

LISSA CASEY, OSB #086541
MICHAEL ARNOLD, OSB #011873
lissa@arnoldlawfirm.com
mike@arnoldlawfirm.com
Arnold Law
401 East 10th Ave. Ste 400
Eugene, OR 97401
Ph: 541-338-9111
Attorneys for Ammon Bundy

**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

AMMON BUNDY *et al*,

Defendants.

Case No.: 3:16-CR-00051

**DEFENDANT AMMON BUNDY'S
MOTION TO AMEND ORDER TO
FILE JOINT STATEMENT**

EXHIBIT A

EXHIBIT A

Arnold Law
401 East 10th Ave. Ste 400
Eugene, OR 97401
Ph: 541-338-9111

LISSA CASEY, OSB #086541
MICHAEL ARNOLD, OSB #011873
lissa@arnoldlawfirm.com
mike@arnoldlawfirm.com
Arnold Law
401 East 10th Ave. Ste 400
Eugene, OR 97401
Ph: 541-338-9111
Attorneys for Ammon Bundy

**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON**

UNITED STATES OF AMERICA,

 Plaintiff,

 vs.

AMMON BUNDY *et al*,

 Defendants.

Case No.: 3:16-CR-00051

**DEFENDANT AMMON BUNDY'S
PROPOSED MEMORANDUM OF
LAW RE: REPLY TO
GOVERNMENT'S RESPONSE TO
DEFENDANT'S MOTIONS FOR
SITE ACCESS**

Defendant AMMON BUNDY respectfully submits this supplemental Memorandum of Law in support of his Reply to the Government's Response to Defendant's Motions for Site Access.

It is well-settled that fundamental fairness is required for a defendant to receive Due Process. *Bearden v. Georgia*, 461 U.S. 660, 673 (“fundamental fairness [is] required by the Fourteenth Amendment...); *Doyle v. Ohio*, 426 U.S. 610, 618 (1976) (holding that a prosecutor's conduct was “fundamentally unfair and a deprivation of due process”). Fundamental fairness means that defendants must be afforded a meaningful opportunity to present a complete defense.

California v. Trombetta, 467 U.S. 479, 485 (1984). What is fundamentally fair to comport with due process is not rigidly defined. Due process is, “perhaps, the least frozen concept of our law—the least confined to history and the most absorptive of powerful social standards of a progressive society.” *Medina v. California*, 505 U.S. 427, 454 (1992). When determining whether a procedure is entitled to protection by the Due Process clause, *Ake v. Oklahoma*, 470 U.S. 68 (1985) is illustrative:

“[t]he private interest in the accuracy of a criminal proceeding that places an individual’s life or liberty at risk is almost uniquely compelling. Indeed, the host of safeguards fashioned by this Court over the years to diminish the risk of erroneous conviction stands as a testament to that concern. The interest of the individual in the outcome of the State’s effort to overcome the presumption so innocence is obvious and weighs heavily in our analysis.” *Ake v. Oklahoma*, 470 U.S. 6878 (1985).

Without access to the investigatory efforts of the Government at the scene, Mr. Bundy will be forced to depend on the good will and diligence of State actors—the actors trying to convict him of a crime – and hope that they meet their obligations to disclose favorable evidence to him and his defense team. The problem in this unique case is that the Government will not know what evidence at the scene is specifically favorable to Mr. Bundy as opposed to another co-defendant. Many different people took many different actions at that scene. Those actions do not diminish Mr. Bundy’s rights to receive exculpatory information nor does it diminish his Sixth Amendment right to counsel who performs an exhaustive

investigation and presents a complete defense on his behalf. *Von Moltke v. Gillies*, 332 U.S. 708, 721 (1948) (“Prior to trial an accused is entitled to rely upon his counsel to make an independent examination of the facts, circumstances, pleadings and laws involved...”). Given that this is a conspiracy case, Mr. Bundy cannot, through his defense counsel, defend himself against a specific act that the Government accuses him of doing in furtherance of the conspiracy without having someone at the scene who can later testify about the state of the scene when the FBI began processing it.

The Government’s offer to catalog evidence and make it available is insufficient in the context of this case. In this case, the evidence of concern is the state of the scene as the FBI originally found it after the last co-defendants were taken into custody. Any part of that scene that is damaged that was not damaged before Mr. Bundy was arrested is *per se* exculpatory. The FBI would not know the differences in the scene to look for, photograph, and document that would be exculpatory to Mr. Bundy. Therefore, a defense investigator is essential in this case to ensure that exculpatory evidence is preserved and Mr. Bundy receives due process in this case.

Fundamental fairness requires accuracy in a criminal investigation. Due Process requires that accurate information be used in securing a conviction. Accurate information can only be ensured with a defense investigator present as the

FBI processes the scene. For the foregoing reasons, Mr. Bundy respectfully requests that a defense investigator be present at the scene as the FBI processes it. Additionally, he hereby puts the government on notice that any destruction of evidence, especially after the filing in this motion should be viewed as highly suspect and indicative of, or at least subject to an inference of, bad faith. To avoid any such accusations, Mr. Bundy requests that the Court order that evidence be preserved until a defense investigator can be allowed onto the scene to observe processing. That way, no evidence is destroyed or consumed by processing without independent observation.

DATED this 16th day of February, 2016.

/s/ Michael Arnold
Michael Arnold, OSB #011873
mike@arnoldlawfirm.com
Lissa Casey, OSB #086541
lissa@arnoldlawfirm.com