Case No. 18-10287

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellant

v.

CLIVEN D. BUNDY, et al
Defendants-Appellees

From the United States District Court For the District of Nevada
The Honorable Gloria Navarro, Presiding
Case No. 2:16-CR-00046-GMN-PAL-1

APPELLEE CLIVEN BUNDY'S OPPOSITION TO GOVERNMENT'S MOTION FOR A THIRD EXTENSION OF TIME TO FILE ITS OPENING BRIEF

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Date: January 16, 2019

For the same reasons set forth in counsel for Appellee Cliven Bundy's communication of December 18, 2018 to Solicitor General Noel Francisco (Exhibit 1) and which Acting Attorney General Matthew Whitaker, Assistant Attorney General Brian Benczkowski, U.S. Attorney Dayle Elieson, Assistant U.S. Attorney Elizabeth White, White House Counsel Pat Cipollone were copied on, he opposes the request by Elizabeth White, Esq. of the same U.S. Attorney's office for the District of Nevada which committed gross prosecutorial misconduct, suborned perjury, threatened and retaliated against Bureau of Land Management whistleblower Larry Wooten, obstructed justice, and whose prosecutors also blatantly lied to the Honorable Gloria Navarro, resulting her having first declared a mistrial and then dismissed with prejudice the supersedes indictment.

It is thus time for "Main Justice" as a whole to take responsibility, do the right thing and finally after almost a year "fish or cut bait" rather than continuing to allow this U.S. Attorney's office to unethically and illegally "jerk around" if not persecute my client, whose co-Defendants include his sons, Ryan and Ammon Bundy, as well as the other dismissed defendants. To keep this appeal hanging over the head of my client and his co-defendants is more than unconscionable: it is unprofessional and grossly unethical, and calculated only inflict more severe emotional distress on them and to "circle the wagons" around those "bad actors" in this U.S. Attorney's office who themselves, rather than the defendants, committed

crimes. They are apparently hopeful that this Court, if an appeal is heard, will relieve them from the prospect that their careers at the Department of Justice are over, much more the potential for disbarment. Given the record, this "Hail Mary" attempt to skate from their own liability is destined to fail. Thus, there is no good reason to grant further extensions of time.

For all of these reasons, Appellee Cliven Bundy opposes any further extension in this non-meritorious and unethical appeal.

Dated: January 16, 2019

Respectfully submitted,

/s/ *Larry Klayman*
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CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2019, I electronically filed the foregoing n with the Clerk of the Court for the U.S. Court of Appeals for the Ninth Circuit by using the Ninth Circuit's CM/ECF system, causing it to be served upon any counsel of record in the case through CM/ECF. A copy of this opposition was sent to Appellee Ryan Bundy via email at c4cfforall@gmail.com.

/s/ *Larry Klayman*

EXHIBIT 1

KLAYMAN LAW GROUP
A PROFESSIONAL ASSOCIATION
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Via Federal Express and Email **URGENT/ FOR IMMEDIATE CONSIDERATION**

December 18, 2018

The Honorable Noel Francisco
Solicitor General of the United States
U.S. Department of Justice
950 Pennsylvania Ave NW
Washington, DC, 20530

Re: ***United States v. Bundy et al*, 2:16-cr-00046 (D. Nev.)**

I understand that you are determining whether or not proceed with appeal in *United States v. Bundy et al*, 2:16-cr-00046 (D. Nev.). I was informed of this by assistant Assistant U.S. Attorney Elizabeth White of the District of Nevada.

In light of the history of this case and the gross injustice which has already been meted out against my client Cliven Bundy, his sons, and family by rogue Obama-era prosecutors, at least one of which, AUSA Steven Myhre, has been found to have acted unethically in the past on other prosecutions and was recently demoted, and who in this latest politically motivated prosecution, along with his fellow AUSAs, also acted unethically and illegally, by withholding and secreting exculpatory *Brady* material, illegally and unethically suppressing other material evidence, suborning perjury at trial by agents of the Federal Bureau of Investigation ("FBI") and Bureau of Land Management ("BLM") as well as himself lying to the court, threatening BLM whistleblower Larry Wooten (see enclosed letter of Wooten), the only possible reason for the Department of Justice to proceed is to cover the "expletive deleted" of these corrupt prosecutors and the current Acting U.S. Attorney Dayle Elieson, who incidentally was reappointed by Judge Gloria Navarro, the Harry Reid and Obama appointed jurist who presided over the Bundy and related prosecutions and who the Las Vegas Review Journal had called a friend of the prosecution in a widely published editorial during the trials. *See Editorial: Judge bans defense arguments in Bundy retrial*, Las Vegas Rev. J., Jul. 13, 2017, available at: https://www.reviewjournal.com/opinion/editorials/editorial-judge-bans-defense-arguments-in-bundy-retrial/.

This is absolutely disgraceful, and as a former Justice Department prosecutor, I am disgusted and appalled, particularly since you are now working under administration of President Donald J. Trump and not the compromised, if not corrupt, Justice Department of President Barack H. Obama under former Attorneys General Eric Holder and Loretta Lynch.

I am enclosing a letter I previously sent to your superiors at Main Justice, to which I did not even get the professional courtesy of a response. I am also enclosing articles about the past historical pattern of unethical and illegal misconduct by the prosecutors, including in the Bundy prosecution, by this U.S. Attorney Office in particular.

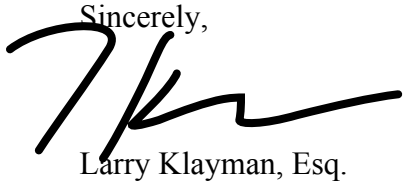
The recent prosecutorial misconduct in the Bundy prosecution is under review by the Department's Office of Professional Responsibility and the Inspector General – at least so I had been reassured after I filed complaints with them on behalf of my client, Cliven Bundy. Former Trump Attorney General Jeff Sessions had also initiated a review of this prosecutorial misconduct.

Please immediately provide this professional courtesy to my client, Cliven Bundy, and me and advise me how you intend to proceed, as I understand from Ms. White that you are considering whether or not to go forward with the appeal. Time is of the essence as the opening brief of the government is due to be filed just after the New Year.

After all they have gone through, including unlawful imprisonment for over two years, its time to allow my clients to go on with their lives and not continue to be persecuted by a Department of "Injustice," which rather than meting out justice, "circles the wagons" to try to unethically and unlawfully protect its own. In the words of Nicolas Sparks, "It's never too late to do the right thing."

As the founder of both Judicial Watch and now Freedom Watch, I hold out hope that you are different from the rest.

Sincerely,



Larry Klayman, Esq.

Copies to with enclosure of prior correspondence:

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Cliven and Ryan Bundy
Bunkerville, Nevada

Jeff German
David Ferrara
Las Vegas Review Journal

Ken Ritter
Associated Press

From: Larry C. Wooten
Special Agent
U.S. Department of Interior, Bureau of Land Management
1387 S. Vinnell Way, Boise, ID 83709
Office Phone [redacted] Gov't Cell Phone: [redacted],
Email: [redacted]
Personal Cell Phone [redacted] Personal Email [redacted]

To: Andrew D. Goldsmith
Associate Deputy Attorney General
National Criminal Discovery Coordinator
Email: [redacted]

Subject: Disclosure and Complaint Narrative in Regard to Bureau of Land Management Law Enforcement Supervisory Misconduct and Associated Cover-ups as well as Potential Unethical Actions, Malfeasance and Misfeasance by United States Attorney's Office Prosecutors from the District of Nevada, (Las Vegas) in Reference to the Cliven Bundy Investigation

Reference: DI-17-2830, MA-17-2863, LM14015035, District of Nevada Case 2:16-cr-00046-GMN-PAL (United States of America v. Cliven Bundy, et al)

Issue: As a U.S. Department of Interior (DOI), Bureau of Land Management (BLM), Office of Law Enforcement and Security (OLES) Special Agent (SA) and Case Agent/Lead Investigator for the Cliven Bundy/2014 Gold Butte Trespass Cattle Impound Case out of the District of Nevada in Las Vegas (Case 2:16-cr-00046-GMN-PAL-United States of America v. Cliven Bundy, et al), I routinely observed, and the investigation revealed a widespread pattern of bad judgment, lack of discipline, incredible bias, unprofessionalism and misconduct, as well as likely policy, ethical, and legal violations among senior and supervisory staff at the BLM's Office of Law Enforcement and Security. The investigation indicated that these issues amongst law enforcement supervisors in our agency made a mockery of our position of special trust and confidence, portrayed extreme unprofessional bias, adversely affected our agency's mission and likely the trial regarding Cliven Bundy and his alleged co-conspirators and ignored the letter and intent of the law. The issues I uncovered in my opinion also likely put our agency and specific law enforcement supervisors in potential legal, civil, and administrative jeopardy.

When I discovered these issues, I promptly reported them to my supervisor (a BLM Assistant Special Agent-in-Charge, but also my subordinate co-case agent). Often, I realized that my supervisor was already aware of the issues, participated in, or instigated

the misconduct himself, was present when the issues were reported to both of us, or was the reporting party himself. When I reported these issues, my supervisor seemed generally unsurprised and uninterested and was dismissive, and seemed unconcerned.

I tried to respectfully and discretely urge and influence my supervision to stop the misconduct themselves, correct and/or further report the issues as appropriate and remind other employees that their use of electronic communications was likely subject to Federal Records Protections, the case Litigation Hold, the Freedom of Information Act (FOIA) and Case/Trial Discovery. I also tried to convey to my supervisor that the openly made statements and actions could also potentially could be considered bias, used in witness impeachment and considered exculpatory and subject to trial discovery.

As the Case Agent and Lead Investigator for the DOI/BLM (for approximately 2 years and 10 months), I found myself in an unusual situation. I was specifically asked to lead a comprehensive, professional, thorough, unbiased and independent investigation into the largest and most expansive and important investigation ever within the Department of Interior. Instead of having a normal investigative team and chain of command, a BLM Assistant Special Agent-in-Charge (ASAC) decided to act as a subordinate co-case agent, but also as my supervisor. Agent's senior to me acted as my helpers. I was basically the paper work, organizational and research guy. I did all the stuff that the senior and supervisory agents didn't want to do, but they called me the "Case Agent" and "Lead Investigator." They often publicly recognized and thanked me, and nominated me for many awards, but their lack of effort and dependability led to numerous case issues. During this timeframe, my supervisor (but subordinate), a BLM ASAC specifically wanted and had the responsibility of liaison and coordinator for interaction with higher agency officials, cooperating/assisting agencies and with the U.S. Attorney's Office. Although the BLM ASAC was generally uninterested in the mundane day to day work, he specifically took on assignments that were potentially questionable and damaging (such as document shredding research, discovery email search documentation and as the affiant for the Dave Bundy iPad Search Warrant) and attended coordination and staff meetings. Sometimes, I felt like he wanted to steer the investigation away from misconduct discovery by refusing to get case assistance, dismissing my concerns and participating in the misconduct himself. In February of 2017, it became clear to me that keeping quite became an unofficial condition of my future employment with the BLM, future awards, promotions, and a good future job reference.

The longer the investigation went on, the more extremely unprofessional, familiar, racy, vulgar and bias filled actions, open comments, and inappropriate electronic communications I was made aware of, or I personally witnessed. In my opinion, these issues would likely undermine the investigation, cast considerable doubt on the professionalism of our agency and be possibly used to claim investigator bias/unprofessionalism and to impeach and undermine key witness credibility. The ridiculousness of the conduct, unprofessional amateurish carnival atmosphere, openly made statements, and electronic communications tended to mitigate the defendant's culpability and cast a shadow of doubt of inexcusable bias, unprofessionalism and embarrassment on our agency. These actions and comments were in my opinion offensive in a professional federal law enforcement work environment and were a clear

violation of professional workplace norms, our code of conduct, policy, and possibly even law. The misconduct caused considerable disruption in our workplace, was discriminatory, harassing and showed clear prejudice against the defendants, their supporters and Mormons. Often times this misconduct centered on being sexually inappropriate, profanity, appearance/body shaming and likely violated privacy and civil rights.

Many times, these open unprofessional and disrespectful comments and name calling (often by law enforcement supervisors who are potential witnesses and investigative team supervisors) reminded me of middle school. At any given time, you could hear subjects of this investigation openly referred to as "ret*rds," "r*d-necks," "Overweight woman with the big jowls," "d*uche bags," "tractor-face," "idiots," "in-br*d," etc., etc., etc. Also, it was common to receive or have electronic communications reported to me during the course of the investigation in which senior investigators and law enforcement supervisors (some are potential witnesses and investigative team members) specifically made fun of suspects and referenced "Cliven Bundy felony...just kind of rolls off the tongue, doesn't it?," dildos, western themed g@y bars, odors of sweat, playing chess with menstru*ting women, Cliven Bundy sh1tthing on cold stainless steel, personal lubricant and Ryan Bundy holding a giant penis (on April 12, 2014). Extremely bias and degrading fliers were also openly displayed and passed around the office, a booking photo of Cliven Bundy was (and is) inappropriately, openly, prominently and proudly displayed in the office of a potential trial witness and my supervisor and an altered and degrading suspect photos were put in an office presentation by my supervisor. Additionally, this investigation also indicated that former BLM SAC Dan Love sent photographs of his own feces and his girl-friend's vag1na to coworkers and subordinates. It was also reported by another BLM SAC that former BLM SAC Dan Love told him that there is no way he gets more pu$$y than him. Furthermore, I became aware of potentially captured comments in which our own law enforcement officers allegedly bragged about roughing up Dave Bundy, grinding his face into the ground, and Dave Bundy having little bits of gravel stuck in his face (from April 6, 2014). On two occasions, I also overheard a BLM SAC tell a BLM ASAC that another/other BLM employee(s) and potential trial witnesses didn't properly turn in the required discovery material (likely exculpatory evidence). My supervisor even instigated the unprofessional monitoring of jail calls between defendants and their wives, without prosecutor or FBI consent, for the apparent purpose of making fun of post arrest telephone calls between Idaho defendants/FBI targets (not subjects of BLM's investigation). Thankfully, AUSA Steven Myhre stopped this issue. I even had a BLM ASAC tell me that he tried to report the misconduct, but no one listened to him. I had my own supervisor tell me that former BLM SAC Dan Love is the BLM OLES "Directors boy" and they indicated they were going to hide and protect him. The BLM OLES Chief of the Office of Professional Responsibility/Internal Affairs indicated to me the former BLM OLES Director protected former BLM SAC Love and shut the Office of Professional Responsibility out when misconduct allegations were reported about Love and that the former BLM OLES Director personally (inappropriately) investigated misconduct allegations about Love. Another former BLM ASAC indicated to me that former BLM SAC Love was a liability to our agency and the Cliven Bundy Case. I was even told of threats of physical harm that this former BLM SAC made to his subordinate employee and his family.

Also, more and more it was becoming apparent that the numerous statements made by potential trial witnesses and victims (even by good officers under duress), could potentially cast an unfavorable light on the BLM. (See openly available video/audio footage titled "The Bundy Trial 2017 Leaked Fed Body Cam Evidence," or a video posted on You Tube titled "Leaked Body Cams from the Bundy Ranch!" published by Gavin Seim.) Some of these statements included the following: "Jack-up Hage" (Wayne Hage Jr.), "Are you fucXXXX people stupid or what," "Fat dude, right behind the tree has a long gun," "MotherFuXXXX, you come find me and you're gonna have hell to pay," "FatAsX slid down," "Pretty much a shoot first, ask questions later," "No gun there. He's just holding his back standing like a sissy," "She must not be married," "Shoot his fucXXXX dog first," "We gotta have fucXXXX fire discipline," and "I'm recording by the way guys, so..." Additional Note: *In this timeframe, a key witness deactivated his body camera.* Further Note: *It became clear to me a serious public and professional image problem had developed within the BLM Office of Law Enforcement and Security. I felt I needed to work to correct this and mitigate the damage it no doubt had already done.*

This carnival, inappropriate and childish behavior didn't stop with the directed bias and degradation of subjects of investigations. The childish misconduct extended to citizens, cooperators from other agencies and even our own employees. BLM Law Enforcement Supervisors also openly talked about and gossiped about private employee personnel matters such as medical conditions (to include mental illness), work performance, marriage issues, religion, punishments, internal investigations and derogatory opinions of higher level BLM supervisors. Some of these open comments centered on B1ow J0bs, Ma$terbation in the office closet, Addiction to P0rn, a Disgusting Butt Crack, a "Weak Sister," high self-opinions, crying and scared women, "Leather Face," "Mormons (little Mormon Girl)," "he has mental problems and that he had some sort of mental breakdown," "PTSD," etc., etc., etc.

Additionally, it should be noted that there was a "religious test" of sorts. On two occasions, I was asked "You're not a Mormon are you" and I was told "I bet you think I am going to hell, don't you." (I can explain these and other related incidents later.)

The investigation also indicated that on multiple occasions, former BLM Special Agent-in-Charge (SAC) Love specifically and purposely ignored U.S. Attorney's Office and BLM civilian management direction and intent as well as Nevada State Official recommendations in order to command the most intrusive, oppressive, large scale, and militaristic trespass cattle impound possible. Additionally, this investigation also indicated excessive use of force, civil rights and policy violations. The investigation indicated that there was little doubt there was an improper cover-up in virtually every matter that a particular BLM SAC participated in, or oversaw and that the BLM SAC was immune from discipline and the consequences of his actions. (I can further explain these issues later. These instances are widely documented.)

As the investigation went on, it became clear to me that my supervisor wasn't keeping the U.S. Attorney's Office up to date on substantive and exculpatory case findings and

unacceptable bias indications. Therefore, I personally informed Acting United States Attorney Steven Myhre and Assistant United States Attorney (AUSA) Nadia Ahmed, as well as Federal Bureau of Investigation (FBI) Special Agent Joel Willis by telephone of these issues. When I did, my supervisor in my opinion deceptively acted ignorant and surprised. As the case continued, it became clear to me that once again, my supervisor failed to inform the U.S. Attorney's Office Prosecution Team about exculpatory key witness statements. Note: *During this investigation, my supervisor would also deceptively indicate to the Prosecution Team that no one else was in the room when he was on speakerphone. Thereby, allowing potential trial witnesses and his friends to inappropriately hear the contents of the discussion.*

My supervisor even took photographs in the secure command post area of the Las Vegas FBI Headquarters and even after he was told that no photographs were allowed, he recklessly emailed out photographs of the "Arrest Tracking Wall" in which Eric Parker and Cliven Bundy had "X's" through their face and body (indicating prejudice and bias). Thereby, making this electronic communication subject to Federal Records Protections, the Litigation Hold, Discovery, and the FOIA.

On February 16, 2017, I personally informed then AUSA (First Assistant and Lead Prosecutor) Steven Myhre of those specific comments (which I had previously disclosed to, and discussed with my supervisor) and reminded Special Assistant United States Attorney (SAUSA) Erin Creegan about an email chain by a particular BLM SAC in reference to the Arrest of David Bundy on April 6, 2014, in which prior to Dave Bundy's arrest, the BLM SAC and others were told not to make any arrests. When I asked Mr. Myhre if the former BLM SAC's statements like "Go out there and kick Cliven Bundy in the mouth (or teeth) and take his cattle" and "I need you to get the troops fired up to go get those cows and not take any crap from anyone" would be exculpatory or if we would have to inform the defense counsel, he said something like "we do now," or "it is now."

On February 18, 2017, I was removed from my position as the Case Agent/Lead Investigator for the Cliven Bundy/Gold Butte Nevada Case by my supervisor despite my recently documented and awarded hard work and excellent and often praised performance. Additionally, a BLM ASAC (my supervisor, but also my co-case agent) violated my privacy and conduced a search of my individually occupied secured office and secured safe within that office. During this search, the BLM ASAC without notification or permission seized the Cliven Bundy/Gold Butte Nevada Investigative "hard copy" Case File, notes (to include specific notes on issues I uncovered during the 2014 Gold Butte Nevada Trespass Cattle Impound and "lessons learned") and several computer hard drives that contained case material, collected emails, text messages, instant messages, and other information. Following this seizure outside of my presence and without my permission, the BLM ASAC didn't provide any property receipt documentation (DI-105/Form 9260-43) or other chain of custody documentation (reasonably needed for trial) on what was seized. The BLM ASAC also directed me to turn over all my personal case related notes on my personal calendars and aggressively questioned me to determine if I had ever audio recorded him or a BLM SAC. I was also aggressively questioned about who I had told about the case related issues and other severe issues uncovered in reference to the case and Dan Love (see Congressional

Subpoena by former Congressman Jason Chaffetz and the February 14, 2017, letter that Congressman Jason Chaffetz and Congressman Blake Farenthold sent the U.S. Department of Interior's Deputy Inspector General, Ms. Mary L. Kendall regarding Dan Love allegedly directing the deletion of official documents). Also after this, I believe I overheard part of a conversation in an open office space where my supervisor was speaking to a BLM SAC as they discussed getting access to my government email account. Note: *The personal notes that I was directed to turn in and the items seized from my office and safe wasn't for discovery, because I was transferring to another agency, because I was the subject of an investigation, or because my supervisor simply needed to reference a file. These items were taken because they contained significant evidence of misconduct and items that would potentially embarrass BLM Law Enforcement Supervision.* Additional Note: *The BLM ASAC also ordered me not to contact the U.S. Attorney's Office, even on my own time and with my personal phone. Later, when I repeatedly asked to speak with the BLM OLES Director, my requests went unanswered until April 26, 2017. The BLM ASAC simply told me it is clear no one wants to speak with me and that no one is going to apologize to me.* Further Note: *In this same secured individual office space and safe, I kept copies of my important personal documents such as medical records, military records, family personal papers, computer passwords, personal property serial numbers, etc., as a precaution in case for some reason my house is destroyed and personal papers are lost/destroyed. It was clear to me the BLM ASAC didn't know what he seized and when I told him about my personal papers, the BLM ASAC just told me "no one is interested in your medical records." It is unknown what unrelated case materials, notes, and personal documents were actually taken and it is impossible for me, any misconduct investigator, or any attorney to prove to a court or Congress what case information was taken. I still haven't heard back what (if any) personal items were in the seized materials and I don't know where the seized materials are being stored. It should be noted that I am missing personal medical physical results that I previously has stored in my office. Additionally, I believe if the BLM ASAC found my accidently seized medical records, instead of giving them back to me, he would shred them just like I have seen him shred other items from an agent that he didn't like. (I can elaborate on this.)*

Please Note: *This seized case related material (to include the hard drives) contains evidence that directly relates to a BLM SAC's heavy handedness during the 2014 Gold Butte Nevada Trespass Cattle Impound, the BLM SAC ignoring U.S. Attorney's Office and higher level BLM direction, documentation of the BLM SAC's alleged gross supervisory misconduct, potential misconduct and violation of rights issues during the 2014 Gold Butte Nevada Trespass Cattle Impound, as well as potential emails that were possibly identified and captured before they could have been deleted (as identified as an issue in the Office of Inspector General Report and possibly concerning a Congressional subpoena). I believe this information would likely be considered substantive exculpatory/jencks material in reference to the Cliven Bundy Nevada Series of Trials and would be greatly discrediting and embarrassing, as well as possibly indicate liability on the BLM and the BLM SAC.*

I am convinced that I was removed to prevent the ethical and proper further disclosure of the severe misconduct, failure to correct and report, and cover-ups by BLM OLES

supervision. My supervisor told me that AUSA Steven Myhre "furiously demanded" that I be removed from the case and mentioned something about us (the BLM, specifically my supervisor) not turning over (or disclosing) discovery related material (which is true), issues I had with the BLM not following its own enabling statute (which is true, I can elaborate on that later), and a personal issue they thought I had with former BLM SAC Dan Love. Note: *Prior to taking the assignment as Bundy/Gold Butte Investigation Case Agent/Lead Investigator for the BLM/DOI, I didn't know and had never spoken to former BLM SAC Dan Love. I was new to the agency and I was also specifically directed to lead an unbiased, professional, and independent investigation, which I tried to do, despite supervisory misconduct. Time after time, I was told of former BLM SAC Love's misconduct. I was told by BLM Law Enforcement Supervisors that he had a Kill Book" as a trophy and in essence bragged about getting three individuals in Utah to commit suicide (see Operation Cerberus Action out of Blanding, Utah and the death of Dr. Redd), the "Failure Rock," Directing Subordinates to Erase Official Government Files in order to impede the efforts of rival civilian BLM employees in preparation for the "Burning Man" Special Event, unlawfully removing evidence, bragging about the number of OIG and internal investigations on him and indicating that he is untouchable, encouraging subordinates not to cooperate with internal and OIG investigations, his harassment of a female Native American subordinate employee where Mr. Love allegedly had a doll that he referred to by the employees name and called her his drunk little Indian, etc., etc., etc. (I can further explain these many issues.)*

Following this, I became convinced that my supervisor failed to properly disclose substantive and exculpatory case and witness bias related issues to the U.S. Attorney's Office. Also, after speaking with the BLM OLES Chief of the Office of Professional Responsibility/Internal Affairs and two former BLM ASAC's, I became convinced that the previous BLM OLES Director Salvatore Lauro not only allowed former BLM SAC Dan Love complete autonomy and discretion, but also likely provided no oversight and even contributed to an atmosphere of cover-ups, harassment and retaliation for anyone that questioned or reported former BLM SAC Dan Love's misconduct.

In time, I also became convinced (based on my supervisor and Mr. Myhre's statements) that although the U.S. Attorney's Office was generally aware of former BLM SAC Dan Love's misconduct and likely civil rights and excessive force issues, the lead prosecutor (currently the Acting Nevada United States Attorney) Steven Myhre adopted an attitude of "don't ask, don't tell," in reference to BLM Law Enforcement Supervisory Misconduct that was of a substantive, exculpatory and incredible biased nature. Not only did Mr. Myhre in my opinion not want to know or seek out evidence favorable to the accused, he and my supervisor discouraged the reporting of such issues and even likely covered up the misconduct. Furthermore, when I did report the misconduct, ethical, professional, and legal issues, I also became a victim of whistleblower retaliation.

Additionally, AUSA Steven Myhre adopted a few troubling policies in reference to this case. When we became aware that Dave Bundy's seized iPad likely contained remarks from BLM Law Enforcement Officers that is potentially evidence of civil rights violations and excessive use of force, Mr. Myhre and my supervisor not only apparently failed initiate the appropriate follow-on actions, Mr. Myhre apparently failed to notify the

Defense Counsel and also decided not to return the iPad back to Dave Bundy, even though the iPad wasn't going to be searched pursuant to a search warrant or used as evidence in trial and Dave Bundy claimed he needed the iPad for his business. Mr. Myhre also adopted a policy of not giving a jury the option or ability to convict on lesser offenses and instead relied on a hard to prove, complicated prosecution theory in order to achieve maximum punishments (which has generally failed to this point). Also, the government relied on factually incorrect talking points and on (or about) February 15, 2017, misrepresented the case facts about government snipers during trial (it is unknown if this misrepresentation was on purpose or accidental, I can explain this in detail). Note: *The investigation indicated that there was at least one school trained Federal Sniper equipped with a scoped/magnified optic bolt action precision rifle, another Federal Officer equipped with a scoped/magnified optic large frame (308 caliber) AR style rifle, and many officers that utilized magnified optics with long range graduated reticles (out to 1,000 meters-approximately 500 meters on issued rifles depending on environmental conditions) on standard law enforcement issued AR (223 caliber/5.56mm) and that often officers were in "over watch" positions. Additionally, the investigation also indicated the possibility that the FBI and the Las Vegas Metropolitan Police Department had law enforcement snipers/designated marksmen on hand for possible deployment.*

The reporting of these severe issues and associated cover-ups are a last resort. I tried continually to respectfully and discretely influence my chain of command to do the right thing and I made every effort to make sure the Prosecution Team had the information they needed and were accurate in their talking points. I just wanted the misconduct to stop, the necessary and required actions be taken and I wanted to be sure these issues wouldn't create a fatal error in the case and further undermine our agency's mission. I also needed to be convinced that I was correct. If I was wrong, or errors were simply mistakes or simple errors in professional judgement or discretion, I didn't want to create more problems or embarrass anyone. However, my personal experience and investigation indicated that not only did my management fail to correct and report the misconduct, they made every effort to cover it up, dismiss the concerns, discourage its reporting and retaliate against the reporting party. I also tried to make sure that despite my supervisor's failings, the Prosecution Team had the most accurate information in terms of case facts, Discovery, and witness liability.

The Whistleblower Retaliation and agency wrongdoing is being investigated by the U.S. Office of Special Counsel and is also being looked at by the House Committee on Natural Resources (Subcommittee on Oversight & Investigations) and the House Oversight and Government Reform Committee (Subcommittee on the Interior, Energy, and the Environment). Additionally, a formal complaint has been filed with my agency in reference to the religious, sexually vulgar, and the other workplace harassment. Furthermore, there have been several investigations by the DOI Office of Inspector General (OIG) that at least in part contributed to the recent firing of BLM Special Agent-in-Charge Dan Love (which I wasn't a part of).

I ask that your office ensure that Acting United States Attorney Steven Myhre and the rest of the Cliven Bundy/Gold Butte Nevada Prosecution and Investigative Team is

conducting the prosecution in an ethical, appropriate, and professional matter. I also specifically ask that your office provide oversight to Mr. Myhre and his team regarding the affirmative responsibility to seek out evidence favorable to the accused, not to discourage the reporting of case issues and suspected misconduct, to report/act on suspected civil rights violations and not to retaliate against an agent that does his required duty. I also ask that your office ensure that the Prosecution Team is free of bias and has ethically and correctly turned over exculpatory evidence to the Defense. I ask that as appropriate, prosecution team bias (by Mr. Myhre and possibly by AUSA Daniel Schiess) and factually incorrect talking points (by AUSA Nadia Ahmed and Mr. Myhre) be disclosed and corrected. Note: *Mr. Myhre previously referred to the defendants as a cult and Mr. Schiess said let's get these "shall we say Deplorables." I was also asked "You're not a Mormon are you." (I can explain these and similar issues in detail.)*

I don't make this complaint lightly. I do this with a heavy heart and I hope that at least in some ways I am mistaken. However, I know that is extremely unlikely. When we speak I can identify subjects, witnesses, and the location of evidence and corroborating information.

I believe this case closely mirrors the circumstances of former Alaska Senator Ted Stevens trial. As you may notice from the trials and several defense cross-examinations, very little of the impeachment and exculpatory issues were brought up by the defense. I believe this is most likely because the defense counsel was unethically not made aware of them and the severe issues were covered up. Additionally, I believe I can easily show that both my supervision and possibly Mr. Myhre entered into an unethical agreement to remove me from being the lead investigator and case agent for the BLM/DOI due to my objection to, and disclosure of outrageous misconduct, the belief that my testimony under oath would embarrass supervisory law enforcement officials in our agency and negatively affect the prosecution, my insistence that my supervisor stop his individual misconduct, correct the misconduct of other employees and report the misconduct as appropriate (for counseling, correction, discipline and the possible required internal investigations) and my belief that my agency is violating the letter and intent of the law.

In regard to prosecution team misconduct, I believe some of it may be attributable to simple mistakes and simple poor judgement. However, I believe it is unlikely (if my supervisor's statements to me are true) that Mr. Myhre wasn't himself acting unethically and inappropriately. Prior to the last few weeks of the investigation, I held Mr. Myhre in the highest of regards. He is an extremely hard worker and very intelligent. However, I feel that his judgement is likely clouded by extreme personal and religious bias and a desire to win the case at all costs. I feel he is likely willing to ignore and fail to report exculpatory material, extreme bias and act unethically and possibly deceptively to win.

All in all, it is my assessment and the investigation showed that the 2014 Gold Butte Trespass Cattle Impound was in part a punitive and ego driven expedition by a Senior BLM Law Enforcement Supervisor (former BLM Special Agent-in-Charge Dan Love) that was only in part focused on the intent of the associated Federal Court Orders and the mission of our agency (to sustain the health, diversity, and productivity of America's public lands for the multiple use and enjoyment of present and future generations). My

investigation also indicated that the involved officers and protestors were themselves pawns in what was almost a great American tragedy on April 12, 2014, in which law enforcement officers (Federal, State, and Local), protestors, and the motoring public were caught in the danger area. This investigation also indicated, the primary reasons for the escalation was due to the recklessness, lack of oversight, and arrogance of a BLM Special Agent-in-Charge and the recklessness, failure to adhere to Federal Court Orders and lack of recognition of the Federal Government in matters related to land management within Nevada, by Rancher Cliven Bundy.

The investigation further indicated that the BLM SAC's peers didn't likely attempt to properly influence or counsel the BLM SAC into more appropriate courses of action and conduct or were unsuccessful in their attempts. The investigation indicated that it was likely that the BLM SAC's peers failed to report the BLM SAC's unethical/unprofessional actions, misconduct, and potential crimes up the chain of command and/or to the appropriate authorities, or that the chain of command simply ignored and dismissed these reports. The investigation further indicated when individuals did report issues with the BLM SAC, the reports were likely ignored or marginalized by higher BLM OLES officials. The investigation also indicated that former BLM OLES Director Salvatore Lauro likely gave the former BLM SAC complete autonomy and discretion without oversight or supervision. The investigation further indicated that it was unlikely that the BLM OLES Director wasn't aware of the BLM SAC's unethical/unprofessional actions, poor decisions, misconduct, and potential crimes. My investigation and personal observations in the investigation further revealed a likely unethical/unlawful "cover-up" of this BLM SAC's actions, by very senior law enforcement management within BLM OLES. This investigation indicated that on numerous occasions, senior BLM OLES management broke their own policies and overlooked ethical, professional, and conduct violations and likely provided cover and protection for the BLM SAC and any activity or operation this BLM SAC was associated with. My investigation further indicated that the BLM's civilian leadership didn't condone and/or was likely unaware of the BLM SAC's actions and the associated cover-ups, at least until it was too late.

During the investigation, I also came to believe that the case prosecution team at United States Attorney's Office out of Las Vegas in the District of Nevada wasn't being kept up to date on important investigative findings about the BLM SAC's likely alleged misconduct. I also came to believe that discovery related and possibly relevant and substantive trial, impeachment, and biased related and/or exculpatory information wasn't likely turned over to, or properly disclosed to the prosecution team by my supervisor.

I also came to believe there were such serious case findings that an outside investigation was warranted on several issues to include misconduct, ethics/code of conduct issues, use of force issues (to include civil rights violations), non-adherence to law, and the loss/destruction of, or purposeful non-recording of key evidentiary items (Unknown Items 1 & 2, Video/Audio, April 6, 2014, April 9, 2014, April 12, 2014-the most important and critical times in the operation). I believe these issues would shock the conscious of the public and greatly embarrass our agency if they were disclosed.

Ultimately, I believe I was removed from my position as Case Agent/Lead Investigator for the Cliven Bundy/Gold Butte, Nevada Investigation because my management and possibly the prosecution team believed I would properly disclose these embarrassing and substantive issues on the stand and under oath at trial (if I was asked), because my supervision believed I had contacted others about this misconduct (Congress, possibly the defense and press) and possibly audio recorded them, because I had uncovered, reported, and objected to suspected violations of law, ethics directives, policy, and the code of conduct, and because I was critical of the misconduct of a particular BLM SAC. This is despite having already testified in Federal Grand Jury and being on the trial witness list.

The purpose of this narrative is not to take up for or defend the actions of the subjects of this investigation. To get an idea of the relevant historical facts, conduct of the subjects of the investigation and contributing factors, you may consider familiarizing yourself with the 2014 Gold Butte Timeline (which I authored) and the uncovered facts of this investigation. The investigation revealed that many of the subjects likely knowingly and willingly ignored, obstructed, and/or attempted to unlawfully thwart the associated Federal Court Orders through their specific actions and veiled threats, and that many of the subjects also likely violated several laws. This investigation also showed that subjects of the investigation in part adopted an aggressive and bully type strategy that ultimately led to the shutdown of I-15, where many armed followers of Cliven Bundy brandished and pointed weapons at Federal Officers and Agents in the Toquop Wash near Bunkerville, Nevada, on April 12, 2014, in a dangerous, high risk, high profile national incident. This investigation further indicated that instead of Cliven Bundy properly using the court system or other avenues to properly address his grievances, he chose an illegal, uncivilized, and dangerous strategy in which a tragedy was narrowly and thankfully avoided.

Additionally, it should be noted that I was also personally subjected to Whistleblowing Discouragement, Retaliation, and Intimidation. Threatening and questionable behaviors included the following: Invasion of Privacy, Search and Seizure, Harassment, Intimidation, Bullying, Blacklisting, Religious "tests," and Rude and Condescending Language. Simply put, I believe I was expected to keep quiet as a condition of my continued employment, any future promotions, future awards, or a favorable recommendation to another employer.

During the course of the investigation, I determined that any disagreement with the BLM SAC, or any reporting of his many likely embarrassing, unethical/unprofessional actions and misconduct was thought to be career destroying. Time and time again, I came to believe that the BLM SAC's subordinates and peers were afraid to correct him or properly report his misconduct (despite a duty to act) out of fear for their own jobs and reputation.

Sometimes, I felt these issues (described in depth below) were reported to me by senior BLM OLES management and line Rangers/Agents/employees because they personally didn't like a particular BLM SAC (although, some of these same people seemed to flatter, buddy up to, openly like, and protect the BLM SAC). Sometimes, I thought BLM OLES management wanted to talk about these actions because they thought these blatant

inappropriate acts by a BLM SAC and others were funny. Sometimes, I thought the reporting parties wanted the misconduct corrected and the truth to come to light, but they were afraid/unwilling to report and correct the misconduct themselves. Sometimes, I thought the reporting parties just wanted to get the issues off their chest. Sometimes, I thought supervisors wanted to report the misconduct to me, so they could later say they did report it (since I was the Case Agent/Lead Investigator). Therefore, in their mind limit their liability to correct and report the misconduct and issues. However, it was confusing that at the same time, I thought some of these reporting parties (particularly in management) sought deniability and didn't want to go "on the record." These same reporting/witnessing parties in most cases apparently refused to correct the misconduct and further report it to higher level supervision, the Office of Inspector General, and the U.S. Attorney's Office (as required/necessary) and even discouraged me from further reporting and correcting the issues. When I did try to correct and further report the issues as I believed appropriate and necessary, these same supervisors (who were reporting/witnessing parties) acted confused and unaware. Ultimately, I became an outcast and was retaliated against.

I also feel there are likely a great many other issues that even I am not aware of, that were likely disclosed or known to my supervisor, at least two other BLM SACs, the former BLM SAC's subordinates, and the former BLM OLES Director. In addition to the witnesses I identify, I would also recommend interviews with the BLM OLES Chief of the Office of Professional Responsibility/Internal Affairs and I would recommend reviews of my chain of command's emails and text messages.

Unfortunately, I also believe that the U.S. Attorney's Office Prosecution Team may have adopted an inappropriate under the table/unofficial policy of "preferred ignorance" in regard to the likely gross misconduct on the part of senior management from the BLM Office of Law Enforcement and Security and Discovery/Exculpatory related trial issues.

What indicated to me there was likely deception and a failure to act on the part of my supervision was the actions, comments, and questions of senior BLM Law Enforcement Officials, comments by the BLM's Chief of the Office of Professional Responsibility (Internal Affairs), and the pretrial Giglio/Henthorn Review.

Additionally, actions, comments, and questions by the U.S. Attorney's Office Lead Prosecutor, the strategy to deny the Dave Bundy iPad evidence from coming to light, the direction by a BLM ASAC for me not to speak with any member of the Prosecution Team, and factually deceptive/incorrect talking points (snipers, Bundy property, Bundy cattle overall health, etc.), indicated to me the Prosecution Team wanted to possibly and purposefully remain ignorant of some of the case facts and possibly use unethical legal tricks to prevent the appropriate release of substantive/exculpatory and bias/impeachment material. I believe that it is more likely than not, that there was not only a lack of due diligence by the Prosecution Team in identifying and locating exculpatory material, but there was also a desire to purposely stay ignorant (which my chain of command was happy to go along with) of some of the issues and likely an inappropriate strategy to not disclose substantive material to the Defense Counsel and initiate any necessary civil rights related or internal investigations. Furthermore, I was surprised about the lack of

Defense Counsel questions about critical vulnerabilities in the case that should have been disclosed to the Defense in a timely manner. It is my belief that the Defense Counsel was simply ignorant of these issues.

Also, please keep in mind that I am not an "Internal Affairs," "Inspector General," or "Office of Professional Responsibility Investigator." Therefore, I couldn't, and can't independently conduct investigations into government law enforcement personnel. Additionally, I haven't been formally trained on internal investigations. Therefore, my perception, the opinions I offer, and the fact pattern that I found relevant was gained from my experience as a regular line investigator and former uniformed patrol and Field Training Officer (FTO).

Each, and every time I came across any potential criminal, ethical, or policy related issue, in the course of my duties as the DOI/BLM Case Agent/Lead Investigator for the Gold Butte/Cliven Bundy Nevada Investigation, I reported the issues up my chain of command with the intent to run an independent and unbiased, professional investigation, as I was instructed. Later, I determined my chain of command was likely already aware of many of these issues and were likely not reporting those issues to the prosecution team and higher headquarters. Later, I also was informed by the BLM Office of Professional Responsibility (OPR) Chief that any issues that had anything to do with a particular favored BLM SAC, the BLM OLES Director looked at himself instead of OPR. The OPR Chief told me he was shut out of those types of inquiries. I noted in the pre-trial Giglio/Henthorn Review that this appeared to be accurate. I also noted that these types of issues I discovered apparently weren't properly investigated as required. The bad joke I heard around the office was that the BLM SAC knew where the BLM OLES Director had buried the pr0stitutes body and that is why the BLM OLES Director protects him.

I know good people make mistakes, are sometimes immature and use bad judgement. I do it all the time. I am not addressing simple issues here. However, some simple issues are included to indicate a wide spread pattern, openly condoned prohibited/unprofessional conduct and an inappropriate familiar and carnival atmosphere. Additionally, the refusal to correct these simple issues and conduct discrepancies, harassment, and ultimately cover-ups and retaliation are indicated and explained throughout this document.

Since I wasn't a supervisor and since I was one of the most junior criminal investigators in our agency, I tried to positively influence those above me by my example and discrete one on one mentoring and urging. I simply wanted the offensive and case/agency destructive conduct to stop, to correct the record where appropriate, and inform those who we had a duty to inform of the potential wrong-doing. I attempted to positively influence my management in the most respectful and least visible way possible. In order to accomplish this, I adopted a praise in public and counsel in private approach. When that failed to work for the long term, I had to become more "matter of fact" (but always respectful), when that failed to work I resorted to documenting the instances and discussions. Later, I resorted to official government email to make a permanent record of the issues. When this failed to deter the offensive conduct or instigate appropriate action by my supervision, I had to notify others and identify witnesses. I respected and stayed

within my chain of command until I was expressly forbidden from contacting the U.S. Attorney's Office and my requests to speak with the BLM OLES Director went unanswered.

Simply put, as a law enforcement officer, I can't allow injustices and cover-ups to go unreported or half-truths and skewed narratives go unopposed. I have learned that when conduct of this sort isn't corrected, then by default it is condoned, and it becomes unofficial policy. When I determined there were severe issues that hurt more than just me, and I determined that my supervision apparently lacked the character to correct the situation, I knew that duty fell to me. I still felt I could accomplish this duty without embarrassing my supervision, bringing shame on our agency, or creating a fatal flaw in our investigation.

Initially, I felt I could simply mentor and properly influence my supervision to do the right thing. Time and time again, I urged my supervision to correct actions and counsel individuals who participate in conduct damaging to our agency and possibly destructive to the integrity of our case or future investigations. I attempted to urge my supervision to report certain information to senior BLM management and the U.S. Attorney's Office. Note: *Evidence of some of this offensive conduct is potentially available through Freedom of Information Act (FOIA) requests and subject to a Litigation Hold, may be considered Exculpatory Material in trial discovery process, and may be subject to federal records protections. Additionally, in many instances, I can provide evidence, identify the location of evidence and identify witnesses.*

Ultimately, in addition to discovering crimes likely committed by those targeted in the investigation, I found that likely a BLM Special Agent-in-Charge recklessly and against advisement from the U.S. Attorney's Office and apparent direction from the BLM Deputy Director set in motion a chain of events that nearly resulted in an American tragedy and mass loss of life. Additionally, I determined that reckless and unprofessional conduct within BLM Law Enforcement supervisory staff was apparently widespread, widely known and even likely "covered up." I also found that in virtually every case, BLM senior law enforcement management knew of the suspected issues with this BLM SAC, but were either too afraid of retaliation, or lacked the character to report and/or correct the suspected issues.

Note: *This entire document was constructed without the aid of my original notes due to their seizure by a BLM Assistant Special Agent-in-Charge outside of my presence and without my knowledge or permission. Additionally, I was aggressively questioned regarding the belief that I may have audio recorded BLM OLES management regarding their answers concerning this and other issues. All dates, times, and quotes are approximate and made to the best of my ability and memory. I'm sure there are more noteworthy items that I can't recall at the time I constructed this document.* Also Note: *The other likely report worthy items were seized from me on February 18, 2017, and are believed to be in the possession of a BLM ASAC. I recommend these items be safeguarded and reviewed.*

As the case agent/lead investigator for the DOI in the Cliven Bundy investigation out of the District of Nevada, I became aware of a great number of instances when senior BLM OLES leadership were likely involved in **Gross Mismanagement** and **Abuse of Authority** (which may have posed a substantial and specific threat to employee and public safety as well as wrongfully denied the public Constitutionally protected rights). The BLM OLES leadership and others may have also violated **Merit System Principles** (Fair/Equitable Treatment, High Standards of Conduct, Failing to Manage Employee Performance by Failing to Address Poor Performance and Unprofessional Conduct, Potential Unjust Political Influence, and Whistleblower Retaliation), **Prohibited Personnel Practices** (Retaliation Against Whistleblowers, Retaliation Against Employees that Exercise Their Rights, Violation of Rules that Support the Merit System Principles, Enforcement of Policies (unwritten) that Don't Allow Whistleblowing), **Ethics Rules** (Putting Forth an Honest Effort in the Performance of Duties, the Obligation to Disclose Waste, Fraud, Abuse, and Corruption, Endeavoring to Avoid Any Action that Creates the Appearance that there is a Violation of the Law, and Standards of Ethical Conduct for Employees), **BLM OLES Code of Conduct** (Faithfully Striving to Abide by all Laws, Rules, Regulations, and Customs Governing the Performance of Duties, Potentially Violating Laws and Regulations in a Unique Position of High Pubic Trust and Integrity of Profession and Confidence of the Public, Peers, Supervisors, and Society in General, Knowingly Committing Acts in the Conduct of Official Business and/or in Personal Life that Subjects the Department of Interior to Public Censure and/or Adverse Criticism, Conducting all Investigations and Law Enforcement Functions Impartially and Thoroughly and Reporting the Results Thereof Fully, Objectively, and Accurately, and Potentially Using Greater Force than Necessary in Accomplishing the Mission of the Department), **BLM Values** (To serve with honesty, integrity, accountability, respect, courage and commitment to make a difference), **BLM Guiding Principles** (to respect, value, and support our employees. To pursue excellence in business practices, improve accountability to our stake holders and deliver better service to our customers), **BLM OLES General Order 38** (Internal Affairs Investigations), **Departmental and Agency Policies** (BLM Director Neil Kornze Policy on Equal Opportunity and the Prevention of Harassment dated January 19, 2016, DOI Secretary Sally Jewell Policy on Promoting an Ethical Culture dated June 15, 2016, DOI Secretary Sally Jewell Policy on Equal Opportunity in the Workplace dated September 14, 2016, DOI Deputy Secretary of Interior Michael Connor Policy on Workplace Conduct dated October 4, 2016, DOI Secretary Ryan Zinke Policy on Strengthening the Department's Ethical Culture dated March 2, 2017, DOI Secretary Ryan Zinke Policy on Harassment dated April 12, 2017, Memorandum dated December 12, 2013, from Acting DOI Deputy Assistant Secretary for Human Capital and Diversity Mary F. Pletcher titled "The Whistleblower Protection Enhancement Act of 2012 and Non-Disclosure Policies, Forms, Agreements, and Acknowledgements, Email Guidance by Deputy Secretary of Interior David Bernhardt titled "Month One Message," dated August 1, 2017, Email Guidance by Deputy Secretary of Interior David Bernhardt titled "Month Two Message," dated September 22, 2017, BLM Acting Deputy Director of Operations John Ruhs guidance contained in an Email titled "Thank You for Making a Difference," dated September 29, 2017, which referenced BLM Values and Guiding Principles, BLM/DOI Email and Computer Ethical Rules of Behavior, BLM "Zero Tolerance" Policy Regarding Inappropriate Use of the Internet, 18 USC 1663 Protection of Public Records

and Documents, 18 USC 4 Misprison of a Felony, 18 USC 1519 Destruction, Alteration, or Falsification of Records in Federal Investigations, 18 USC 241 Conspiracy Against Rights, 18 USC 242 Deprivation of Rights Under Color of Law, 43 USC 1733 (c) (1) Federal Land Policy Management Act, 43 USC 315 (a) Taylor Grazing Act, 5 USC 2302 Whistleblower Protections-Prohibited Personnel Practices/Whistleblower Protection/Enhancement Acts, 5 CFR 2635 Gifts Between Employees, 5 USC 7211 Employees Rights to Petition Congress, and Public Law 112-199 of November 27, 2012.

Additionally, the BLM Criminal Investigator/Special Agent Position Description (LE140) in part states the following: "Comprehensive and professional knowledge of the laws, rules, and regulations which govern the protection of public lands under jurisdiction of the Bureau of land Management, and their applicability on a national basis,"(under Factor 1, Knowledge Required by the Position), "Knowledge of the various methods, procedures, and techniques applicable to complex investigations and other law enforcement activities required in the protection of natural resources on public land. The applicable methods, procedures, and techniques selected require a high degree of judgement that recognizes sensitivity to the violations, as alleged, discretion in the manner that evidence and facts are developed, and an awareness of all ramifications of a criminal investigation. The incumbent must have the ability to establish the interrelationship of facts and evidence and to present findings in reports that are clear, concise, accurate, and timely submitted for appropriate review and action." (under Factor 1, Knowledge Required by the Position), "Comprehensive knowledge of current and present court decisions, criminal rules of evidence, constitutional law, and court procedures to be followed in criminal matters, formal hearings and administrative matters in order to apply court and constitutional requirements during the conduct of an investigation and to effectively testify on behalf of the Government." (under Factor 1, Knowledge Required by the Position), "great discretion must be taken to avoid entrapment of suspects and to protect the integrity of the investigation" (under Factor 4, Complexity), and "The incumbent must be able to safely utilize firearms...." (Factor 8, Physical Demands)

Please also note the potential Constitutional issues regarding "religious tests," search and seizure, and speech/assembly protections.

Please further note the following Rules of Criminal Procedure/Evidence: Memorandum of Department Prosecutors dated January 4, 2010, from David W. Ogden to the Deputy Attorney General, Rule 16, 18 USC 3500-the Jencks Act, the Brady Rule, Giglio, U.S. Attorney's Manuel 9-5.001 Policy Regarding Disclosure of Exculpatory and Impeachment Information, 9-5.100 Policy Regarding the Disclosure to Prosecutors of Potential Impeachment Information Concerning Law Enforcement Agency Witnesses, American Bar Association Standards 3-1.2 The Function of the Prosecutor, 3-2.8 Relations with the Courts and Bar, 3-3.1 Conflict of Interest, 3-3.11 Disclosure of Evidence by the Prosecutor, 3-5.6 Presentation of Evidence, and 3-6.2 Information Relevant to Sentencing.

Case Details: 2-year/10-month case, approximately 570 DOI Exhibits/Follow-on Turn-in Items, approximately 508 DOI Identified Individuals-19 Defendants

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Via Federal Express and Email **URGENT/ FOR IMMEDIATE CONSIDERATION**

November 28, 2018

The Honorable Matthew G. Whitaker
Acting Attorney General
U.S. Department of Justice
950 Pennsylvania Ave NW
Washington, DC, 20530

The Honorable Brian A. Benczkowski
Assistant Attorney General
U.S. Department of Justice
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The Honorable Dayle Elieson
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Re: Orders Issued in *In re: Cliven D. Bundy*, 16-72742 and *United States v. Bundy et al*, 2:16-cr-00046 (D. Nev.)

Dear Ladies and Gentlemen:

I am legal counsel for Cliven and Ryan Bundy, as you know.

Enclosed is an order from the U.S. Court of Appeals for the Ninth Circuit which provides that you may respond within 21 days, or until and including December 18, 2018, to my petition for writ of mandamus to vacate the Ninth Circuit's order in *In re: Cliven D. Bundy*, 16-72742 on grounds of law and equity. A copy of the writ is also enclosed.

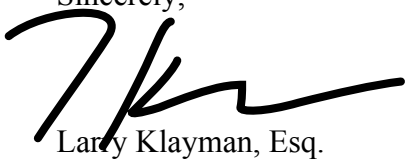
As I have discussed previously with Ms. Elizabeth White, Assistant U.S. Attorney for the District of Nevada, who is assigned to Ninth Circuit appellate matters concerning the Bundy cases, I respectfully request that the Department, of which I am an alumnus, consent to vacating this order.

In the past I also spoken with and asked former Attorney General Ashcroft to review the Bundy cases, and he finally agreed to do so after the Honorable Gloria Navarro dismissed the supersedeas indictment. *United States of America v. Bundy et al*, 2:16-cr-00046, Dkt. # 3117. In the context of this apparent ongoing review, it is hoped that the Department will, in addition to agreeing to vacate the above order pursuant to my writ, also withdraw its notice of appeal of Judge Navarro's dismissal in order that the Bundys and the government can then attempt to amicably settle all matters.

I trust that y'all will agree that it is time for all parties move on in the interests of justice and fundamental fairness.

Thank you for your immediate consideration and thank you in advance for your prompt and timely response to this letter.

Sincerely,



Larry Klayman, Esq.

Embattled federal prosecutor in Nevada takes a step down

Steven Myhre, right, speaks during a news conference at the Lloyd George U.S. Courthouse in Las Vegas on Oct. 22, 2007. (Las Vegas Review-Journal)

By **Jeff German (https://www.reviewjournal.com/staff/jeff-german/)** / Las Vegas Review-Journal
April 12, 2018 - 4:57 pm

Updated April 12, 2018 - 5:17 pm

After a stormy year, the long tenure of Steven Myhre as the No. 2 prosecutor in the Nevada U.S. attorney's office has ended under secrecy.

Within the past month, Myhre left his job as first assistant to Interim U.S. Attorney Dayle Elieson and took on new duties in the office as a senior litigation counsel, several former federal prosecutors who have spoken with office members told the Las Vegas Review-Journal.

His new position comes with no supervisory responsibilities, but allows him to mentor and train younger attorneys, according to a Justice Department manual.

Last May, Myhre, who spent about 15 years as first assistant in the office, was ordered to undergo anti-sex discrimination training as a result of a federal case filed by a female prosecutor during the tenure of former U.S. Attorney Greg (https://www.reviewjournal.com/news/politics-and-government/nevada/former-u-s-attorney-for-nevada-leaves-fbi-liaison-job/)Brower (https://www.reviewjournal.com/news/politics-and-government/nevada/former-u-s-attorney-for-nevada-leaves-fbi-liaison-job/) in 2008 and 2009.

In January, Myhre came under fire again after Chief U.S. District Judge Gloria Navarro dismissed the high-profile criminal case against rancher Cliven Bundy and his co-defendants over the armed 2014 standoff near Bunkerville. Navarro concluded that Myhre's prosecution team committed "flagrant" misconduct by not turning over evidence to the defense that could have harmed the government's case. The Justice Department earlier had ordered an internal investigation of the prosecution team.

Elieson this week refused to confirm or comment on Myhre's move and other management changes in the office, including the promotion of Andrew Duncan from criminal division chief to executive assistant U.S. attorney. She said through a spokeswoman that she considered the matters to be personnel issues. But other U.S. attorneys across the country put out news releases about such changes, and larger offices in New York, Los Angeles and Washington D.C. include the names of supervisors on their websites.

Charles La Bella, a retired Justice Department official, said Elieson has an obligation to disclose the names of her managers.

"While I understand personnel actions are not public and shouldn't be public because people have a certain degree of privacy, the people who are in those positions should be identified," said La Bella, a former U.S. attorney in San Diego and deputy fraud chief with the Justice Department. "The public has a right to know."

At the same time, La Bella said he has sympathy for Elieson, who is new to Nevada.

"She has a formidable task getting the office marching in the same direction when she has no history in that office," he said. "Every United States attorney's office has its own personality. It's like walking into a new classroom as a teacher."

Elieson has not filled the first assistant's position, and it is unclear whether Myhre requested the new assignment or was demoted. Trisha Young, a spokeswoman for Elieson, denied a request to interview Myhre and Duncan, now the No. 2 person in the office.

The Justice Department in Washington did not return a call for comment.

Myhre was among those singled out last year in a U.S. Equal Employment Opportunity Commission decision critical of the office under Brower.

The EEOC decision, obtained by the Las Vegas Review-Journal in (https://www.reviewjournal.com/news/politics-and-government/ex-las-vegas-prosecutor-key-player-in-russia-probe-cited-for-sex-discrimination/)July (https://www.reviewjournal.com/news/politics-and-government/ex-las-vegas-prosecutor-key-player-in-russia-probe-cited-for-sex-discrimination/), concluded that Brower had subjected the female prosecutor, who has since left the office, to sex discrimination and retaliation. Myhre was Brower's first assistant.

Brower, a former Nevada legislator, displayed a "hostile" attitude toward the prosecutor after she complained about sexist remarks her white collar crime supervisor had made, the decision said. The office also was slow to transfer the prosecutor out of the white collar crime unit.

The EEOC ordered Myhre, Brower and other office managers, to undergo anti-sex discrimination training and submit a compliance report. The agency also ordered the Justice Department to pay the female prosecutor $287,998 in legal fees, costs and damages.

Brower at the time was the FBI's top liaison with Congress during a politically charged investigation into Russian election meddling. Last month, he left his position as an FBI assistant director to work in the Las Vegas and Washington, D.C. offices of the high-powered law firm Brownstein Hyatt Farber Schreck.

When the EEOC decision became public last year, Myhre was the acting U.S. attorney in Nevada as a result of the Trump administration's firing of longtime U.S Attorney Daniel Bogden. He also spent more than a year as acting U.S. attorney in 2007.

In January, the Justice Department took the unusual step of bringing Elieson from Texas to temporarily take the reins of the Nevada office rather than hiring someone from within the state.

Nevada's congressional delegation traditionally recommends a new U.S. attorney, who then is appointed by the president and approved by the U.S. Senate. But in Elieson's case, the Justice Department took control of the process with her temporary appointment.

Her 120-day term ends in May, which means if she wants to continue heading the office, she must be appointed by Navarro for another temporary term until the president decides to put someone in the position for the long term. Under federal law, Navarro is not bound to select Elieson and could choose someone else.

Former federal prosecutors said Elieson has been making administrative changes that suggest she is expecting to remain at the helm of the office.

It is not unusual for a new U.S. attorney to install a new management team, the former prosecutors said. Elieson also has added more supervisors and reorganized the criminal division, which is now headed by Assistant U.S. Attorney Cristina Silva.

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THE BOTCHED CLIVEN BUNDY CASE WAS JUST THE LATEST EXAMPLE OF PROSECUTORIAL MISCONDUCT IN LAS VEGAS

Brooke Williams and Shawn Musgrave

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Photo: Mike Blake/Reuters

WHEN A FEDERAL JUDGE dismissed the indictment against cattle rancher Cliven Bundy earlier this year due to what she described as "outrageous" misconduct by Nevada prosecutors, she repeatedly referred to similar wrongdoing in a case from a decade earlier. In that older case, an appeals court delivered an incredibly rare ruling: The prosecutorial misconduct was so severe the court threw out dozens of criminal charges and barred the government from filing new ones.

As it happens, that older case — U.S. v. Chapman, decided by the 9th Circuit Court of Appeals in 2008 — also originated with the U.S. Attorney's Office in Las Vegas. In fact, the same veteran prosecutor who led the Bundy case also tried to downplay his colleague's similar misconduct in Chapman.

In both cases, prosecutors were found to have violated their constitutional obligations to provide defendants with important evidence that could have helped them fight the charges.

An ongoing, nationwide examination of federal prosecutors by The Intercept shows the Nevada office has a history of error and misconduct, though it doesn't always rise to the level of dismissing a case.

The 16-count indictment a judge threw out against Bundy, two of his sons, and a co-defendant stemmed from an April 2014 armed standoff in Bunkerville, Nevada. The government alleged the four men conspired to obstruct federal agents from rounding up Bundy's cattle that were grazing on federal lands, including by recruiting squadrons of armed gunmen.

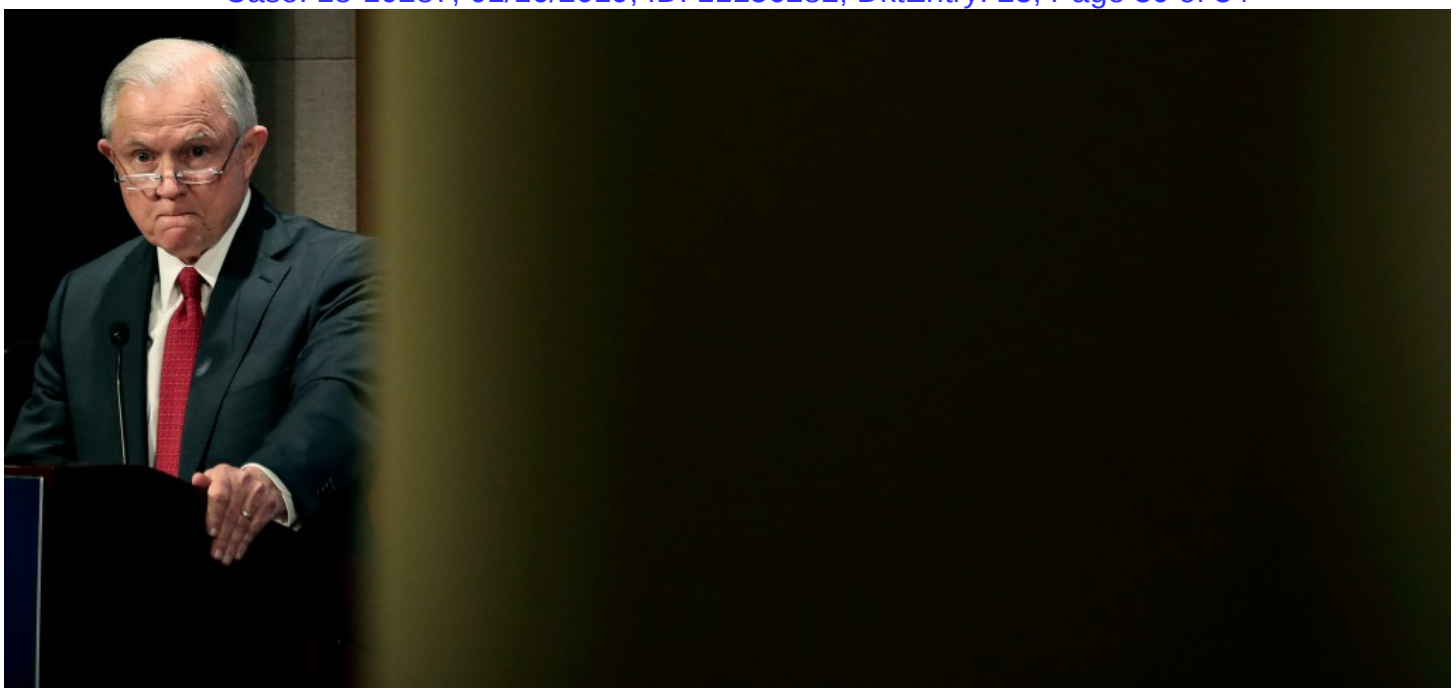
A judge found that prosecutors, including then-acting U.S. Attorney Steven Myhre, withheld more than 3,000 pages of FBI reports and other documents and misled the court. This is the same sort of misconduct that led to the dismissal of the indictment in Chapman. In that 2008 case — now considered a landmark in prosecutorial oversight — Myhre's colleague failed to hand over hundreds of pages, including plea agreements with government witnesses.

Myhre and his team had a front seat to both cases, and in the intervening years, his office was warned multiple times about the havoc that misconduct can wreak, including withholding evidence and making misrepresentations at trial.

The Nevada U.S. Attorney's Office, which has asked the judge to reconsider her dismissal of the Bundy indictment, declined to answer any questions for this article. Myhre was replaced as acting U.S. attorney days before the Bundy indictment was dismissed.

Given the rarity with which judges dismiss charges, even for serious infractions, some experts wonder if there are more fundamental problems with the Nevada federal prosecutor's office. Laurie Levenson, a professor at Loyola Law School in Los Angeles who previously served as a federal prosecutor, said there seems to be "a range of problems" with the Nevada U.S. Attorney's Office, "from clerical errors to intentional violations."

"Although the courts have displayed some patience, they are clearly warning the government to 'get its act together,'" Levenson wrote by email.



U.S. Attorney General Jeff Sessions speaks at the Heritage Foundation's Legal Strategy Forum, on October 26, 2017 in Washington, D.C. Photo: Drew Angerer/Getty Images

MYHRE LED THE Bunkerville prosecutions, even after Attorney General Jeff Sessions named him acting U.S. attorney for Nevada in March 2017. Sessions praised Myhre for continuing to handle such high-profile trial work while heading the office. "I've got to tell you, it's impressive when you have a tough case, a controversial case, and you've got the top guy leading the battle, going to court, standing up and defending the office and the principles of the law," Sessions said of Myhre's handling of the Bundy cases in a July 2017 speech, according to the Las Vegas Review-Journal.

But in dismissing the indictments against Bundy, District Court Judge Gloria Navarro found that Myhre and his office had violated their constitutional obligations. She noted key similarities between the misconduct in Chapman and the government's missteps in the Bundy case, including the prosecutors' failure to turn over "voluminous" documents. In opposing dismissal, Myhre also cited Chapman numerous times, attempting to distinguish the Bundy prosecutions from such a landmark case.

What neither Myhre nor Navarro mentioned, according to hearing transcripts, was the crucial role Myhre himself played in Chapman, in which he unsuccessfully attempted to salvage an indictment that had been dismissed over a colleague's flagrant misconduct.

In 2003, a Las Vegas grand jury returned more than 60 counts of securities fraud, racketeering, and money laundering against Daniel Chapman and four co-defendants. Prosecutors alleged the defendants sold and merged a number of shell companies at a profit of over $12 million. Two of Chapman's co-defendants later pleaded guilty.

But ahead of the trial in 2006, Assistant U.S. Attorney Gregory Damm failed to turn over some basic evidence regarding government witnesses, including their rap sheets and plea agreements. When the defense complained about this missing documentation, Damm assured the court that he had, in fact, handed over all relevant materials. But this wasn't enough for the judge.

"Where's the proof of it? Show it to me," the judge told the prosecutor. "You make statements that you can't back up, and you'd better be careful, Mr. Damm.

"Don't roll your eyes at me, sir, or you will be spending the night with the marshals."

Unable to provide such proof, Damm sent more than 650 pages to the defendants' lawyers, including agreements with some witnesses who had already testified before the jury.

The judge was incensed over Damm's "unconscionable" failure to provide the defense with evidence that might impeach these witnesses' credibility. He took the same steps as Navarro did with the Bundy case: He declared a mistrial, and then dismissed all charges against Chapman and the other defendants entirely. The judge found that Damm had acted "flagrantly, willfully, and in bad faith," although he waffled on whether Damm's misconduct had been intentional.

"For over two weeks of trial, the prosecutor consistently claimed that he had disclosed the required material to the defendants," the trial judge said at the dismissal hearing. "And I accepted that, I accepted Mr. Damm's statement as an officer of the court. … Only after I excoriated the assistant U.S. attorney in the strongest terms did he then offer an apology to the court, not a heartfelt apology, but simply a response to me."

Myhre, first in his capacity as first assistant U.S. attorney and then as acting U.S. attorney for Nevada, tried to rescue the charges. He asked the 9th Circuit Court of Appeals to send the matter back for a new trial before a different judge.

In a 2007 brief, Myhre tried to downplay the gravity of Damm's actions, calling the documents Damm withheld "unremarkable" and insufficient to justify dismissal. "Nondisclosure of them could not possibly offend due process," he wrote. "Defendants' effort to recast the issue as misrepresentation by the government is a thinly veiled attempt at misdirection." The judge's ruling was arbitrary, he wrote, and motivated partly by "personal bias" against the prosecutor.

Several months later, standing before a three-judge panel of the 9th Circuit, Myhre said dismissing the indictments was like using "a mallet to swat an ant." Asked at one point to lower his voice, he apologized and explained his frustration about the accusations against Damm.

"I've had a prosecutor with a number of years," Myhre said, "who basically was accused and been found by the federal judge to have engaged in willful and flagrant misconduct." But Myhre said he was not making excuses for Damm's actions. "What I'm saying is that prosecutors are not perfect," he argued, noting that mistakes of all kinds are made in every trial. "But the issue is, Are we going to penalize society for the mistakes of a prosecutor?"

Myhre said judges shouldn't dismiss cases "willy-nilly" or toss them out because "someone is outraged."

"It has to be shocking and outrageous conduct," he told the panel of judges.

The 9th Circuit panel unanimously rejected Myhre's characterization, deeming Damm's actions "prosecutorial misconduct in its highest form."

They agreed with the trial judge that Damm violated his obligations under Brady v. Maryland, a 1963 case in which the U.S. Supreme Court ruled that prosecutors must disclose exculpatory evidence. In a subsequent case, the Supreme Court held that the "Brady rule" also applies to materials that might cast doubt on witnesses' credibility.

The Chapman opinion called out Myhre and the Nevada prosecutor's office for attempting to minimize the extent of Damm's misrepresentations to the trial judge. Not only did Damm try to "paper over his mistake" at trial, the 9th Circuit concluded, but Myhre and his colleagues also later changed tune and claimed they didn't need to disclose the 650 pages of evidence at all.

"The government's tactics on appeal only reinforce our conclusion that it still has failed to grasp the severity of the prosecutorial misconduct involved here, as well as the importance of its constitutionally imposed discovery obligations," the panel ruled.

The Lloyd D. George United States Courthouse, which houses the 9th Circuit Court of Appeals in Las Vegas. Photo: Google. Screenshot: The Intercept

BEFORE HANDING DOWN their ruling, one of the justices asked Myhre whether the case had been referred to the Office of Professional Responsibility, which oversees misconduct investigations and discipline for the Justice Department. Myhre said it had.

However, it's unclear if Damm suffered any disciplinary or professional repercussions for his misconduct. Despite the strong language of its ruling, the 9th Circuit didn't even identify him by name. Indeed, it is rare for judges to name prosecutors — even those they find have committed serious infractions — in their written opinions, making it difficult for the public to know about any repeated misconduct.

According to several media reports from the time, the Office of Professional Responsibility conducted a review, but found nothing worth discipline.

State Bar of Nevada records reflect no discipline against Damm, and the Nevada U.S. Attorney's Office declined to tell The Intercept whether he was subject to any internal discipline or retraining. Reached by phone, Damm declined to comment.

The office also declined to say what steps, if any, it took to prevent similar misconduct from happening again. Since Chapman, judges have warned Nevada federal prosecutors at least twice that cases might be thrown out because of prosecutors' failure to properly disclose important materials. Damm was a prosecutor on one of the cases.

In 2016, Damm was part of a team prosecuting a man and a woman for breaking into three stores, armed with guns, and stealing about $1 million worth of jewelry. In that case, the Nevada U.S. Attorney's Office waited until the morning of trial to provide defense attorneys with witness and exhibit lists despite the fact that the judge had ordered them to be turned over several days earlier.

"How is that fair to the defendants," the judge asked Kimberly Frayn, the lead prosecutor and Damm's co-counsel, "to go to trial not knowing what witnesses are going to be called and not knowing what exhibits are going to be introduced against them? Tell me how that's fair and just."

Frayn suggested this was standard practice, but the judge said he was "borderline irate." He pointed out that one of the defendants managed to get his materials submitted properly despite representing himself while in prison.

The judge considered dismissing the charges, according to hearing transcripts, but instead decided to limit the government to a single day to present its case. This was not a perfect remedy, the judge pointed out, since it "still shortchanges the defendants" some of the preparation time they would have had "had the government done its job."

"I'm not going to allow the government's creation of this problem to interfere with the defendants' preparation for their trial to the extent I can avoid that," the judge said.

After apologizing to the court, the Nevada U.S. Attorney's Office quickly struck incredible deals with two of the defendants. The alleged ringleader of the robbery crew, who faced a possible 100 years in prison, according to the Review-Journal, saw that whittled down to two years of time served under his plea agreement. Damm retired the next month, a move that the office told the Review-Journal had been planned before the trial.

The U.S. Attorney for Nevada at the time, Daniel Bogden, also told the Review-Journal that his office was "fully reviewing the matter to determine precisely what occurred." In response to a request from The Intercept, the Nevada U.S. Attorney's Office declined to say what came of that review.

Daniel Medwed, a law professor at Northeastern University who studies prosecutorial accountability, says it's important to distinguish the constitutional violations in Chapman from the lesser violation of the judge's orders in the 2016 case. "But taken together, it suggests a pattern of disregard for disclosure obligations, both constitutional and statutory," Medwed said.

In 2015, the 9th Circuit upheld a drug and firearms conviction despite "inexplicable" misconduct by a veteran Nevada prosecutor, Amber Craig, in her arguments to the jury. Known as "harmless error," judges sometimes find egregious misconduct but uphold a conviction because they determine the jury would have reached the same conclusion even if the prosecutor hadn't acted improperly.

A judge also scolded Nevada prosecutors in a 2012 wire fraud case after the government failed to provide one of the defendants with a 33-page affidavit containing details of witness interviews. A magistrate judge ruled that it was not necessary to dismiss the case, but was concerned that prosecutors failed to turn over such an important document sooner.

"The court should not be forced to intervene due to conduct such as this, and any future conduct of this nature by the government will result in this court exercising its supervisory powers and recommending severe sanctions, and possibly the dismissal of the indictment," he warned.

Bennett Gershman, a law professor at Pace University who has written extensively about prosecutors, said the Nevada office has "behaved irresponsibly and unprofessionally in meeting its constitutional and ethical duties relating to discovery and disclosure."

But "whether it's an office culture, or misconduct by a handful of assistants," he said, "is hard to say."

From left, Ammon Bundy; Ryan Payne; Jeanette Finicum, widow of Robert "LaVoy" Finicum; Ryan Bundy; Angela Bundy, wife of Ryan Bundy; and Jamie Bundy, daughter of Ryan Bundy, walk out of a federal courthouse in Las Vegas on Dec. 20, 2017. Photo: John Locher/AP

DISMISSAL IS CONSIDERED an extreme remedy for prosecutor misconduct. Judges often declare a mistrial but let the indictments stand, thus allowing prosecutors the option of taking the case before another grand jury.

As Myhre noted in his brief, the Chapman case seems to be the only ruling in which the 9th Circuit has ever upheld outright dismissal of indictments due to prosecutorial misconduct. And Navarro found plenty of similarities when comparing Damm's misconduct in Chapman to Myhre's actions in the Bundy trial.

As in Chapman, Myhre and his office failed to turn over hundreds of pages of evidence, particularly FBI reports, logs, maps, and threat assessments, Navarro found. And, like Damm, Myhre and his office made "several misrepresentations" to the defense and the court, both about the existence of certain evidence and its importance, she ruled.

In one instance, Navarro said, the prosecution made "a deliberate attempt to mislead and to obscure the truth." At the mistrial hearing in December, she criticized Myhre for calling an internal affairs report about one of the Bundy investigators an "urban legend." When the report surfaced, Myhre told the court his "urban legend" comment was "based on the government's inability to verify its existence, let alone find it," and not an attempt to deceive.

To be sure, Navarro did find some key differences between the cases. She gave prosecutors credit, for instance, for keeping a log of which documents had already been turned over, which Damm did not do. She also placed considerable blame on the FBI for the failures, saying "both the prosecution and the investigative agencies are equally responsible."

Prosecutors also tried to distinguish between the two cases. This put Myhre in the odd position of reframing Chapman as a relatively clear case of misconduct by his own office. Ten years after he had downplayed the misconduct in Chapman, Myhre wrote, "Unlike in Chapman, in this case the government acted in good faith, relying on its understanding of the law and its discovery obligations." Where once he argued the plea agreements, rap sheets, and other documents in Chapman were "unremarkable," Myhre now characterized them as "perhaps the most obvious Giglio evidence there is."

In Giglio v. United States, the Supreme Court ruled that prosecutors must provide evidence that might cast doubt on the credibility of witnesses. "The government did not withhold anything it knew to be material or obvious Giglio material like a prior conviction," Myhre wrote in his 2017 motion.

Experts split on whether this recasting of Chapman by the same office that spawned it — and the same prosecutor who argued it — was problematic. Medwed, the Northeastern University professor, didn't consider it unethical. "If now, years later, it suits his interest," Medwed said, "I don't see any real problem with changing the interpretation."

Levenson, on the other hand, said, "I don't think you can get away with saying two contradictory things," quipping that she hoped Myhre "wears an asbestos suit" when he goes before the judge. Gershman said it seemed like "Myhre either forgot what he argued in Chapman, or hoped nobody would ever find out."

"He is playing fast and loose with the truth, something no lawyer, let alone a prosecutor should ever do," he said.

Ultimately, Myhre's arguments didn't sway Judge Navarro.

"Here, the prosecution seems to have minimized the extent of prosecutorial misconduct by arguing that they believed the various items previously undisclosed, like the threat assessments, were not helpful or exculpatory," Navarro said at the dismissal hearing in January.

She found it "grossly shocking" how Myhre claimed prosecutors were "unaware" that these kinds of documents were material to the case.

Navarro didn't explore any of the more incendiary allegations against Myhre brought by a whistleblower, including claims that Myhre adopted a "don't ask, don't tell" attitude about potential inappropriate conduct by federal agents working on the Bunkerville investigation. The Nevada U.S. Attorney's Office has denied the whistleblower's allegations and called them "false in all material aspects" in court filings.

After weighing possible sanctions, Navarro decided dismissal was the most appropriate, both to uphold the defendants' due process rights and to deter "future investigatory and prosecutorial misconduct."

"None of the alternative sanctions available are as certain to impress the government with the court's resoluteness in holding prosecutors and their investigative agencies to the ethical standards which regulate the legal profession as a whole," she said.

In briefs filed in February, the U.S. Attorney's Office in Nevada urged Navarro to reconsider, saying her ruling was "clearly erroneous."

The office argued Navarro failed to adequately consider less drastic remedies, such as dismissing some of the charges, or tossing all of them but allowing prosecutors to seek new ones. As of April 25, the court had not yet ruled on this appeal, according to federal records.

After the court dismissed the Bundy indictment, Justice Department officials ordered a review, saying they would send a "discovery expert" to Las Vegas. A department spokesperson declined to elaborate on the status of that review or say whether Myhre had been referred to the Office of Professional Responsibility.

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Judge appoints acting US attorney in Nevada to continue interim role

By Colton Lochhead (https://www.reviewjournal.com/staff/colton-lochhead/) / Las Vegas Review-Journal
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Chief U.S. District Judge Gloria Navarro on Wednesday appointed Dayle Elieson to be Nevada's U.S. attorney until the Senate can confirm a candidate for the job.

Elieson was appointed as Nevada's acting U.S. attorney by Attorney General Jeff Sessions in January. That appointment was only good for 120 days and is set to expire on May 4, and President Donald Trump has yet to nominate a candidate for Senate consideration to confirm for the permanent role.

According to Navarro's order, such a nomination and confirmation will not happen before Elieson's appointment expires on May 4.

Under the Constitution, if the Senate has not confirmed a permanent candidate by the end of that interim period, the federal courts can appoint someone to the position until the vacancy is filled.

Elieson's new appointment begins on May 5.

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