



Written by [William F. Jasper](#) on February 5, 2018

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VINDICATION: Bundys Walk Free!

From the print edition of The New American

“The government’s conduct in this case was indeed outrageous.... There has been flagrant misconduct, substantial prejudice and no lesser remedy is sufficient.” So declared U.S. District Judge Gloria M. Navarro on January 8 in her stunning ruling that dismissed “with prejudice” all charges against Nevada rancher Cliven Bundy (shown, wearing hat) and his sons Ammon and Ryan. “With prejudice” was the key phrase hoped for and prayed for by the Bundy family and their many supporters, since it would mean that federal prosecutors could not come back again for yet another long, drawn-out, costly trial. Cliven Bundy had already been incarcerated for 700 days by the time of his January 8 release. The 71-year-old rancher, his two sons, and 14 other defendants were jailed on charges related to the standoff with federal agents at their ranch near Bunkerville, Nevada, in April of 2014. The felony charges they faced, including conspiracy, assault, extortion, threats against the government, obstruction of justice, and firearms offenses, could have resulted in decades of prison time. For Cliven Bundy, conviction would have been, almost certainly, a sentence to serve the remainder of his life in prison.



Judge Navarro had already declared a mistrial in the case on December 20. She did so after reviewing sealed evidence of misconduct by federal prosecutors and the Federal Bureau of Investigation (FBI), and serious criminal activity by agents of the federal Bureau of Land Management (BLM). However, in declaring a mistrial, she had left open the opportunity for prosecutors to come back for another run at the Bundys and their co-defendant Ryan Payne, which prosecutors had indicated they would do. Her January 8 ruling not only relieved the defendants and their families from the fear of ongoing prosecution, but also severely rebuked the federal prosecutors and federal agencies in language that is rarely heard from the bench.

Judge Navarro denounced the government’s misconduct as “especially egregious,” “grossly shocking,” “reckless,” and “willful.” She found prosecutors had engaged in a “deliberate attempt to mislead” and



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had made multiple misrepresentations — both to the defense and to the court. “The court has found that a universal sense of justice has been violated,” Navarro said. She particularly hammered the prosecution regarding exculpatory “Brady evidence” that they are required to produce for the defense. Instead, prosecutors and agency officials had repeatedly concealed and/or denied the existence of the evidence. “The failure to turn over such evidence violates due process,” thus depriving the defendants of an essential right, the judge said.

The Real Conspirators

“Cliven Bundy was accused of conspiracy against the government,” reported the *Western Livestock Journal* in a January 8 article on the Bundy ruling. “Instead,” it noted, “the Bundy trial showed it was the government that was conspiring against him.” That charge does not exaggerate in the least the gravity of the government’s wrongdoing in the case.

During her ruling of a mistrial on December 20, Judge Navarro spent nearly 45 minutes reading from the bench details of the federal misconduct that she found to be so outrageous and flagrant. A central component of that misconduct concerned the government’s willful withholding of thousands of pages of evidence that supported the Bundys’ defense, and to which the defendants were legally entitled. That evidence concerned:

- Surveillance cameras — In August of last year, Ryan Bundy, who represented himself in court, had requested the government produce evidence from surveillance cameras or other recording devices that they had planted on the Bundy ranch. His motion said he had seen a “mysterious device” on a hill overlooking the Bundy home prior to the confrontation. He speculated that it was for video and/or audio surveillance, or for “painting” the Bundy home for artillery or aerial targeting. U.S. Attorney Steven Myhre contemptuously dismissed the request, arguing to the court that “Bundy’s motion appears to be little more than a fantastical fishing expedition for evidence justifying attacking law enforcement officers because he did not like the way they dressed while enforcing court orders. In essence, his motion is another attempt at jury nullification.” As it turned out, Ryan Bundy’s request was not “fantastical” at all; a federal agent testified that she had watched video surveillance from it at the BLM command center on four separate days. Judge Navarro ordered the government to produce the supposedly non-existent recordings and rebuked the prosecution for withholding the evidence.
- FBI and BLM snipers — The prosecution had repeatedly denied that federal snipers had been deployed at the Bundy ranch. It also claimed the Bundys had lied about this in order to draw sympathizers to their defense. However, photographs, as well as FBI and BLM records, later showed that snipers were indeed “inserted” against the Bundys, as eyewitnesses had claimed.
- “Threat assessments” — Multiple “threat assessments” by the FBI’s Behavioral Analysis Unit, the BLM, and other governmental counterterrorism units agreed that the Bundys were unlikely to resort to violence. Withholding these exculpatory assessments, which contradicted the violent “domestic terrorist” image the prosecution painted of the Bundys, seriously violated the Brady rule.
- Desert tortoise endangerment — It was the BLM’s curtailment of the Bundys’ grazing rights, supposedly to protect the “endangered” desert tortoise, that precipitated the long conflict between the ranching family and the feds. However, hundreds of pages of internal BLM documents show that the cattle grazing had not caused injuries to the tortoises.



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• BLM whistleblower memo — A stunning memo by Larry Wooten, the BLM's lead investigator into the handling of the Bundy ranch standoff, warned of "a widespread pattern of bad judgment, lack of discipline, incredible bias, unprofessionalism, and misconduct, as well as likely policy, ethical, and legal violations" among the BLM's senior and supervisory staff during the confrontation. He particularly cited the egregious activities of the BLM's Special Agent in Charge (SAC) Dan Love, who is notorious for harassment, abuse, lewdness, and considering himself "untouchable" and above the law. Wooten reported that Agent Love even "bragged about getting three individuals in Utah to commit suicide," and kept a "Kill Book" as a "trophy" to commemorate his role in the deaths of various victims. Wooten further warned that withholding exculpatory evidence would jeopardize the case. The Wooten memo was ignored and covered up not only by his BLM higher-ups, but also by U.S. Attorney Steven Myhre.

The violations listed above are far from a comprehensive cataloging of the flagrant abuses in the case. In addition to these and other offenses, the government was extremely dilatory in producing the documents after the court had ordered it to do so. Judge Navarro had ordered the previously withheld evidence to be provided to the defense by October 1, but the prosecution dribbled it out in a series of delays between October 10 and December 15.

Photo: AP Images

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Navarro found prosecutors engaged in a "deliberate attempt to mislead" and made multiple misrepresentations to both the defense and the court about evidence. Noting that the government had four years to prepare the prosecution, she said she "seriously questions" claims that the FBI "inexplicably placed" a tactical operations log that referred to the presence of snipers outside the Bundy residence on a "thumb drive inside a vehicle for three years." Another explanation, she noted, is that the government "perhaps hid" the misplaced evidence. Likewise, the government denied the existence of evidence requested by the defense and had dismissed it as "urban legend" — only to later admit its existence and belatedly produce it.

In the pre-trial and trial proceedings, Judge Navarro had repeatedly ruled against defense motions, restricting their witnesses and evidence, while time after time siding with the prosecution. She had shown no indication whatsoever of being sympathetic to the Bundys' defense arguments. Navarro had been recommended for her judicial appointment by Nevada Senator Harry Reid, a longtime antagonist of the Bundy family, and was appointed by President Obama. This background, along with her court actions, had caused many of the Bundy supporters to nearly despair of ever obtaining a fair verdict. Thus, her declaration of a mistrial with prejudice is all the more remarkable and indicates her recognition of very serious transgressions by the government.

U.S. Attorney Steven Myhre, in his written response to Judge Navarro's December 20 mistrial decision, argued that the prosecution's abuses were "inadvertent" and not done in "bad faith." In fact, he insisted, the government had bent over backward to be scrupulously fair!

According to Myhre, "The government's belated disclosure of these materials is not so grossly shocking or outrageous as to violate the universal sense of justice." "Rather," he insists, "the late disclosures stem from the government's good-faith reliance on its understanding of its discovery obligations, as informed by its reasonable interpretation of the governing law on available affirmative defenses, and supported by Court orders on these subjects." This amounts to a claim of ignorance by the prosecutors



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as to what constitutes exculpatory evidence under the Brady rule. This is an incredible claim, since Myhre was also rebuked for withholding 650 pages of exculpatory evidence in the famous case of *United States v. Chapman*. That case was also dismissed “with prejudice,” due to the misconduct of Myhre’s team.

In the Bundy case, Myhre appears to have amped up the abuse to a level several times higher than in *Chapman*. However, he claims total innocence. “The government did not withhold material to gain a tactical advantage or harm the defendants,” he insists in his response to Judge Navarro. “Rather, it litigated these issues in good faith, arguing that the materials were neither helpful nor material.”

Incredibly, rather than acknowledging any misconduct, Myhre argues that he should be given another bite at the apple; the Bundys should be subjected, he says, to a whole new round of litigation.

“The Brady violations found by the Court are regrettable and benefit no one,” says Myhre. “But because the government neither flagrantly violated nor recklessly disregarded its obligations, the appropriate remedy for such violations is a new trial.”

“Every Prosecutor’s Nightmare”

Fortunately, Judge Navarro was having none of it. The possible impact of her blistering censure of the government’s misconduct has not gone unnoticed by legal analysts. “How could prosecutors have lost sight of due process, one of the basic tenets of the legal system?” asked *The Oregonian’s* Maxine Bernstein, in an article entitled “Rebuke of U.S. attorneys in Cliven Bundy case: ‘Every prosecutor’s nightmare.’”

“This is every prosecutor’s nightmare,” Kent Robinson, a retired federal prosecutor, told *The Oregonian*. “When a judge makes a finding of misconduct by a prosecutor,” Bernstein wrote, “the U.S. Department of Justice’s Office of Professional Responsibility investigates and determines if discipline is warranted, which can range from a reprimand to a suspension.”

That investigation is under way. According to Bernstein, Justice Department spokesman Ian Prior has said that U.S. Attorney General Jeff Sessions “takes this issue very seriously and has personally directed that an expert in the Department’s discovery obligations be deployed to examine the case and advise as to next steps.”

Only if those “next steps” lead to significant penalties — including prosecution of the offending prosecutors — will we be likely to see any curtailment of similar abuses and corruption. Judge Navarro’s predecessor on that same court bench, Judge Robert C. Jones, had previously blasted similar “shocking” actions by the government against Nevada rancher Wayne Hage and his family. As we reported in articles here in 2012, Judge Jones charged that “the government and the agents of the government” had “entered into a conspiracy, a literal, intentional conspiracy” against the Hages. Indeed, he said, “the Government’s actions over the past two decades shock the conscience of the Court.”

However, those shocking actions have continued, and they will only be stopped when the U.S. Department of Justice takes sufficient retributive action to show that this type of criminal misconduct by government officials will not be tolerated.

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