RECORD NO: 14-1678

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

Doris Holt, et al.,

Plaintiffs-Appellants

v.

Horry County, South Carolina, et al.,

Defendants-Appellees

EMERGENCY MOTION FOR REMAND AND DISCOVERY BY SPECIAL MASTER BASED ON NEWLY DISCOVERED EVIDENCE AND NATIONAL SECURITY

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I. MOTION FOR REMAND AND DISCOVERY

In accordance with Federal Rule of Appellate Procedure 27 and Federal Rule of Evidence 201, Appellants request that this Court take judicial notice of a document from the South Carolina Law Enforcement Division ("SLED") received by the undersigned on July 17, 2015, in response to a FOIA request submitted June 18, 2015. This document had been concealed for eleven years despite the same SLED records being subpoenaed *duces tecum* by Appellants in November, 2006 and were the subject of FOIA requests by Appellants in 2007 and 2008.

Additionally, Appellants request this Honorable Court to take Judicial Notice of, Florida South District Federal Court Case 0:12-cv-61735-WJZ, Document #57, entered on 03/25/2014, and Document #29-5, entered on 05/31/2013, the Declaration of Former U.S. Senator Bob Graham **(Both attached as Exhibit A).** These filings document Justice Department actions in effect covering up Saudi Kingdom ties to the funding of ***al Qaeda*** related to the attacks on the United States on September 11, 2001, many of which are duplicative of the acts in the case at bar with the same intent and purpose.

The undersigned is now able to reconstruct for the first time the fraud on the court by officers of the court employed by the Appellees who operated in conjunction with the Justice Department and SLED to derail and then take control of the underlying judicial proceeding violating legal standards far beyond the criteria established by the United States Supreme Court in *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246, 64 S. Ct. 997, 1001 (1944). (Also see previously submitted documents before this court 57-1, 57-2, 57-3, 57-4 and 57-5.)

The facts of this case speak for themselves as to the complete destruction of the justice system in this litigation. If the Appellees and their legal counsel, Andrew Lindemann (the evidence indicates he participated in the extensive fraud on the court along with several other counsel for

the Defendants in the underlying action) resort to the use of the emotional cliché "conspiracy" or "bald allegations" instead of addressing the hard facts, then so be it. Presented below are the substantiated facts; Appellees can characterize anyway they desire, but they cannot legitimately refute them.

This motion raises *factual questions for the first time* before this court regarding the actual sequence of events and the involvement of governmental agencies with officers of the court in the destruction of evidence in the underlying case, in violation of the Appellants' 5th and 14th Amendment due process rights under the United States Constitution. The destruction and concealment of evidence by officers of the court, assisted by governmental law enforcement personnel misusing their law enforcement authority, in conjunction with specific instances of invoking the doctrine of *National Security* to wrongfully conceal evidence during trial, rendered impossible a fair hearing of the issues of this civil case before the trial court.

This governmental intervention was apparently justified under a misapplication and misuse of the doctrine of *National Security*. Contained in the documentation turned over to the authorities by the Appellants was documentation on smuggling which, unknown to the Appellants at the time, contained specific evidence of the Saudi Kingdom's funding of ***al Qaeda*** prior to September 11, 2001, through the smuggling of tobacco products ***(emphasis added)***. This documentation was provided to the United States Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF") in Miami and Bogotá Columbia in late 1999, to the FBI from 2000 to 2005 at its offices in Greensboro, NC, Charlotte, NC, Myrtle Beach, SC, Florence, SC, Columbia, SC, and Washington, DC as well as to the United States attorney in Columbia, S.C. However, the evidence supplied to the law enforcement agencies by the Appellants "disappeared" while in their custody and the

Justice Department and FBI now deny the meetings ever occurred. See Affidavits and Justice Department responses, **Exhibit "B".**

This Honorable Court must exercise its authority to remand this case for discovery under an independent special master under Rule 48 of the Federal Rules of Appellate Procedure regarding the government's involvement with officers of the court in fraud on the court and the misapplication of the *doctrine of National Security.*

II. BACKGROUND

On January 27, 1999, Southern Holdings, Inc., (Southern) a Nevada corporation legally acquired Ivestra Importaciones S.A. (Ivestra) of Caracas, Venezuela, a Venezuelan corporation. Ivestra owned Venezuelan licenses for the exclusive right to import finished tobacco products into mainland Venezuela. Ivestra held exclusive representation contracts for R.J. Reynolds' (RJR) tobacco products in Venezuela and Aruba and Ivestra was a proxy for the British American Tobacco Company (BAT) and their Venezuelan subsidiary Bigott.

In August of 1999, management of Southern became aware of illegal activities, including but not limited to, smuggling tobacco products and money laundering that involved the former management of Ivestra. The business records of Ivestra document that Roy Sheriff, the former head of the Venezuelan corporation, participated in the smuggling of tobacco products and money laundering. There were two sets of business records: One set for legal transactions and a second set for highly suspect transactions that were kept off the official record.

The latter set of records documented that an individual named *Mohamed Abed Abdel Aal* and business associates of his, and *Mohammed Jamal Khalifa* and business associates of his, through banks including Interbank, Aruba N.A., NationsBank, Bank of America, Banco Central de Venezuela, (BCV), Royal Bank of Canada, Citibank UAE and HSBC accounts in Switzerland

were used in smuggling and related money laundering activities involving Ivestra operations, and the resulting money disbursements were handled through the financial center of Dubai UAE, including, but not limited to, the Wall Street Exchange Center, UAE.

According to Ivestra records and Roy Sheriff, the former President of Ivestra, the funding support by Saudi based charities was initiated and arranged in 1997 by an official with the Saudi government by the name of *Turki al-Faisal Al Saud*.[1]

BCV officials arranged a meeting between the CEO of Southern, President Elect Hugo Chavez, and BCV officials, which took place when the CEO made his first trip to Caracas. The subject matter of the meeting related to the sale of tobacco products in Aruba and Columbia, other regional sales of tobacco products and the CEO's former work on behalf of USAID[2], with the country of Nevis and Saint Kitts. BCV officials were exploring his knowledge of banking regulations.

President elect Hugo Chavez's in-laws provided infrastructure support to Ivestra, through which they received financial benefits from the operations of Ivestra.

BCV officials scheduled a meeting with *al-Mahdi Ibrahim*, who represented funding in South America for al-Haramain, a Saudi charity, and negotiated an agreement for Saudi funding for cigarette shipments with commercial letters of credit (LCs), through BCV and potentially other banks, depending on the specific requirements of each transaction.

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[1] According to documents on Roy Sheriff's computer, *Turki al-Faisal Al Saud's* only interest in the transactions was to generate additional funds for the Saudi charities through non-traditional sources on an ongoing basis. He was not to be named as a benefactor or associated with the transaction and if any contact was to be made it would be initiated by *Turki al-Faisal Al Saud* or his proxies.

[2] The subject of the former Southern CEO's activities with USAID and Nevis were unexpectedly brought up by the executives of BCV, as this obscure fact had never been mentioned before to any party involved with the Ivestra acquisition by Southern.

Al-Mahdi Ibrahim discussed with the Southern CEO that they had common ties with Greensboro, North Carolina, as he identified a business associate, *Khalid Sheikh Mohammed* [3] with al-Haramain, who lived there at the same time as the CEO, and that they were both students at universities in Greensboro.

Upon the Southern executives' discovery of incriminating documentation of the smuggling by Ivestra, they notified the law firm Bentata & Associates, representing the legitimate, but wary U.S. executives/Appellants in South American and Caribbean business dealings. Bentata and Associates provided both legal advice and implemented their advice by notifying through their contacts the Venezuelan authorities, Interpol, and the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) of these illegal activities for the Southern executives.

Further, at this time, Roy Sheriff and Appellee/Defendant Ancil Garvin[4] and their colleagues were formally removed by the Southern executives from any business association with the domestic and offshore companies, managed by Southern executives.

These actions took away Sheriff's and Garvin's access to the Venezuelan import licenses for finished tobacco products, exclusive ties to R.J.R. cigarettes and access to the financing necessary to continue to engage in the illegal business, conducted in what is frequently referred to

[3] The alleged architect of the 9/11 attacks on the United States of America.

[4] Garvin's removal was prompted by a presentation made by Garvin at the 1999 annual Board of Directors meeting of Southern Holdings, Inc., held in Murrells Inlet, S.C. Garvin discussed his former participation in and recommendation of his continuing to go deep into the jungles along the border between Venezuela and Columbia, the Zulia State, to smuggle cigarettes for gold. Garvin referred to such activities as ones that generated "tax free money" for parties involved. It is important to note that the unrepresented and absent Garvin who was in default was ordered dismissed in the Southern Holdings Inc. civil litigation by Judge Harwell according to the other officers of the court which is part of the court record. Judge Harwell denied this on the court record a year later and the Appellants have been prevented from conducting discovery to clarify the court record in order to properly make an appeal.

as the "parallel market." Sheriff's and Garvin's reaction to their removal by Southern was to identify and engage Appellee/Defendant Harold Steve Hartness (Hartness) to develop a scheme involving the intimidation and murder of selected key Southern executives who refused to participate in the illegal activities.[5] The plan or scheme, developed by Hartness, (the Hartness plan) employed the criminal use of FBI technology (the FBI-NCIC system), and local police officers in the United States whom he had bribed, as documented in his handwritten notes detailing the bribes. His authorship was admitted to on the record by Hartness. The Hartness plan was implemented during the summer of 2000.

The underlying case involved the attempted murder [6] of a United States businessperson who was, effectively and unwittingly, dismantling ***al Qaeda*** funding operations that involved Saudi charities and select Saudi government officials prior to the attacks against the United States of America on September 11, 2001. The Appellants were following the law and effectively, unknown to them at the time, truly ***(emphasis added)*** protecting *National Security*.

The corrective actions of divesting the Venezuelan operations by the executives, to address the illegal money laundering and smuggling activities, were undermined by the Hartness plan, even though the murder attempts during the summer of 2000 failed. The Appellants reported these

[5] On May 12, 2004, Harold Steve Hartness smiled as he arrogantly and threateningly testified under oath, during a videotape deposition, that the exclusive Venezuelan cigarette importation licenses were worthless to the Southern business executives in the room during his deposition (who were trying to stop the cigarette smuggling and laundering of money) because they would be killed if they did anything with them. The Southern executives in the room were Appellants/Plaintiffs Irene Santacroce, Nicholas C. Williamson and James Spencer.

[6] The attempted murder of the business executive involved the criminal use of the FBI-NCIC system, by local bribed Sheriff's Deputies under the direction of a felon during the summer of 2000. However, after 9/11 it became imperative to expand and maintain the cover-up based on the premise of "***National Security***" and the self-preservation of the local public officials covering up the attempted murder when this case was filed on May 29, 2002.

criminal activities in person multiple times to the local offices of the FBI as it involved violations of federal laws, including but not limited to civil rights violations under color of law with brutality. However, not one action was taken to investigate these matters by the FBI, despite the nondiscretionary requirement to do so under the FBI's Manual of Investigative and Operational Guidelines (MIOG).[7]

An interagency cover-up of acts of public corruption is now directly evident in the underlying case, which requires judicial action with upmost urgency, as the ties to ***al Qaeda*** funding and the capricious nature of Saudi relations need to be publicly exposed. The cover-up includes a refusal to investigate and prosecute certain felonies committed by identified individuals,[8] the refusal to investigate and prosecute the criminal use of the vaunted anti-crime/and anti-terrorism[9] FBI-NCIC information system[10], which entailed attempts to murder and stated intentions to murder, law-abiding United States citizens/business "executives" (Appellants). These same business executives, who were uncovering, exposing and attempting to stop smuggling and, in so doing, unwittingly obstructing ***al Qaeda's*** money laundering activities from early 1999

[7] **See Exhibit "C", MIOG, Section 44**

[8] These individuals include, but are not limited to, career criminals, Ancil B. Garvin (smuggling, gunrunning, and assault and battery), Roy Sheriff (murder, smuggling, gunrunning, and racketeering), and **Harold Steve Hartness (jury tampering and racketeering - including the bribing of public officials).**

[9] "The FBI's CJIS Division implemented the NCIC Violent Gang and Terrorist Organization File or "VGTOF" in December 1994. This file is designed to provide identifying information about violent criminal gang and terrorist organization members to protect the law enforcement community and the public….The terrorist records, in particular, support national security and homeland security." Quotes are from a *November 13, 2003, speech before the United States Senate* by Michael D. Kirkpatrick, Deputy Director of the FBI. Director Kirkpatrick directly supervises the FBI Criminal Justice Information System Division, "CJIS" the largest division of the FBI that includes the NCIC system.

[10] The systems use includes the worldwide identification of wanted terrorists for law enforcement worldwide.

to the summer of 2000, ironically ended up being harassed and discriminated against by federal, state and bribed local law enforcement officials who intentionally adhered to the Justice Department policy of covering up all ties between Saudi funding and ***al Qaeda***. Evidence of such is found repeatedly in the court record as will be detailed in part below. The acts of public corruption by local South Carolina law enforcement officials covered up, with the help of FBI personnel, tended to maintain intact the financing of ***al Qaeda's*** operations pre-9/11.

Subsequently, post 9/11 the United States Government has actively sought to conceal all Saudi funding ties to ***al Qaeda*** which includes the underlying case. This policy manifested itself in acts of fraud on the court involving officers of the court and the Justice Department to destroy these legal proceedings, justified under the guise of *National Security.*

Mohamed Abed Abdel Aal and his associates were known to be laundering money for ***al Qaeda*** via the bootlegging of cigarettes from Venezuela to Columbia through the Zulia State[11] in Venezuela and in Aruba. The Ivestra corporate records included prior specific shipment dates, delivery dates, and laundered money flows for ***al Qaeda***, involving *Saudi controlled bank accounts and, Saudi charities*. The laundered money trail also lead to Sarasota, Florida area banks.[12] The laundered funds were used either directly or indirectly to support ***al Qaeda*** pre-9/11 operations, which included the flight training and living expenses of Ziad Samir Jarrah (United Airlines, Flight 93-Shanksville, PA), Mohamed Atta (American Flight 11-North Tower), and Marwan Al-Shehhi (United Airlines Flight 175 - South Tower). The corporate documentation detailing the money

[11] Zulia is one of the 23 states in Venezuela and is the Venezuelan geographic border with Columbia through which smuggling occurs. The state capital is Maracaibo. As of June 30, 2010, Zulia had an estimated population of 3,821,068, the largest population among Venezuela's states.

[12] It is important to note much of the questioned transactions methodology was out of the ordinary including, the number of financial intermediaries involved, the disbursement of the sums of money involved, and the final destination of funds in many cases were nebulous at best.

flows related to the smuggling was encrypted in the same manner as other suspect documentation and was segregated from the corporate transaction records of the legitimate trade. **(See Exhibit "D".)**

III. INTRODUCTION

Since August, 2000, the Appellants have been attempting by legal means to obtain evidence related to the underlying case from local, state and federal governmental agencies, including the FBI, the Justice Department, SLED and the Horry County Police Department. The underlying civil lawsuit to this appeal was filed on May 29, 2002.

In a series of acts of Obstruction of Justice, Criminal and Civil Contempt of Court and Fraud on the Court involving officers of the Court, the sought after evidence was destroyed while under Court Order, Federal or State Subpoena and/or discovery request. The three pieces of case defining evidence were composed of **(1)** the FBI-NCIC summary reports which document the criminal use of the NCIC system in an attempted murder, **(2)** the original Horry County law enforcement dispatch recordings which recorded the police audio communications on August 5, 2000 and August 6, 2000, and **(3)** the Brantley police videotape recorded at the scene and the police camera and recorder needed to authenticate it or in the alternative for authentication purposes, any videotape ever recorded using that specific police camera and recorder.[13]

The underlying case was undermined by the law enforcement authorities in concert with the Appellees'/Defendants' counsels as will be documented below by the facts.

[13] Known as an "exemplar tape" which would contain the electronic fingerprint necessary to authenticate the true Brantley videotape recorded at the scene.

One of three critical pieces of evidence was a police videotape (the Brantley Videotape) that recorded a terrorist[14] disguised as a police officer and the torture and attempted murder of a CEO involved in a high risk felony traffic stop at gunpoint orchestrated by bribed local law enforcement officers in conjunction with a convicted felon. The CEO was the chief architect and tasked by the Southern Board of Directors with dismantling offshore smuggling operations and legally selling Ivestra as part of the process.

After going through four years of unanswered subpoenas and discovery requests for the police videotapes and the cameras and recorders used to record them, the Appellants/Plaintiffs obtained a court order to secure this evidence from the Appellees/Defendants. However, instead of producing the sought after evidence they and their legal counsel perpetrated acts of obstruction of justice, contempt of court and fraud on the court as detailed below.

On **September 7, 2004**, Court Order #109 was issued by Judge Harwell, requiring the Defendants in the underlying proceeding to turn over the original[15] police videotapes recorded at the

[14]As defined under *18 U.S. Code § 2331*. This individual was identified from pictures obtained from the North Carolina State Bureau of Investigation (SBI) by the former head of the SBI, Haywood Starling. The Appellants in this action independently identified this individual as the alleged perpetrator of acts including (1) vehicular assault and battery on Appellant Santacroce and her 11 year old daughter, (2) vehicular assault and battery on the wife and school age children of Appellant Police Officer Rodney Lail, (3) the physical assault and battery of Appellant Doris Holt, (4) the stalking and sexual harassment of Appellant Santacroce's 11 year old daughter, (5) the drive by-shootings at Appellant Holt's home, (6) the vivisection of Doris Holt's cat which had holes mechanically drilled into its head and was hung by the neck while still alive at the front door of Doris Holt's home, and (7) the planting of a pipe bomb and detonator in Appellant Holt's car. The terrorist's vehicle was identified at the scene or leaving the scene just prior to discovery of the last two acts listed above. It is important to note every incident cited herein was reported at the time they occurred to the law enforcement authorities who had jurisdiction over the alleged crimes in the geographic area of occurrence including the Appellee Horry County Police Department, SLED and the Columbia, SC office of the FBI. However, ***not one identified alleged perpetrator*** was interviewed at any time by any law enforcement entity, be it internal affairs or as a standard investigation follow up to a crime report.

[15] It is important to note that a videotape can be an edited copy and still be technologically be found to be a recording on an original videotape not previously used. There is a major difference in an authenticated videotape being the original recording taken at the scene and an original recording.

scene on August 6, 2000, including the Brantley videotape of the traffic stop, and the equipment needed to authenticate the videotapes, to the Appellants' forensic expert, Steve Cain[16], in Lake Geneva, Wisconsin. When the Defendant/Appellees failed to produce the court ordered production of the police videotapes to the Appellants' forensic expert as ordered, the Appellants counsel on October 12, 2004, called opposing counsel and insisted on the Appellees/Defendants compliance with Court Order #109 or the Appellants/Plaintiffs would seek a contempt of court charge. However, instead of complying with Court Order #109 the newly discovered evidence documents that acts of *criminal* contempt of court, as defined by the 4th Circuit Court of Appeals,[17] were undertaken, involving extensive fraud on the court by the Appellees' counsels including, but not limited to, the alteration and destruction of specific evidence which was the subject of Court Order #109, the forging of documents and subornation of perjury as detailed below.

IV. THE NEWLY DISCOVERED EVIDENCE

The newly discovered evidence includes a document describing the concealment of the police videotapes including the Brantley videotape by SLED and the FBI in violation of Court Order #109. These tapes were to be produced under federal Court Order #109 to the Appellants' expert for analysis and authentication. The newly discovered evidence includes handwritten notes **(See Exhibit "E")** that

[16] M.F.S.; M.F.S.Q.D.; D.A.B.R.E.; F.A.C.F.E.

[17] "Criminal contempt sanctions are intended "to vindicate the authority of the court by punishing the contemnor and deterring future litigants' misconduct."*Buffington v. Baltimore County*, 913 F.2d 113, 133 (4th Cir. 1990). The failure of a party to comply with a court order rises to the level of criminal contempt only where the order is "definite, clear, specific" and the party in question "willfully, contumaciously, and intentionally" violated the order. *Ashcroft v. Conoco, Inc.*, 218 F.3d at 299 (4th Cir. 2000). Magistrate Judge Jones issued a definite, clear, and specific court order on September 12, 2008. The Poindexters violated the September 12, 2008 Order by failing to: (1) comply with the subpoena; (2) tell the truth at the subsequent deposition; and (3) failing to turn over the computer without altering files contained on the hard-drive. Magistrate Judge Jones determined that the Poindexter's conduct was done with willful and intentional defiance to the Court's September 12, 2008 Order. This Court agrees with Magistrate Judge Jones' recommendation to recommend to the United States Attorney to investigate into the matter of criminal contempt for the reasons articulated." SonoMedica, Inc. v. Mohler, 2009 U.S. Dist. LEXIS 65714, *15-16, 2009 WL 2371507 (E.D. Va. July 28, 2009)

document the actions taken under the direction of then SLED Chief of Staff, Major Mark Keel, Esquire on October 13, 14, & 15, 2004, in defiance of Federal Court Order #109. This document will be clearly shown to be the missing piece of the evidence puzzle that documents an extensive fraud on the court as detailed below. In fifteen years the Appellants/Plaintiffs forensic expert has never been allowed access to the evidence needed to authenticate the true original Brantley videotape taken at the scene, or any ***(emphasis added)*** videotape that was not edited purportedly taken by the Brantley recorder at the scene.

The documents provided by SLED received on July 17, 2015, in response to a FOIA request, evidence that on October 13, 2004, Major Keel gave a copy of Court Order #109 to Captain David A. Caldwell of SLED and instructed him to, in violation of the court order, to get the tapes to the Columbia S.C. office of the FBI in two days. Since the instructions were given to Captain Caldwell along with a copy of Court Order #109, Captain Caldwell also knew, or should have known, he was violating a federal court order by following Major Keel's instructions. (The notes do not indicate that Captain Caldwell raised any objections to the instructions; however, the very existence of such notes implies that someone was documenting these activities to avoid legal, possibly criminal, repercussions, if discovered.) On the morning of October 14, 2004, the notes state that Captain Caldwell called FBI SA Joe Fedison at the Columbia, S.C., FBI Office at 551-4303. SA Fedison instructed Captain Caldwell to call FBI SA Vince Flamini at the Florence, SC, FBI R.A. (Resident Agency) office.[18] The notes detail that on the morning of October 14, 2004, Captain Caldwell, as instructed, called FBI SA Vince Flamini who told Captain Caldwell he will be in Columbia on October 15th and he will get the tapes. On the morning of October 15, 2004, SA Flamini told Captain Caldwell he does not think

[18] The police videotapes that were the subject of Court Order #109, were being kept at the Appellee/Defendants' law firm also located in Florence, SC.

he needs (unidentified word) and asked Captain Caldwell to find someone who is familiar with the case. Captain Caldwell then looked for SLED SA Prodan who was in interviews in Dillon, SC and Sumter, SC. On the afternoon of October 15th, at 12:25 p.m., Captain Caldwell called SA Flamini. SA Flamini instructed Captain Caldwell to mail the tapes to the FBI at Quantico, Va., and that he (SA Flamini) will get Captain Caldwell the address. The memo also includes indiscernible redactions **(See Exhibit "E")**.

Major Mark Keel and Captain Caldwell committed acts of criminal contempt of court with *willful and intentional defiance* of Order #109[19] and in so doing transferred the police videotapes to the FBI Quantico, Va. laboratory on or about October 15, 2004, directly contrary to the Court Order # 109, which required their transfer to the Plaintiffs' forensic expert for examination. To this day the Appellants/Plaintiffs have not been allowed to examine an unedited Brantley videotape of the original stop, an unjustified stop in which so much harm was done.

This new documentation of the activities done in contempt of court details events initiating actions involving officers of the court along with SLED and the FBI personnel in a constructed, orchestrated and premeditated fraud upon the court that included the issuance of Court Order #127, on December 10, 2004. Court Order #127, unconstitutionally[20] was used to order the FBI to conduct an investigation, violating not only the doctrine of separation of powers between the

[19] *Op Cit* footnote 17.

[20]"Federal courts exercise the judicial power of the United States pursuant to Article III of the Constitution and specific statutory grants of power. While district courts have certain responsibilities in connection with selecting, instructing, and supervising grand juries, Fed. R. Crim. P. 6, the investigation of crime is primarily an executive function. Nowhere in the Constitution or in the federal statutes has the judicial branch been given power to monitor executive investigations before a case or controversy arises. Without an indictment or other charge bringing a defendant before the court, or in the absence of a pending grand jury investigation, a district court has no general supervisory jurisdiction over the course of executive investigations." Jett v. Castaneda, 578 F.2d 842, 845 (9th Cir. 1978)

executive and judicial branches of government, but also effectively denied the due process rights of the Appellants guaranteed by the 5th and 14th Amendments related to the judiciary. Court Order #127 resulted in the court, while adjudicating this case, misusing its power to conduct its own discovery in support of the Appellees/Defendants. Order #127 was orchestrated to cover-up the contempt of Court Order #109 and the naming of FBI analyst, Noel Herold, as an "expert witness" under Rule 26(a)(2)(B) of the FRCP by the Appellees/Defendants on October 16, 2006, over two years after the scheduling order deadline for the Appellees naming of experts which was June 1, 2004. This "expert" was allowed to testify by Judge Harwell for the Appellees as their Rule 26 forensic expert despite being an independent contractor supplied and paid for by the Justice Department in a civil case in which the United States was not a party and despite being named years after the scheduling order deadline.

V. RELEVANCE OF NEWLY DISCOVERED EVIDENCE

Acts of fraud on the court involving the Department of Justice, SLED and the Officers of the Court will be addressed on an individual basis but all are interrelated, as is clarified by the newly discovered evidence. When the court in this case took no remedial action to stop and correct the initial acts of fraud, no matter what the reason, the Appellees/Defendants' attorneys working with the Justice Department were unrestrained in their efforts to change factual reality into a world of complex fraud that achieved the purpose of concealing the facts and derailing this legal proceeding in a manner so egregious it exceeds every parameter imagined when the United States Supreme Court ruled in Hazel-Atlas Glass Co. v. Hartford-Empire Co. that:

> "It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society. Surely it cannot be that preservation of the integrity of the judicial process must always wait upon the diligence of litigants. The public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of

deception and fraud." Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238, 246, 64 S. Ct. 997, 1001 (1944)

These acts of fraud by officers of the court have never been reviewed in any prior appeal and require remand for discovery and an appointment of a Special Master to recommend to the Court whether the Court should request a criminal investigation by the office of the United States Attorney. This is the lawful way the judiciary can seek a criminal investigation by the executive branch as exhibited in prior cases before the 4th Circuit Court of Appeals.[21] Already detailed are two acts in contempt of court that appear to meet the criminal standard that need to be handled by remand to a truly independent District Court Judge and Special Master without prior or current ties to South Carolina and/or the United States Justice Department. The court record is replete with inconsistent statements making the court record in this case virtually unusable for appeal purposes and, therefore, must be completed in this case by remand and discovery in order to make a proper appeal regarding, but not limited to, the following events:

A. Court Order #127

Furthermore, besides the question of constitutionality, depending on which descriptive statement by Judge Harwell put on the court record is used, between the May 4, 2007 statement that Court Order # 127 was nothing more than a *"Shepherding Order"*[22] or the June 11, 2014 statement that it was a court order to have the FBI examine the police videotapes (which would be

[21] "The Court adopts the recommendation of Magistrate Judge Jones and refers this case to the United States Attorney to investigate and determine whether to initiate criminal contempt charges against the Poindexters because the Poindexters willfully disobeyed a direct court order." SonoMedica, Inc. v. Mohler, 2009 U.S. Dist. LEXIS 65714, *15-16, 2009 WL 2371507 (E.D. Va. July 28, 2009)

[22] This wording appears to be nothing more than a semantical attempt to justify the existence of Court Order #127 by calling it a "*Shepherding Order.*" The undersigned can find no reference to a "Shepherding Order" in *Black's Law Dictionary* besides one related to bringing diverse legal proceedings together.

unconstitutional under the doctrine of the separation of powers)[23] Court Order #127 violated Federal Local Rule 83.I.06.[24] Under either version the order was in violation of the local rules as it did not bear the required signature of a local counsel for the Appellants. The court record contains diametrically opposed versions of the nature and purpose of Court Order #127 by Judge Harwell, as well as irreconcilable versions of the officers of the court representing the Appellees/Defendants regarding Court Order #127.

During the February 9, 2007, motions hearing Judge Harwell in uniformity with Appellees' Counsels present, Saleeby, Benjamin A. Baroody, and Andrew Lindemann, established that SLED independently made the decision to send the videotapes to the FBI to assist with a "criminal investigation."

> **"THE COURT:** I understand it. Because of the seriousness of a claim that videotapes have been altered, SLED wanted to look at it with the help of the FBI to do their own independent review of it; is that correct?
>
> **MR. SALEEBY:** When there is a claim of that nature, a local law enforcement agency is being investigated by SLED, so SLED wanted to take the tapes. SLED does not have the capacity to evaluate the tapes themselves that is why SLED thought it necessary to send it to the FBI." **See ECF # 522, page 10, lines 2-10**

During the May 4, 2007, motions hearing Judge Harwell stated he issued Court Order #127, which he referred to as a "*Shepherding Order*" ***(emphasis added)*** to make sure that the Appellants'/Plaintiffs' expert got to examine the police videotapes after the FBI and SLED conducted their investigations. Judge Harwell stated,

> " I was glancing through the videotape deposition of Mr. Herrold [sic] Herold, and there was not an objection made, but I think it's incumbent on me to *sua sponte* raise it, and I'm not

[23] *Op Cit* footnote 20.

[24]"Pleadings, Service, and Attendance by Local Counsel in Cases Where Out-of-State Attorneys Appear. Pleadings and other documents filed in a case where an attorney appears who is not admitted to the Bar of this Court shall contain the individual name, firm name, address, and phone number of both the attorney making a special appearance under this Local Civil Rule and the associated local counsel."

> implying that there was any intentional mischaracterization at all, but Mr. Herrold [sic] Herold was not, to my knowledge, a 706 court-appointed expert. I signed a consent order that the lawyers gave me, that basically dealt with sheperding [sic] shepherding] these tapes around, and that was in 2004." **See ECF # 543, page 73, lines 16 – 25**

At the May 4, 2007 hearing Judge Harwell for the first time claimed that, after reviewing Noel Herold's deposition **(ECF #401),** Noel Herold's involvement in the case was a mix-up, because he never ordered a 706 expert witness. Significantly, there was never any claim in the court record nor in **ECF #401** about Noel Herold being a 706 witness. Noel Herold testified that he was ordered to do an examination by Judge Harwell,

> "This came to me through a cover letter issued by South Carolina Law Enforcement Division, SLED, and accompanying it was some literature regarding a court order by a judge in the examination. **Question:** and more specifically, was it court ordered by Judge Bryan Harwell of United States District Court that SLED deliver three videotapes to you for the purposes of examination to determine if they had been altered or edited? **A.** Yes." **See ECF # 401, Page 0020, lines 5 – 14.**

However, Judge Harwell stated that Court Order #127 was nothing more than a "*shepherding order,*" to make sure the police videotapes were transported to the Plaintiffs forensic expert after the FBI and SLED were finished with their investigation and the order was nothing more than that. Judge Harwell maintained that *SLED* brought Noel Herold into the case as part of a criminal investigation that SLED was already conducting and that Court Order #127 had nothing to do with Noel Herold being brought into the case. The Appellees/Defendants' counsels, in unison with Judge Harwell at the May 4, 2007 hearing, agreed that the purpose of Court Order #127 was not to order an investigation by the FBI. "***The Court:*** *"You would agree with me that was not the intent?* ***Mr. Saleeby****: Absolutely, Your Honor."*[25]

[25] See ECF #543, page 75, lines 17-19.

Therefore, based on the immediately preceding, Judge Harwell knew or should have known that Noel Herold was an independent videotape forensic expert provided and paid for by the Justice Department to be a Rule 26 expert witnesses for the Appellees/Plaintiffs in this "private litigation"[26] and had no legitimate basis for testifying or providing materials in the underlying case. His presence was based on an act of fraud on the court by SLED officials in conjunction with Appellees'/ Defendants' counsels drafting and orchestrating the misuse of Judge Harwell's self-described *"shepherding order."* However, Judge Harwell took no remedial action for the fraudulent use of the order and witness that appeared as a result of the fraudulent use; in the alternative, Judge Harwell rewarded the fraud on the court by allowing the testimony of Noel Herold as a Rule 26 expert for the Appellees/Defendants, in blatant violation of the scheduling order.

On June 11, 2014, in Court Order #788 Judge Harwell changed his version of the facts on the court record concerning Court Order #127. Judge Harwell then claimed, *"The videotapes were referred to the FBI by a "Consent Order", and consented to in writing by Plaintiffs' own counsel of record. (ECF No. 127)."*[27] On this date Judge Harwell flip-flopped on this fraud defining matter, and the "*shepherding order*" was transformed into an unconstitutional[28] court order. The court record is obviously both contradictory and confusing both procedurally and substantively.

This Honorable Court needs to remand this case for discovery to clarify the contradictory court record regarding Court Order #127. Furthermore, the inconsistent versions and the purpose

[26] See ECF # 267-1, last paragraph. "To begin, pursuant to federal law, FBI employees are prohibited from providing testimony, information, and/or documents in cases to which the United States is not a party unless the requesting party provides both (1) an affidavit or statement describing the scope of the request and its relevance to the proceedings and (2) a jurisdictionally valid subpoena or demand issued by a court. See 28 C.F.R. §§ 16.21 & 16.22." See *United States ex rel. Touhy v. Ragen*, 340 US 462].

[27] See Court Order #788, page 14, lines 4 – 6.

[28] Op Cit footnote 20.

of Court Order #127 are in fact consistent with the existence of a cover-up of the fact that the tapes were sent by SLED on October 15, 2004 to the FBI at Quantico, Va., in violation of Court Order #109, based on the newly discovered evidence. ***(Emphasis added)*** The following are a series of acts of fraud on the court, not all inclusive, but representative, which stand independently but are tied to the newly discovered evidence. These facts scream for remand and discovery as each act contributed to the destruction of evidence and derailing of this judicial proceeding in a coordinated fashion of projecting a false reality on the record through fraud upon the court.

B. Fabricated Evidence - Mail Receipts and Fraud upon the Court

On February 23, 2005, SLED faxed to Appellees' counsels in the underlying case ECF # 330-16 entered as evidence by the Appellees on February 6, 2007 as Defendants' Exhibit P, **(Exhibit "F").** Page 3 of ECF # 330-16 contains copies of Certified Mail Receipts which purportedly evidence the fact that the police videotapes were mailed out on December 15, 2004 to the FBI laboratory at Quantico, Va. and as such were presented to the court as evidence to that effect. However, there are no required signatures, dates, and no United States postal verification provided on the receipts. In fact, these were nothing but postal forms that had never actually been used. Resorting to the use of these legally insignificant blank postal receipts as fabricated evidence should be considered as contra-evidence. However, the affidavit by United States Postmaster Billy Dickens attesting to this being fabricated evidence (Exhibit AA in **ECF #753**) was summarily dismissed by Judge Harwell without comment on or explanation of in Court Order #788. There is no question that the presentation by Appellees'/Defendants' counsel of these blank postal receipts as legitimate evidence is consistent with fraud on the court which confirms the notes documenting the criminal contempt of court, notes just uncovered on July 17, 2015, which had previously been concealed by the perpetrators for eleven years and calls for the appointment of a Special Master

and remand and discovery with the very real possibility of a recommendation to the United States attorney for criminal contempt of court.

C. Fabricated Evidence - SLED Chain of Custody and Fraud upon the Court

The SLED chain of custody of the videotapes is problematic for the Appellees, the officers of the court, SLED and personnel with the FBI. It bears the signatures of Appellees' counsel Robert E. Lee, Captain David Caldwell of SLED and Noel Herold with the FBI. ECF # 330-16 was entered as evidence by the Appellees on February 6, 2007 as Defendants' Exhibit P, **(Exhibit "F")**. See page 4 of ECF # 330-16, the SLED chain of custody.

The FBI chain of custody documenting the same events was presented to the court by the Department of Justice on March 1, 2007, ECF # 353. (**See Exhibit "G".)** The FBI chain of custody clearly contradicts the SLED chain of custody **(Exhibit F, pg. 4)** as to who received the documents and police videotapes purportedly sent by SLED to the FBI laboratory, as well as to how it was handled and who sent the videotapes back to SLED from the FBI laboratory.

Mr. Michael Gilmore, the director of all FBI laboratories, confirmed that the SLED chain of custody would have not been used beyond the receipt signed by FBI receiving at the door of the FBI laboratory. **(See Exhibit "H", pg. 8, lines 10- 19, pg. 9, lines 1-2)** The SLED chain of custody was clearly fabricated and the signatures document the involvement of Captain David Caldwell of SLED, Appellees/Defendants' counsel Robert E. Lee and Noel Herold in the fraud on the court. The fabricated SLED chain of custody[29] again confirms the fraud on the court as part of the evidence just uncovered on July 17, 2015, and calls for remand and discovery by a truly

[29] Note the SLED chain of custody does not even have a required case number required to legitimize it as related to some case, as there was no case which again ties to the newly discovered evidence and fraud on the court.

independent Special Master under a District Judge with no ties to the region or the Justice Department.

D. Fabricated FBI Chain of Custody and Fraud upon the Court

The SLED documentation provided on January 23, 2005, presented as evidence to the court, included a document purportedly provided by the FBI to SLED, **ECF # 330-16,** page 5 of 7, Form 7-252 (3-1-00). **(See Exhibit "F".)** However, this document has a Case ID No: **95A-HQ-1488276.** This case number is totally inconsistent with the coding by FBI informational identification procedures placed on all evidence received at FBI laboratory at Quantico, Va. The FBI **95A** prefix establishes that this case was a criminal case involving a rape or murder and the FBI was providing assistance in the criminal investigation through the FBI laboratory. **(**See Transcript of Charlie Peters with the FBI laboratory **Exhibit "I"** and affidavit **(Exhibit "J", point 19 and point 20)** of Dr. Fredrick Whitehurst, PhD., former SSA regarding the evidentiary relevance of the information contained in FBI case coding.) The documentation purportedly sent with the videotapes to be examined on December 15, 2004, Court Order #127, **see Exhibit "K"**, clearly documented the underlying case was a civil case as it listed the Plaintiffs and Defendants on the front page and is captioned as a civil case.

Such a case, if legitimately received by the FBI receiving at Quantico, Va. should and would necessarily be coded as 95D according to Mr. Peters, (S**ee Exhibit "I", pgs. 1-2)** Furthermore, all the documents provided to the FBI by SLED, according to the FBI case establishment system, identified this case as a civil matter, See FBI 01-23, **see Exhibit "L"**.

Justice Department correspondence concerning the underlying case identified it as a "private litigation" and/or a "civil case" and as such the FBI refused to participate in the proceedings. See Documents **ECF 267-1** dated July 7, 2005 from the United States Justice

Department. After reviewing the documents including Court Order #127, Assistant United States Attorney Jonathan S. Gasser, refused to allow the FBI and Noel Herold to be involved as stated in his July 7, 2005 letter:

> "To begin, pursuant to federal law, FBI employees are prohibited **from providing testimony, information, and/or documents** in cases to which the United States is not a party unless the requesting party provides both (1) an affidavit or statement describing the scope of the request and its relevance to the proceedings and (2) a jurisdictionally valid subpoena or demand issued by a court.**[Known as the "Touhy Requirements" – See *United States ex rel. Touhy v. Ragen*, 340 US 462]** See 28 C.F.R. §§ 16.21 & 16.22…The FBI has no direct and/or substantial interest in the above captioned civil action. Based upon the information currently available, the FBI is not willing to authorize such an appearance, even if the proper documents are submitted. As the Fourth Circuit has noted, "When the government is not a party, the decision to permit employee testimony is committed to the agency's discretion. This compromise between public and private interests is necessary to conserve agency resources and to prevent the agency from becoming embroiled **in private litigation.**
> Comsat Corp. v National Science Foundation, 190 F.3d 269, 278 (4th Cir. 1999)…There are also a number of other grounds upon which any subpoena would properly be quashed which I will provide to the Court in the future if necessary."

Neither the required affidavit was provided to support the requirement of the testimony of the witness and the relevance of his testimony to the facts of the matter in question was produced, nor the required subpoena with the affidavit required under the law for consideration by the Justice Department was produced and, therefore, under the law the documents purportedly submitted to the court by Noel Herold prior to January 23, 2007 were not only forgeries, **ECF #753**[30]**,** but

[30] Judge R. Bryan Harwell dismissed the detailed report submitted to the court by forensic expert Durward Matheny **ECF #753,** evidencing the forged signature of Noel Herold on the statement of his purported findings despite the fact Noel Herold confirmed the forgery by officers of the court when testified he did not sign the report. Judge Harwell did not comment on Noel Herold's confirmation of the forgery his only rationale contained in **ECF # 788** for summarily dismissing the report was that he ruled Durward Matheny was not timely named as an expert by the Appellants in the underlying case and therefore Judge Harwell ruled he would not be allowed to testify. This was a meritless claim by Judge Harwell to dismiss the evidence of fraud and forgery by officers of the court. The court record documented that Durward Matheny was in fact timely named on August 4, 2003 **(ECF #61, page 2, item 2)** almost two years before the deadline to name experts by the Plaintiffs which was May 1, 2004, **ECF #73**. Furthermore, Judge Harwell

inadmissible according to the Justice Department as the required documentation ("Touhy Requirements") was not submitted by the Appellees/Defendants.

Furthermore, the FBI and the Justice Department have denied in writing multiple times the existence of any investigation of any nature involving the Appellees/Plaintiffs by any division of the FBI, including the FBI laboratory. **(See Exhibit "B".)**

On January 23, 2007, Appellees/Defendants' counsel Sandra Senn notified the court that the Justice Department in Washington, DC, changed its position **ECF # 353** and within certain restrictions, as solely determined by the Justice Department [National Security], would allow Mr. Herold to testify as the Rule 26 expert witness for the Appellees/Defendants.

Those restrictions included not providing the correspondence with the Appellees/Defendants in this case which would have including documents fulfilling the "Touhy Requirements." The Justice Department provided what they determined were the "relevant materials" that did not violate National Security. However, these materials did not meet the requirements of FRCP Rule 26 and Noel Herold's testimony was restricted by Justice Department attorneys at his deposition. The FBI specifically refused to provide the materials requested by the Appellants/Plaintiffs under the FRCP Rule 26 requirements and also requested by federal subpoena. This refusal to provide the materials was allowed by Judge Harwell, despite the opposition of the Appellants/Plaintiffs both prior to and after the depositions of Noel Herold.

acknowledged this on the record on February 9, 2007, **ECF # 522,** page17, lines 24 & 25 and page 18, lines 1 – 21.

E. FRCP RULE 26 VIOLATIONS BY THE JUSTICE DEPARTMENT UNDER GUISE OF NATIONAL SECURITY

1. *Fraudulent testimony related to the FBI Laboratory Manual*

Noel Herold testified that the FBI Laboratory Manual issued on July 22, 2002 **(See Exhibit "M")** was not in existence in 2004 and thus was not produced under Appellants/Plaintiffs' federal *subpoena duces tecum*, by the Justice Department. This manual documents that the FBI chain of custody produced in this case was incomplete and that the FBI withheld under the guise of the doctrine of "*National Security*" key evidentiary information including, but not limited to, documents **2.5** The Administrative Review, **2.41** The Examination Team Record (7-243b) – " A form used within the FBI Laboratory, located on the reverse side of the *Chain-of-Custody Log* (both the 7-243 and the 7-243(a) to record team members." In this case neither the 7-243(a) nor the 7- 243(b) was provided. **See Exhibit "N",** Ms. Christi Oberbroeckling of the FBI at Quantico explains the components of a true chain of custody log and what was missing in the FBI Chain of Custody provided in the case at bar. Missing from what was provided by the Justice Department was the **2.51** Laboratory File - "A portion of an official file maintained by the Laboratory. At a minimum, requests for examinations acknowledgement letter file copies, report file copies and 7-251s, Supporting Documentation Envelope (which contains administrative and examination documentation), will be included in the Laboratory file." **2.60** Peer Review – "A review that determines whether the appropriate examinations had been performed, the examiner's conclusions are consistent with the documented data and are within the limitation of the discipline, and there is sufficient supporting documentation for each conclusion." **(See Exhibit "M" - FBI Laboratory Division Quality Assurance Manual, Issue Date 07/22/02, Definitions, pages 1-8).**

2. *Fraudulent testimony and Document Fraud related to Noel Herold's CV*

The Justice Department produced a fabricated CV for Noel Herold showing credentials he did not have including a degree the college the Justice Department claimed he earned it at (Defiance College) did not even offer. In addition, the Justice Department provided a testimony case history without the required most recent cases that he had been involved in, as required under Rule 26. The missing cases were on his 2003CV but had been intentionally removed from his 2007CV presented in the underlying case. The cases edited out by the Justice Department were all related to the topic in the underlying case which is the authentication of videotapes. Furthermore, the Justice Department failed to provide a publication by Noel Herold which completely refutes his testimony in the underlying case, an article which was published by the Justice Department approximately nine months prior to Noel Herold' deposition. **(See Exhibit "O").**

This case must be remanded for discovery to determine how the fabricated resume, testimony records and publications and the denial of the existence of the laboratory manual were all wrongfully withheld by the Justice Department as classified material, all of which was, therefore, both ruled as undiscoverable by Judge Harwell at the time of trial and all of which undermined the Appellants'/Plaintiffs' case by the very organization that is supposed to uphold the law, the Justice Department. The Justice Department records related to this case must be required to be produced by a District Court and a hearing must be held to determine why this is not criminal contempt of court, obstruction of justice and fraud upon the court all undertaken and covered up by the misuse of the doctrine of "National Security."

3. *Document Fraud Related to the Case Numbers on FBI Documents*

All FBI documents subsequently submitted by the Justice Department **(See Exhibit "L")** had the Case ID Numbers redacted covering up critical information contained in the case number

under the wrongfully imposed Doctrine of "National Security." See Fred Whitehurst affidavit attached hereto as **Exhibit "J", point 20.** See Dwight Lum documentation provided to the court in that murder case which documents that the case number is not redacted in the underlying case, which was a true murder case with a 95A coding, **Exhibit "P".**

The remand for discovery is necessary as the new evidence establishes that fraud upon the court permeated the whole proceeding. As in one example, at the February 9, 2007, hearing regarding the spoliation of evidence, the Appellees/Defendants' counsel entered the fraudulent examination report of Noel Herold, designated as their purported forensic expert witness, along with totally redacted documents which they claimed explained the disappearance of the police cruiser and all its records showing its disposal date, servicing and even its acquisition date, and the Appellees/Defendants' Chief of Police, Johnny Morgan, committed perjury by affidavit by submitting an affidavit claiming all the records related to the police video evidence were not in existence. See **ECF #330 – 9** included in **Exhibit "Q"** with transcripts from Greg Bratcher and Rhonda Johnson attached hereto documenting the fraud on the court committed by the Appellees/ Defendants just regarding **ECF #330-9** and baseless claims during the February 9, 2007 hearing, **ECF #522, pg. 85, line 9-13,** during which Defendants' Counsel claimed the Brantley cruiser, camera and recorder were lost in 2001, in an attempt to circumvent Court Order #109 issued in 2004. Further, every exemplar videotape ever recorded was destroyed by Appellee Brantley in conjunction with his counsel Robert E. Lee after counsel Lee learned about the use of exemplar tapes from Appellants'/Plaintiffs' expert Steve Cain.[31]

[31] **See Exhibit "R".**

F. Disappearance of the Horry County Police Dispatch Recordings

These recordings of August 5, 2000 and August 6, 2000, despite being under Circuit Court Subpoena simply disappeared, with the Horry County Police Department claiming SLED took them and SLED claiming they never had possession of them. SLED would not investigate this matter nor would the FBI. To this day, the Appellants/Plaintiffs have never had access to the original dispatch recordings. **(See Exhibit "S".)**

G. The Justice Departments Illegal Editing of the FBI NCIC System Reports & Office of United States Senator Lindsey Graham - OBSTRUCTION OF JUSTICE –

In response to the Appellants'/Plaintiffs' federal ***subpoena duces tecum***, the FBI provided NCIC summary reports from Michael D. Kirkpatrick, FBI Assistant Director in charge of CJIS. These reports were certified as true and accurate by FBI Assistant Director Kirkpatrick, Thomas R. Isabella, Jr., CJIS Technical Information Specialist, and Monte Dell McKee, Unit Chief of the Investigative and Operational Assistance Unit of the Programs Support section of CJIS, Thomas Isabella, Jr.'s supervisor. The reports and certification were copied to the Director of the FBI, Robert S. Mueller, III. The reports were disseminated by the FBI through the office of United States Senator Lindsey Graham, Chairman of the United States judiciary sub-committee on the United States Constitution and Civil Rights, for use as evidence in the Southern case (the underlying lawsuit).

Plaintiffs/Appellants issued a federal subpoena ***duces tecum*** for the FBI NCIC records on March 24, 2005. These records would document the criminal use of the FBI NCIC system[32] in the

[32] The actual records would clearly show the Appellees at the scene on August 6, 2000 knew there were no warrants outstanding for the CEO and Appellant Lail and that the CEO should not have been stopped, since there was no probable cause. Further, after Appellees were informed there were no NCIC listings and there were no local warrants outstanding, both Appellants should have been released immediately, but were not.

attempted murder of the CEO and the related crimes including civil rights violations under color of law against the Appellants by the Appellees, crimes which benefited directly the continued ***al Qaeda*** and Saudi Arabia's "*classified*" funding of ***al Qaeda*** through this misapplication of the doctrine of "*National Security.*"

In an act of obstruction of justice, and contempt of court, this report was wrongfully altered and was submitted by the FBI to undermine the Plaintiffs'/Appellants' civil lawsuit. All of the incriminating entries (4) that indicated the criminal use of the NCIC system had been edited out. Additionally a fifth entry was edited out to cover-up the fact that the FBI was informed in person by the former CEO of Southern Holdings of the civil rights violations on February 21, 2001. That record identified as **(2001-02-21-12.31.59.326068)** documented the NCIC was checked by FBI SA Thomas Marsh at the Columbia office of the FBI. On that date he was notified in person at the Columbia office of the FBI by victims James Spencer and Doris Holt, of the alleged civil rights violations and torture they had been victims of. This was clearly an error of commission as the FBI now denies any such meeting occurred **(See Exhibit "B").** That means the records of the FBI field office and FBI-CJIS, who operates the FBI-NCIC, had to have been intentionally adjusted to conform to one another. **See Doc. #57-2, pg. 144.** The Appellants'/Plaintiffs' evidence presented in **Doc. # 57-2 c**learly documented this obstruction of justice and contempt of court that has never been investigated despite repeated reports and requests for investigation to United States Senator Graham's office **(See Exhibit "T")** and the Justice Department. Senator Graham is Chairman of the Senate Subcommittee on Appropriations for State and Foreign Operations, and is a Member of the Senate Subcommittees, on the Department of Homeland Security and the Department of Defense. (For whatever reason, Senator Lindsey Graham does not support the

release of the 28 pages of the 9/11 commission report documenting specific indications of foreign government support of the 9/11 hijackers that are being hidden from the American people.) [33]

This obstruction of justice was done under the direction of officials at least as high as the Assistant Director of the FBI in charge of CJIS Operations who reports to the Director of the FBI. Furthermore, the *office* of a current candidate for the Presidency of the United States, United States Senator Lindsey Graham, was compromised by the acts of obstruction of justice and criminal contempt of federal court as all records of ties to Saudi funding of ***al Qaeda's*** 9/11 attacks in the hands of the FBI were made to disappear under the misapplication of the doctrine of *"National Security."*

VI. ARGUMENT

Judicial notice of these facts is proper under Federal Rule of Evidence 201(b)(2) because they are not subject to reasonable dispute and are "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b)(2). Rule 201(f) provides that "Judicial notice may be taken at any stage of the proceeding." Fed. R. Evid. 201(f). Indeed, under Rule 201(d), "[a] court *shall* take judicial notice if requested by a party and supplied with the necessary information." Fed. R. Evid. 201(d) (emphasis added).

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[33] "Former Florida Sen. Bob Graham, who chaired the Senate Intelligence Committee in 2002, led the inquiry into the terror attack and helped draft the 28 pages in question, according to the Daily Beast. For years Graham has been "banging the drum" for the remaining 28 pages to be publicly released. They are the only pages of the report still withheld from public view. Without violating his oath of secrecy about specifics of the 9/11 report has been quite outspoken, saying the redacted pages 'point a very strong finger at Saudi Arabia as being the principal financier' of the 9/11 attacks. He has also said the U.S. government's protective stance toward the Saudis allows them to continue spreading the extreme Wahhabi version of Islam that has led to the rise of ISIS," as reported in the Daily Beast on Tuesday, June 2, 2015.

Plaintiffs seek judicial notice of facts readily available on the websites of the Federal Bureau of Investigation. This Court has taken judicial notice of matters of public record, including facts published on government websites, documents presented under Federal Subpoena by the United States Government through Senator Lindsey Grahams' office in the underlying case and analysis of ***al Qaeda*** activities and the geopolitical and local political influences in these matters. *See, e.g., Sec y of State for Defense v. Trimble Navigation, Ltd.,* 484 F.3d 700, 705 (4th Cir. 2007); *Hall v. Virginia,* 385 F.3d 421, 424 n. 3 (4th Cir. 2004), (citing *Papasan v. Allain,* 478 U.S. 265, 268 n. 1 (1986). Courts also regularly take notice of information in internet publications. *See, e.g., O'Toole v. Northrop Grumman Corp.,* 499 F.3d 1218, 1225 (10th Cir. 2007); *Caldwell v. Caldwell,* 420 F. Supp. 2d 1102, 1105 n.3 (N.D. Cal. 2006); *Twentieth Century Fox Film Corp. v. Marvel Enters. Inc.,* 220 F. Supp. 2d 289, 296 n.9 (S.D.N.Y. 2002); *Richards v. Cable News Network, Inc.,* 15 F. Supp. 2d 683, 691 (E.D. Pa. 1998) (all taking judicial notice of web pages). Moreover, these sources are updated versions of sources relied upon by the lower court in its opinion. *See Yousuf v. Samantar,* 1:04cv1360, 2007 U.S. Dist. LEXIS 56227, at *7-8 (E.D. Va. Aug. 1, 2007).

Plaintiffs also seek judicial notice of the exhibits, produced by the federal government and the government Defendants in South Carolina, United States Federal District Court. As court filings, it is appropriate for this Court to take judicial notice of the government Defendants' submissions and the FBI's submissions for the court, *Colonial Penn Insurance Co. v. Coil,* 887 F.2d 1236, 1239 (4th Cir. 1989), without accepting as true the factual statements made therein. *Nolte v. Capital One Financial Corp.,* 390 F.3d 311, 317 (4th Cir. 2004).

VII. CONCLUSION

The informality of the procedures and outright violations of the law allowed in this case led nowhere but to confusion of the record and confusion of the litigants, and to confusion compounded. The Appellants/Plaintiffs were not allowed to conduct meaningful discovery. In addition the lack of judicial control of the proceedings that allowed the extensive fraud on the court led to the violation of the Appellants'/Plaintiffs' constitutional rights guaranteed to all citizens under the 5th and 14th Amendments to the U.S. Constitution.

If Appellants' counsels would have had knowledge of the documents and facts that have been concealed and effective judicial control of the proceedings had occurred, and the law had been followed, the current status of this case would be considerably different. In fact, there would have been no disputed settlement.

The duty of this Honorable Court is clear. This case must be remanded for discovery under an independent Special Master and a Senior Judge with no ties to South Carolina or to the Justice Department. This action is mandated as the public welfare demands that the agencies of public justice not stand by and be so impotent that they be mute and allow the public to become helpless and hapless victims of deception and fraud.

This Honorable Court must order the remand to address the issues of civil and criminal contempt of court, the inconsistent statements of Judge Harwell on the record (no matter the reason), the fraud on the court documented herein, the total undermining of meaningful discovery for the Appellants, and a court record that is both unclear and incomplete or the undersigned will be forced to resign from the case as he is not experienced enough to take on a case when the record has been destroyed by fraud.

The undersigned cannot litigate an appeal when the record contains a Judge's contradicting statements and explanation of orchestrated and/or unconstitutional court orders.

An example of this is the orchestration and acceptance of Court Order #127 which was constructed by opposing counsel. In regards to fraud on the court and the record being incomplete, Judge Harwell summarily dismissed the forensic expert report of Durward Matheny, **ECF #753,** which was backed by the sworn affidavit of a U.S. postmaster, and Noel Herold's own sworn testimony, documenting Herold's expert forensic report (ECF #170-13) was forged**,** by the Appellees'/Defendants' counsels. Judge Harwell did this by wrongfully claiming he had ruled that Durward Matheny was not allowed to testify in the underlying case to this appeal.

Another problematic issue with the record is the misuse of the doctrine of ***"National Security"*** to conceal fraud upon the court and prevent discovery in a civil case thereby denying the Appellants'/Plaintiffs' their due process rights. Concealing ***al Qaeda*** funding sources from the American public does not appear to qualify for the use of this doctrine.

The improper application of federal law inside the court room and the politically motivated violation of the law outside the courtroom resulted in the disputed settlement in this case. The failure to provide a plenary hearing regarding the existence of a true settlement in this case mandated by both 4th Circuit and United States Supreme Court precedent, assured the issues the Justice Department wanted silenced, remain silenced. The burying of all records and denying meaningful discovery in this case is consistent with a geopolitical motivated cover-up of ***al Qaeda*** funding by the Saudi Kingdom. However, this is not a legitimate excuse for the extensive fraud on the court that took away the rights guaranteed by the constitution to the law abiding Appellants/Plaintiffs.

For the foregoing reasons, the Appellants respectfully request that the Court grant this request and remand this case for discovery and afford the Appellants the opportunity to both

complete the court record and seek justified civil contempt of court charges and the recommendation by the court for the United States attorney to seek criminal contempt of court charges against Mark Keel, Esquire, Michael Kirkpatrick, and Captain David Caldwell for the reasons cited herein.

Respectfully Submitted: August 24, 2015

By:

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STATEMENT OF COUNSEL

Pursuant to Local Rule 27(a), the undersigned counsel states that opposing counsel has been informed of the intended filing of this Motion for Judicial Notice in Support of Plaintiffs-Appellants' Briefs, and opposes this Motion.

s/Michael G. Sribnick, M.D., J.D.

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CERTIFICATE OF SERVICE

I, Michael Sribnick, MD, JD do hereby certify that the foregoing **EMERGENCY MOTION FOR REMAND AND DISCOVERY BY SPECIAL MASTER BASED ON NEWLY DISCOVERED EVIDENCE AND NATIONAL SECURITY** This day August 24, 2015 was served on the following person(s) by either mail, fax or electronic transfer a true and correct copy, as follows:

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