  
5 created a stronger opening statement with this information had  
6 it been timely provided.

7           The suppression did prevent the Defense from using the  
8 information about the snipers in the opening statement and  
9 rebutting elements of the indictment, and the information, the  
10 Court finds, does undermine the outcome of the case in favor of  
11 the Defense.

12           Also part of the sniper allegations is an FBI 302  
13 prepared regarding Delmolino. This one is dated November 20th  
14 of 2017, and the Court does not find this to be Brady. There's  
15 also maps created during the interview, and because they were  
16 created during the interview on the 20th and provided  
17 immediately thereafter, the Court does not find those to be  
18 Brady information that was untimely provided.

19           There were, however, maps provided on December 15th of  
20 2017. These are maps that were in existence for dates in  
21 question. These do appear to be Brady information. They do  
22 appear to have been withheld willfully and they do prejudice the  
23 Defense.

24           Likewise, there's a 302 about Swanson that was prepared  
25 by the FBI. It's dated November 20th of 2017. It clarifies the

2:16-cr-46-GMN-PAL

1 role that was assigned to Swanson and that it was different from  
2 that that was reflected originally in the organizational chart.  
3 And the Court does not find this to be Brady information.

4           Moving on now to the subject of threat assessments.  
5 There was a threat assessment that was provided. However, there  
6 are numerous other threat assessment reports that were not  
7 provided. We have the 2012 FBI BAU Threat Assessment; also 2012  
8 Southern Nevada Counterterrorism Threat Assessment; the third  
9 one is the March 24th, 2014, FBI order; fourth, we have the Gold  
10 Butte Impoundment Risk Assessment; and the BLM OLES Threat  
11 Assessment.

12           The Court does find that these provide information that  
13 is favorable to the accused and potentially exculpatory. The  
14 information does bolster the defense and is useful to rebut the  
15 Government's theory.

16           Specifically, turning first to the 2012 FBI BAU Threat  
17 Assessment. That document provided favorable information about  
18 the Bundys' desire for a nonviolent resolution. The 2012  
19 Southern Nevada Counterterrorism Threat Assessment noted that  
20 the BLM antagonizes the Bundy family, giving the community an  
21 unfavorable opinion of the Federal Government, and that they are  
22 trying to provoke a conflict, and that the likelihood of  
23 violence from Cliven Bundy is minimal.

24           The March 24th, 2014, FBI order relies on the 2012  
25 assessment that the Bundy family was not violent, but if backed

2:16-cr-46-GMN-PAL

1 into a corner, they could be.

2           And the Gold Butte Impoundment Risk Assessment lists a  
3 strategic communication plan to allow the BLM and the NPS, the  
4 National Park Service, to educate the public and get ahead of  
5 negative publicity. The failure of the BLM to implement this  
6 plan bolsters the Defense theory that even if the information  
7 received by Mr. Payne from the Bundy media campaign was  
8 incorrect, that no alternative information was available for him  
9 to discover the truth directly from the Government.

10           And, finally, the undated BLM OLES Threat Assessment  
11 drafted between 2011 and 2012 discusses the nonviolent nature of  
12 the Bundy family, quote, Will probably get in your face, but not  
13 get into a shootout, end quote.

14           All of this information undermines the Government  
15 theory and the witness testimony about whether the Bundys  
16 actually posed a threat in relation to the 2012 and 2014 cattle  
17 impoundment operations and whether the BLM acted reasonably. It  
18 is both exculpatory evidence and potentially impeachment  
19 information, and it was not provided before October 30th of  
20 2017.

21           The Court does find that there was a willful failure to  
22 disclose the information. Most, if not all, of this information  
23 was in the possession of the FBI. It was difficult to  
24 understand why this -- these would not be seen as material by  
25 the Government since it was referenced in the 2014 FBI BAU that

2:16-cr-46-GMN-PAL

1 was timely disclosed. Therefore, this information was in the  
2 hands of the FBI, even when it's not authored by the FBI,  
3 because it's mentioned by the FBI in its own report.

4           Regardless, these documents also were requested by the  
5 defendants in an e-mail dated July 5th, 2017, and later again  
6 during trial and after the testimony by Ms. Rugwell. And the  
7 Government's response was that this information was not  
8 material.

9           The Court also finds that there's prejudice and that  
10 the suppression has undermined the confidence in the outcome of  
11 the trial. The defendant does represent that this information  
12 would have been used to cross-examine Ms. Rugwell; that there  
13 would have been proposed different questions for the jury voir  
14 dire; the exercise of the peremptory challenges would have been  
15 completed differently; and this also provides a stronger opening  
16 statement that they were prevented from giving, using  
17 information about snipers in their opening arguments and  
18 rebutting elements of the indictment. And this information does  
19 undermine the outcome of the case in favor of the Defense.

20           Next we have the Internal Affairs information. This  
21 was information that originally was misidentified as being an  
22 OIG report. This was information that came to light through  
23 another document wherein in a meeting it is memorialized that  
24 someone had requested -- well, that someone had noted that there  
25 was a prior OIG report that made reference to specific

—2:16-cr-46-GMN-PAL—

1 information. And the Government has found, in fact, that it was  
2 not an OIG report; that it was an Internal Affairs document  
3 based on an allegation provided.

4           The Court does find that this information in the  
5 Internal Affairs report is favorable to the accused; that it is  
6 potentially exculpatory; it does bolster the defense; and is  
7 useful to rebut the Government's theory. This particular  
8 information -- Internal Affairs report documents that  
9 Special-Agent-In-Charge Dan Love requested for the FBI to place  
10 a surveillance camera. The report allegedly also suggests that  
11 there was no documented injury to the tortoises by grazing, and  
12 this information would have been useful to potentially impeach  
13 Ms. Rugwell who testified that there had been a detrimental  
14 impact on the desert tortoise habitat.

15           The Court also finds that this information was  
16 willfully suppressed, despite representations by the Government  
17 that this report was an urban legend and a shiny object to  
18 distract the Court. The report does exist. Now, the Court does  
19 note that the Government did provide the information, did locate  
20 it, despite the fact that it was misnamed. The Government,  
21 however, did know right away that it was misidentified by Dan  
22 Love as an OIG report, which has not been explained, and it did  
23 not explain how Dan Love knew about the Internal Affairs report.

24           This information, the Court finds, was available to the  
25 Government, and even if it was inadvertently suppressed, it



2:16-cr-46-GMN-PAL

1 would still meet the Brady standard.

2           The report was 500 pages long and not disclosed until  
3 December 8th of 2017. The Court does find that there is  
4 prejudice to the Defense due to the late and untimely  
5 disclosure. The suppression has now undermined the confidence  
6 in the outcome of the trial for the same reasons previously  
7 stated.

8           So, in summary, the Defense provides in their document,  
9 which is a response to the sur-reply, No. 3027, a table of  
10 evidence that was produced between December 12th and December  
11 15th of 2017. Also they represent that since October 10th of  
12 2017 the Defense has received 3,300 pages of discovery, and even  
13 excluding the OIG reports which amount to approximately 2,000  
14 pages, that the Defense has still had to review over 1,000  
15 pages.

16           The Court does find that there are numerous other  
17 documents which were provided timely such as the 302 created by  
18 FBI Special Agent Gavin. This is dated November 10th of 2017  
19 and was provided as soon as created. The same for the 302  
20 created by the FBI regarding BLM Special Agent Scott Swanson.  
21 That report is dated November 20th, 2017, and was provided as  
22 soon as created. Also there is a 302 by the FBI regarding BLM  
23 Special Agent Delmolino. That document is dated November 20th  
24 of 2017 and was provided as soon as it was created. And there  
25 are also FBI notes that were created in preparation for the

2:16-cr-46-GMN-PAL

1 testimony of Mary Jo Rugwell, and these are Jencks material.

2           There still seems to be outstanding discovery. I  
3 noted, trying to match up from the different documents, that the  
4 name of the individual who prepared the TOC log which was  
5 requested on November 13th and again on November 14th of 2017  
6 does not appear to have been provided. Also information  
7 regarding the other BLM officers assigned to do security in a  
8 car south of the Bundy house is mentioned by the FBI's 302 about  
9 Special Agent Swanson, that information does not appear to be  
10 provided.

11           But I understand that during this break information has  
12 been provided by the Government to the Defense. So it might be  
13 that we are not keeping up with how many --

14           MS. WEKSLER: Judge, so that the record is clear, that  
15 information has been provided.

16           THE COURT: Thank you. That was what I was -- as I was  
17 going through, I was thinking, Well, maybe it has been by now,  
18 but I didn't have proof of that yet. So I wanted to make note  
19 of it. So thank you for that representation.

20           So, the effect of this suppressed information. The  
21 suppressed evidence is considered collectively; not item by  
22 item. I did consider it item by item or subject by subject so  
23 that I could better under -- better understand and interpret and  
24 analyze whether it was Brady and whether it was timely provided.  
25 In determining its materiality pursuant to Kyles v. Whitley, we

—2:16-cr-46-GMN-PAL—

1 do look at it collectively and I did try to group them.

2           The Defense represents that since October 10th of 2017  
3 they have been provided this 3,300 pages of discovery; not all  
4 of it qualifies as Brady or Giglio information. However, the  
5 Government's failure to timely disclose the evidence reviewed by  
6 the Court is prejudicial in light of the information's  
7 importance to the Defense strategy. And the Court does find  
8 that there have been multiple Brady violations.

9           So in fashioning a remedy for these Brady violations,  
10 the Court does consider a number of different options. First of  
11 all, allowing the defendant to recall the Government witnesses  
12 that have already testified so that they have the opportunity to  
13 impeach these witnesses with newly-disclosed information.

14           The Court is worried about the jury's memory and the  
15 jury's confusion as a result of the recalling witnesses, but  
16 recalling of witness would be an appropriate remedy. However,  
17 the remedy would not cure the prejudice claimed by the  
18 defendants regarding the jury voir dire questions that were not  
19 asked, the peremptory challenges that would have been exercised  
20 differently, and the strength of the opening statements which  
21 could have been more unequivocal. Therefore, recalling the  
22 prior witnesses is an impractical remedy and not sufficient to  
23 cure the prejudice.

24           The second remedy that the Court analyzed is a  
25 continuance to allow the defendants time to review all of this

—2:16-cr-46-GMN-PAL—

1 newly-discovered evidence. Again, the continuance would likely  
2 not be sufficient of a remedy. The continuance would most  
3 likely require a new jury to be empanelled as a result of the  
4 delay and the length of this particular trial as opposed to in  
5 other trial situations where a continuance would be more  
6 appropriate.

7           In this case the jury was pre-vetted for a particular  
8 amount of time, and they were amenable to making themselves  
9 available for this amount of time. We gave them specific  
10 parameters and calendar dates. Therefore, a continuance would  
11 effectively lead to a mistrial. Furthermore, this does not  
12 suffice to cure the prejudice claimed by the defendants  
13 regarding the voir dire questions, the peremptory challenges,  
14 and the opening statements.

15           The last option that the Court looks at is the mistrial  
16 option. And the mistrial could be in this case declared both  
17 because of the Brady violations because they are constitutional  
18 due process violations, but also the manifest necessity  
19 exception applies whenever the judge believes to a high degree  
20 that a new trial is needed. And I am quoting from Chapman.

21           Based on evidence presented in the record and the  
22 information determined to be a Brady violation, the Court does  
23 regrettably believe that a mistrial in this case is the most  
24 suitable and the only remedy that is available. In this case  
25 the Court does find that a fair trial at this point is

2:16-cr-46-GMN-PAL

1 impossible with this particular jury and that a mistrial is  
2 required to at least a high degree of necessity, quoting Arizona  
3 v. Washington. And it is hereby ordered that the defendants'  
4 request for a mistrial is granted based on manifest necessity.

5           The joinders to the motion, to Motion No. 2856, are  
6 granted to the extent that they are requesting the same relief.  
7 For example, Motion for Joinder 2865 is granted. There is a  
8 Joinder No. 2907 which requests other information in addition to  
9 the mistrial, and so that inform -- that request is not granted,  
10 but to the extent that the joinder in 2907 asks for the same  
11 relief, then the joinder's relief is granted. Also, there's a  
12 Motion for Joinder No. 2925 that is granted.

13           There is a joinder to 2609, which is Joinder No. 2924,  
14 and that is granted. And then there's a Motion for Joinder  
15 No. 2916 which also supplements and provides new information.  
16 So 2916 is granted to the extent that it requests the same  
17 remedy as 2609; but not otherwise.

18           So the Court is going to call the jury back in at 1  
19 o'clock, which is when they are scheduled to be here and ...

20           (Court conferring with courtroom administrator.)

21           THE COURT: Okay. So the jury is here now. So I will  
22 call them in and advise them of the mistrial, thank them for --  
23 not right now, though.

24           COURTROOM ADMINISTRATOR: Okay.

25           THE COURT: Sorry.

2:16-cr-46-GMN-PAL

1           And thank them for their service, but first I want to  
2 set the timeline here. So I do need briefing on whether the  
3 mistrial should be with or without prejudice. I am going to set  
4 a calendar call and a trial date because the Speedy Trial Act  
5 does require that a mistrial [sic] be held within 70 days of the  
6 declaration of a mistrial. So I will set a calendar call and a  
7 trial date.

8           Aaron, do you have that?

9           COURTROOM ADMINISTRATOR: Yes, Your Honor. Calendar  
10 call will be Thursday, February 15th, 2018, at 9 a.m. in this  
11 courtroom, 7C. And trial will be Monday, February 26th, 2018,  
12 at 8:30 a.m., also in this courtroom, 7C. And all trial  
13 documents will be due Thursday, February 8th, 2018.

14           THE COURT: All right. So the trial is scheduled to  
15 begin Monday, February 26th, 2018, at 8 a.m.

16           COURTROOM ADMINISTRATOR: 8:30 a.m., Your Honor.

17           THE COURT: I'm sorry. 8:30 a.m. And calendar call  
18 will be February 15th at 9 a.m.

19           COURTROOM ADMINISTRATOR: Correct, Your Honor.

20           THE COURT: And then the parties will be given a week  
21 to address whether the mistrial should be with or without  
22 prejudice.

23           Aaron, do you have a date for that?

24           COURTROOM ADMINISTRATOR: I do, Your Honor. For the  
25 response, that would be December 29th, 2017.

2:16-cr-46-GMN-PAL

1 THE COURT: All right. So end of business, 5 p.m.,  
2 December 29th, 2017. I just need -- not having response, reply,  
3 sur-reply back and forth. Just tell me everything you want me  
4 to know before 5 p.m. December 29th, 2017, regarding the legal  
5 standard I should use, the information I should consider, how I  
6 should consider it, interpret it, analyze it, evaluate it, what  
7 the results should or shouldn't be, any information that you  
8 want to provide to that effect.

9 MS. WEKSLER: Your Honor, what I would request is  
10 given -- I mean, the way that I'm reading the Court's ruling is  
11 that it's following the Chapman model to decide whether  
12 dismissal should be appropriate or not. The Court mentioned it  
13 in terms of mistrial with prejudice which would be essentially  
14 the same thing as dismissal with prejudice in this case.  
15 Because the Court needs to find whether the Government has acted  
16 with flagrant misconduct, and that is in fact the standard, we  
17 believe that a certain number of evidentiary hearings need to  
18 take place because that would inform the Court's decision  
19 regarding dismissal in this case.

20 So we would request in addition to the briefing  
21 schedule that's been set out for -- or excuse me -- in addition  
22 to the calendar call and trial dates that have been set out, a  
23 schedule for evidentiary hearings and briefing on a specific  
24 number of matters that have -- some of which have been briefed;  
25 some of which have not. Specifically, we have disclosures that

2:16-cr-46-GMN-PAL

1 have taken place regarding the Wooten memo, regarding a variety  
2 of different things. Some of which have been briefed; some have  
3 not, which I think would inform the flagrant misconduct prong  
4 that the Court has to analyze in terms of dismissal.

5 THE COURT: All right. Well, that information can be  
6 provided in the brief that's due December 29th, 2017. I am also  
7 going to set a hearing.

8 Aaron, do you have that date?

9 COURTROOM ADMINISTRATOR: I do, Your Honor. That will  
10 be Monday, January 8th, 2018, at 9 a.m. in this courtroom, 7C.

11 THE COURT: So Monday, January 8th, 2018, is the date  
12 set for the Court to provide its either order in regards to  
13 whether or not the mistrial should be with or without prejudice  
14 or to conduct any other hearing, whether it be an evidentiary  
15 hearing or oral argument hearing. And the Court will advise the  
16 parties as soon as it receives the briefs so that it can provide  
17 information to the jury -- to the parties so the parties can be  
18 prepared if we need to extend the hearing date from January 8th  
19 to a different date depending on what the Court determines.  
20 Then we can also do that as well and consider other dates as  
21 availability for witnesses, if witnesses need to be called.  
22 That is not the inclination of the Court at this point.

23 The Court is aware that there is information that needs  
24 to be provided about the conduct, and that's why I did go into  
25 more detail on whether or not the Court found willful



2:16-cr-46-GMN-PAL

1 suppression as opposed to inadvertent suppression. As Brady  
2 makes clear, and it's all the line of cases, in determining  
3 whether or not there is a Brady violation, it doesn't matter  
4 whether the suppression was willful or inadvertent. But I did  
5 make those findings because I think that it does help to clarify  
6 the next step of whether or not the mistrial should be with or  
7 without prejudice.

8 Mr. Schiess?

9 MR. SCHIESS: Your Honor, the Court in its order has  
10 described or stated a couple of items that the Court relied  
11 upon, one, the maps that were disclosed on December 15th. We  
12 have not had a chance to respond to those. So I'm wondering --  
13 as well as the Court referred to the OIG/Internal Affairs  
14 record. What I'd like to do is just to make sure that those are  
15 part of the record so that we can use those in part with the  
16 response, if that's permissible from the Court.

17 THE COURT: When you say you want to make sure that  
18 they're part of the record, and you're asking for my permission  
19 to do what?

20 MR. SCHIESS: I just want a clarification that when we  
21 file our response or our discussion to the Court that we're able  
22 to refer to these items as part of the basis for the analysis.  
23 So to make sure that we -- that they're at least lodged in the  
24 record so that we can address them.

25 THE COURT: Well, you have the right to file on the

2:16-cr-46-GMN-PAL

1 docket anything that you wish to file. But that brings up  
2 another issue that I also wanted to address, which is that of  
3 how much information is being filed under seal, probably under  
4 an abundance of caution because of the protective order filed in  
5 this case which was filed in order to protect individuals who  
6 had been receiving threats and who the Government represented  
7 and the Court believed were in danger of receiving more threats  
8 if the information was made publicly available. There had  
9 already been many instances on public media about information  
10 regarding these individuals, and the Court did find that it was  
11 appropriate and necessary to grant that protective order.

12           However, I think that there is much more information  
13 that is being filed under seal than need be. I understand that  
14 because this has been a flurry of information that's being  
15 provided that it's quicker and easier and safer to just file  
16 everything under seal. So I appreciate that, that you're being  
17 careful and erring on the side of caution. But now that we have  
18 more time, now that we've -- you have the Court's ruling, I am  
19 going to ask you to go back and look at those documents that  
20 have been filed under seal and refile them publicly with  
21 whatever redactions need to be made more specifically.

22           Some of these documents were very long. So, again, I  
23 understand why they were filed completely under seal in order to  
24 make the deadline and not accidentally divulge something. But the  
25 practice of this Court has always been that if you need to file

2:16-cr-46-GMN-PAL

1 something under seal, you file it under seal, and then the part  
2 that doesn't need to be under seal is filed publicly with  
3 whatever redactions are necessary. So sometimes it's names of  
4 children, some -- and this is both in criminal cases and civil  
5 cases. You file a redacted and an unredacted copy. The  
6 redacted copy is filed publicly, and the unredacted copy is  
7 filed under seal so everyone can see the entirety of the  
8 document.

9           So I'm going to ask the parties to go back and look at  
10 those and refile as many of them as possible without redaction,  
11 but some of those still may need some redaction and so that  
12 those redactions need to be made. If there is a question as to  
13 whether a redaction should or shouldn't be made, the parties  
14 should be able to get-together and discuss it, and if not, then  
15 the Court will address it.

16           There is a pending motion by an intervenor that the  
17 Court did provide standing to file a motion to intervene. Did  
18 you set a hearing date for that yet, Aaron?

19           COURTROOM ADMINISTRATOR: Your Honor, we did discuss  
20 setting that at the exact same time as the current hearing of  
21 January 8th. Did you still want to do that or should we do that  
22 separately?

23           THE COURT: I think we can still do that. Is that a 9  
24 a.m.?

25           COURTROOM ADMINISTRATOR: Yes, Your Honor. And, Your

2:16-cr-46-GMN-PAL

1 Honor, does that ruling also grant the Document No. 3018 which  
2 is the request for hearing made by the intervenors?

3 THE COURT: Yes. So that request for a hearing by the  
4 intervenors is granted, and the hearing date will be the same,  
5 January 8th of 2018 at 9 a.m. If that hearing date changes for  
6 any reason because of documentation provided by the defendant  
7 and the Government in response to the question of whether or not  
8 the mistrial should be with or without prejudice, we'll still  
9 keep that hearing date for the intervenors' motion. So,  
10 regardless, we'll still have a hearing on January 8th at 9 a.m.

11 All right. Mr. Ryan Bundy?

12 MR. RYAN BUNDY: Yes, I find it appropriate at this  
13 time to modify the conditions of release; that all of the  
14 defendants be released on their own recognizance without  
15 electronic monitoring, only signing a promise to appear. In the  
16 light of the Government's misconduct, and there's not been any  
17 shown here by the Defense, that I think that conditions should  
18 be changed. Mr. Cliven Bundy should be released. I also  
19 believe that this greatly affects the outcome of the previous  
20 trials and that also Todd Engel and Greg Burleson should also be  
21 released, as well as Jerry Delemus.

22 THE COURT: All right. Well, I appreciate your request  
23 and I anticipated as such. Unfortunately, the Pretrial Office  
24 is not aware of my ruling nor is anyone. You are all the first  
25 ones to hear it. I even saw another judge in the elevator

2:16-cr-46-GMN-PAL

1 today, and that judge does not know my ruling either. So the  
2 Pretrial Office does not have this information, has not had the  
3 opportunity to determine whether or not your request is  
4 appropriate, but -- so I -- I believe that the correct course  
5 here is for you to make that request of the Pretrial Office. If  
6 they agree, they can submit it in writing for me to approve. If  
7 they disagree, then we can set it for a hearing to determine  
8 whether it is appropriate or not.

9           The point that I want to make clear here is that the  
10 Court is not determining or making a finding in any way that the  
11 information that was suppressed is, in fact, exculpatory or that  
12 the defendants are, in fact, not guilty or that any of the  
13 allegations in the superseding indictment are completely false.  
14 That is not the Court's position. It's not my technical  
15 position. It's not a factual decision for the Court to make.  
16 It's for the jury to make.

17           To try to put it as simply as possible, the Defense has  
18 a right to information so that it can provide it to the -- to  
19 the jury so that the jury can decide what the facts are, who to  
20 believe, who not to believe, how much weight to give the  
21 evidence, what really happened, was it a crime or not. So I am  
22 not making any decisions by finding that this information is  
23 helpful and potentially exculpatory or potentially useful. I  
24 believe it's very useful and very material, but that does not  
25 mean that I am making a finding that all the allegations are

2:16-cr-46-GMN-PAL

1 rebutted or that the jury would have believed this new helpful  
2 information or not. So the weight of the evidence has not  
3 changed in my mind as to -- in regards to this particular  
4 hearing as opposed to in the past.

5 So we'll go ahead now -- Aaron, you can go ahead and  
6 bring in the jury. And we'll advise them of the change in  
7 circumstance and thank them.

8 COURTROOM ADMINISTRATOR: All rise.

9 (Whereupon jury enters the courtroom at 9:28 a.m.)

10 THE COURT: All right. Everyone may be seated.

11 We're joined by the jury and we welcome them back.  
12 Good morning, ladies and gentlemen. We do appreciate you being  
13 here. We appreciate your patience with us. There are things  
14 that have come up, as I'm sure you assumed that there was a  
15 continuance for some reason. And that reason being that we do  
16 have more information that has been made available to the  
17 parties. The Court has provided continuances to determine  
18 whether they can have sufficient time to review that information  
19 incorporated into the case, whether there are any other problems  
20 that have arisen because of the information being provided later  
21 than expected. And the Court has found that it is not possible  
22 for us to go forward with the case having -- the parties having  
23 received all of this information at this time.

24 So I apologize that I have had to declare a mistrial,  
25 which means that we will not be going forward with this

2:16-cr-46-GMN-PAL

1 particular jury, with you all, for this case. It has been a  
2 treat to have you all on this case. We have other issues with  
3 jurors once in a while, and we haven't had any with you, even  
4 though I think we found out on the first day that there was  
5 about five smokers on this jury, which is sometimes a problem,  
6 but didn't even turn out to be. You all have been very patient,  
7 very cooperative, with all of the different doors and passages  
8 and getting in and out of here to the smoking section, and being  
9 kept in that little room for such a long period of time while we  
10 talked about important things here in court.

11           And we really appreciate you setting aside so much of  
12 your time to be available for this trial. We gave you the  
13 timeline. We asked you to reschedule your life, your home life,  
14 your work life, your duties and responsibilities so that you  
15 could be here. Some of you had to rearrange your work  
16 schedules, your work shifts, so that you could be available for  
17 this trial. And we cannot thank you enough for making that  
18 sacrifice to be able to provide the parties with a fair jury so  
19 that they could have their decision and their case resolved.

20           So I do appreciate you very much. All of the parties  
21 appreciate you very much. We are going to be considering other  
22 issues before we decide whether to empanel another jury.

23           In the past, the order that I have provided to you was  
24 that you were not to discuss this case with anyone nor permit  
25 anyone to discuss it with you. You are now relieved of that

2:16-cr-46-GMN-PAL

1 requirement which means that you may discuss this case with each  
2 other, with others. You may allow others to discuss it with  
3 you, but it's important to note that you are not required to  
4 discuss it with anyone if you don't want to. So if anyone asks  
5 you any questions that you don't want to answer, that's fine.

6 Judge said I don't have to answer any questions I don't want to.

7 If you do want to answer questions, if you do want to  
8 speak to your spouses, your work colleagues, your kids, your  
9 neighbors about your experience, you are free to do so, but  
10 not -- but you're not required to do so. All right?

11 So we'll go ahead and stand for the jury so they may go  
12 back in the jury room and collect their things and --

13 MR. RYAN BUNDY: Madam?

14 THE COURT: Yes.

15 MR. RYAN BUNDY: I would just like to personally thank  
16 them if you would allow me.

17 Jury, thank you for being here. I just want you to  
18 know that I appreciate your time and your service. Thank you.

19 THE COURT: As do all of the individuals here  
20 appreciate your service. The parties will be available to speak  
21 with you if you would like to speak with them and -- and if they  
22 want to speak with you, but you're not required to do so. We'll  
23 make that available.

24 All right. So thank you very much.

25 A JUROR: Merry Christmas.



2:16-cr-46-GMN-PAL

1 THE COURT: Merry Christmas.

2 MR. RYAN BUNDY: Merry Christmas.

3 (Whereupon jury leaves the courtroom at 9:33 a.m.)

4 THE COURT: All right. So the Court's in recess until  
5 Monday, January 8th, at 9 a.m.

6 MR. RYAN BUNDY: Madam, may ...

7 (Court conferring with courtroom administrator.)

8 MR. RYAN BUNDY: Madam, may I suggest ...

9 THE COURT: I'm not going to take any more information  
10 at this time. You can provide the briefs.

11 MR. RYAN BUNDY: Thank you.

12 (Whereupon the proceedings concluded at 9:34 a.m.)

13 --oOo--

14 COURT REPORTER'S CERTIFICATE

15  
16 I, PATRICIA L. GANCI, Official Court Reporter, United  
17 States District Court, District of Nevada, Las Vegas, Nevada,  
18 certify that the foregoing is a correct transcript from the  
19 record of proceedings in the above-entitled matter.

20  
21 Date: December 20, 2017.

22 /s/ **Patricia L. Ganci**

23 Patricia L. Ganci, RMR, CRR

24 CCR #937

25