

Terri Wood, OSB #883325  
Law Office of Terri Wood, P.C.  
730 Van Buren Street  
Eugene, Oregon 97402  
541-484-4171  
Fax: 541-485-5923  
Email: contact@terriwoodlawoffice.com

Attorney for Jon Ritzheimer

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

Plaintiff,

-VS-

JON RITZHEIMER,

Defendant

Case No. 3:16-CR-00051-02-BR

DEFENDANTS' MOTION TO COMPEL  
PRODUCTION OF INFORMATION  
REGARDING LAW ENFORCEMENT'S USE  
AND DISPLAY OF FORCE

**Certificate of Conferral:** The undersigned counsel for Jon Ritzheimer hereby certifies she has conferred with AUSA Geoffrey Barrow about this motion and the relief sought. The government opposes the motion.

Mr. Ritzheimer, through counsel Terri Wood, and on behalf of all defendants, moves the Court to order the government to produce, by a date certain, information regarding law enforcement's use and display of force in Harney County, Oregon, during the time period alleged in the superseding

indictment, as more particularly set forth below. The defense acknowledges that limited information regarding some of the particular requests has been provided in discovery received to date. Upon conferral, the government indicates that it does not believe that the defense is entitled to the requested information.

The information sought by this motion is material to defendants' state of mind in their defense that they possessed firearms for lawful defensive purposes, and in fear of law enforcement's use of excessive force to end the protest, rather than to facilitate the alleged conspiracy or for use in the commission of the alleged conspiracy. The information is also material to establishing bias and hostility towards defendants by law enforcement and other government witnesses. See supporting Memorandum of Law filed herewith and incorporated by reference.

Wherefore, pursuant to Rule 16, F.R.Cr.P., Due Process and the Right to Present a Defense guaranteed by the Fifth and Sixth Amendments to the United States Constitution, the Court should order the government to inquire of all participating law enforcement agencies, including the U.S. Forest Service, Bureau of Land Management (BLM), and U.S. Attorneys Office, and state, local and tribal law enforcement agencies that participated in this investigation under the direction of or in cooperation with the FBI, as well as the Oregon Governor's office and Department of Justice due to their documented involvement with state and federal law enforcement agencies during the occupation, and disclose all records, regardless of format and including photographs or videos, containing information responsive to the following:

1) All records that relate to the authorization, justification, and preplanning for the arrests of defendants and Lavoy Finnicum.

2) All records that relate to the designation of the Lead Law Enforcement Agency for the FBI operation, the Order of Operations Plan, the Rules of Engagement for each law enforcement agency involved in the operation, including the specific Rules of Engagement and Operational Field Orders for Operation OGURA and Operation Anaconda, and the After Action Evaluation Reports.

3) The total number of local, state and federal law enforcement agents who participated in the federal response to the protestors, including their identities and respective agencies, and the names and number of such officers present on each day of the response.

4) The total number of local, state and federal law enforcement agents who participated in the federal response to the protestors who wore or were equipped with body armor or similar tactical response gear, including the number of such officers present on each day of the response.

5) The total number of, and positioning of, snipers who participated in the federal response to the protestors, including their identities and respective agencies, and the names and number of such officers present on each day of the response.

6) The number and types of firearms possessed or carried by all law enforcement agents who participated in the federal response to the protestors.

7) The number and types of any other weapons possessed or carried by all law enforcement agents who participated in the federal response to the protestors.

8) The number and types of any armored or tactical response vehicles, and aircraft, on site in Harney County or adjoining

counties, for use by law enforcement agents in response to the protestors.

9) The number and location of any trauma units requested or established under direction of the FBI to deal with a Mass Casualty Incident should one occur during the protest.

10) All information concerning the planning for a Mass Casualty Incident and establishment of trauma units, regardless of whether any trauma units were in fact set up.

11) All information concerning the barricading of Harney County courthouse during the law enforcement response to the protestors, including the identities and number of armed law enforcement officers stationed there, and the presence of any armored or tactical response vehicles.

12) All information concerning the closures of schools in Harney County, and the decision to re-open the schools, related to the protest.

13) All information concerning the FBI post located at the Burns airport, including the identities and number of armed FBI or other law enforcement agents stationed there, and the presence of any armored or tactical vehicles.

14) All information concerning the activities of the FBI SWAT and FBI HRT on site in response to the protestors.

15) All information concerning the use of informants, undercover officers, news or social media to convey information to the protestors about law enforcement plans to invade the Refuge, ambush the protestors, or otherwise use force against defendants.

16) All information concerning the FBI, BLM and any other federal agency involvement in defendants, Lavoy Finnicum, and other protestors being characterized as violent extremists or terrorists, in

law enforcement briefings, press releases, social media postings, or news conferences, regardless of whether the involvement was done openly or covertly, directly or indirectly through the use of local or state government agencies, informants, or undercover operatives posing as members of the press.

17) All information concerning the use of covert operatives to harass, threaten or annoy citizens of Harney County, and any other counterterrorism methods employed against the protestors, including the use of Public Information Officers.

18) All records of daily Patrol Briefings, PIO (public information officer) Briefings, FBI Command Briefings, Law Enforcement Briefings, Domestic Terrorist (DT SVTC) Briefings, FBI Intel Briefings, and FBI PC Reps Briefings leading up to and during the protest that began on January 2, 2015.

All of the above requests specifically include responsive information that may be located in the original Case Files from the FBI Office of Origin or otherwise known to the designated Case Agent in the FBI Office of Origin, as well as other involved FBI Offices and FBI Headquarters; and that may be found in Intelligence Information Reports (IIR), Sensitive case records, FBI Fact sheets, talking points, questions and answers and briefing materials, emails, Working files maintained by individual agents, Transitory and Tickler Files, Electronic Communications, Electronic Surveillance Records, records of the Office of the General Counsel, Investigative Law Unit, records of the Criminal Investigative Division, records of the Office of the General Counsel, National Security Law Unit, records of the Counterintelligence Division, and executive correspondence kept by the Record Management Division's Executive Secretariat.

AS A LESS FAVORED ALTERNATIVE, should the Court determine that any of the requested information is not discoverable pursuant to Rule 16 or constitutional law, the defense moves the Court use its inherent authority to order production consistent with the Department of Justice, “Memorandum for Department Prosecutors: Guidance for Prosecutors Regarding Criminal Discovery” (updated 9/14/2014)(copy submitted as exhibit to this motion). *See, United States v. W.R. Grace*, 526 F3d 499 (9<sup>th</sup> Cir. 2009)(district court has inherent authority to regulate discovery process so long as court’s orders do not conflict with the Federal Rules of Criminal Procedure).

This motion is made in good faith and not for the purpose of delay. It is supported by the aforementioned Memorandum of Law, and by such additional grounds and authorities as may be offered in reply to the government’s response or at hearing on this motion.

Dated this 14<sup>th</sup> day of June, 2016.

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/s/ Terri Wood  
TERRI WOOD OSB 883325  
Attorney for Ritzheimer