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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

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UNITED STATES OF AMERICA,

Plaintiff,

v.

JEREMY JOHNSON, SCOTT LEAVITT  
AND RYAN RIDDLE,

Defendants.

**MEMORANDUM DECISION AND  
ORDER REGARDING WITNESSES  
UNDER GOVERNMENT SUBPOENA**

Case No. 2:11-cr-501-DN-PMW

District Judge David Nuffer

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After the jury was excused for the day on Wednesday, February 17, 2016 a dispute arose about which prosecution witnesses are subject to recall by Defendants. On January 27, 2016, defendants submitted a consolidated witness list<sup>1</sup> showing all witnesses Defendants proposed to call, indicating which witness each Defendant intended to call and also indicating if any listed witness would be called by the prosecution.<sup>2</sup> In a January 29, 2016, telephone conference<sup>3</sup> Magistrate Judge Paul Warner and District Judge David Nuffer discussed witness management and defense subpoenas, and determined that prosecution “will call” witnesses also listed by defendants as witnesses would not need to have subpoenas issued by defendants because the prosecution agreed to make them available for recall without subpoena. Specifically, the discussion clarified that defendants could enforce subpoenas against all prosecution “will call” witnesses listed by defendants as witnesses, as if they were subpoenaed by the defendants. Later that day, the prosecution filed a list of its “will call” witnesses.<sup>4</sup> Defendants Leavitt<sup>5</sup> and

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<sup>1</sup> This consolidated list was discussed in hearings January 20 and 21, 2016. Docket nos. 1020 and 1023.

<sup>2</sup> Defendants’ Consolidated Witness List, Attachment 1.

<sup>3</sup> Minute Entry, docket no. 1088.

<sup>4</sup> United States’ Will Call List, Attachment 2.

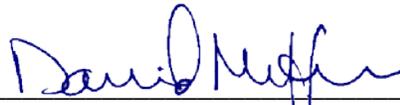
Johnson<sup>6</sup> later submitted lists of witnesses for use during the trial that included some prosecution “will call” witnesses.

**ORDER**

The witnesses that are on defendants' lists and on the prosecution's “will call” list are subject to recall in defendants’ case without a defense subpoena.<sup>7</sup> Defendants may enforce the prosecution’s subpoena against any non-appearing witness on the prosecution’s “will call” list.

Signed February 18, 2016.

BY THE COURT



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District Judge David Nuffer

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<sup>5</sup> Leavitt Witness List, Attachment 3, dated 2/9/16.

<sup>6</sup> Johnson Witness List, Attachment 4, dated 2/8/16.

<sup>7</sup> Subject to *Touhy* regulations for any witnesses employed by the United States. See *United States ex rel. Touhy v. Ragen*, 71 S. Ct. 416 (1951).