In 2013 the federal Bureau of Land Management (BLM) obtained federal court orders authorizing the agency to “seize and remove to impound” hundreds of Cliven Bundy’s cattle on the public ranges around Bunkerville, Nevada. The agency interpreted these court orders broadly, and descended on the area in April 2014 with some 200 body-armor-wearing agents, semiautomatic weapons, sniper teams, undercover informants, and surveillance cameras aimed at the Bundy residence.

The BLM brought more than corrals and horse trailers. They brought backhoes, dumptrucks and earth-moving equipment to tear up water lines and other infrastructure that had been built by Bundy and his ancestors over decades. Defying county officials, the federal officers chose calving season—the very time when cows and newborn calves are most physically weak and vulnerable—to execute the court orders. They orchestrated a paramilitaryized roundup operation using helicopters to terrify the cattle into stampeding to the point of exhaustion in
extreme heat. At least 40 cows either died from the ordeal or were shot by BLM employees and contractors.

The Feds even used the impoundment order to establish “First Amendment Zones” limiting freedom of speech in a 600,000-acre area to two small isolated parcels in the desert. It was almost certainly the largest infringement of First Amendment rights (by area) in American history.

When Bundy’s son Dave stopped on a state highway to photograph BLM snipers on local hillsides, BLM agents threw him down, ground his face into asphalt and falsely arrested him. And when other family members stopped a BLM dump truck to inquire if the truck was carrying dead cows, BLM agents erupted in a flurry of violence.

In response, hundreds of citizens journeyed from all over the country to protest the BLM operation. A few were armed. Political officials from across the west denounced the BLM’s heavy-handedness. As a direct result of the national outcry, the BLM halted their cattle impoundment. And on April 12, 2014, the BLM agents withdrew from the area—seemingly at the direction of the U.S. Attorneys office. It was apparently the plan of the Justice Department to entrap the Bundys into a criminal case by constructing a narrative that Bundy supporters “extorted” the cattle from the BLM by threats and “assaults” on federal officers. (The corralled cattle would have died had not Bundy family members released them back onto the range.)

Federal prosecutors spent tens of millions to build an elaborate criminal case designed to imprison Bundy and his sons and supporters for life. For two years, more than a thousand FBI agents combed through Facebook comments, posed as supporters or journalists, or surfed the internet to concoct a case against the Bundys.

Again the FBI spent millions in a show of force against the “domestic terrorists.” The entire town of Burns, Oregon—30 miles from the Refuge occupation—was fortified with razor wire, chain-link fences and concrete barriers. Military hardware rolled through the streets and buzzed overhead. Undercover informants dressed as rednecks in pickups harassed the populace. At a January 26, 2016 roadblock ambush, FBI and Oregon State Police opened fire on Ryan Bundy and shot 54-year-old LaVoy Finicum in the back as he stood surrounded in a roadside snowbank.

Leftist or socialist demonstrators would likely have been charged with misdemeanors over the Refuge occupation; but government officials viewed the 2014 “armed takeover” as an affront to all that government stands for. Federal prosecutors alleged that the protesters had launched a conspiracy to impede federal officials from performing their jobs.

THE MOST ELABORATE PROSECUTIONS IN AMERICAN HISTORY

In their zeal to destroy the Bundy “movement,” teams of federal prosecutors launched the most elaborate federal criminal cases in American history. Ammon and Ryan Bundy, militia spokesman Ryan Payne, and others were flown back-and-forth between Oregon and Nevada to face hearings in two, simultaneous criminal cases. Jurors in both jurisdictions were bussed (supposedly for their safety) from secret locations every day. In Nevada, not one but two helicopters followed overhead while defendants were transported between prison and court daily. In all, the federal government has likely spent a quarter of a billion dollars reacting to,
imprisoning, and prosecuting the Bundys and their fellow protesters.

In October 2016, jurors in Portland acquitted the Oregon defendants in the “trial of the century.” U.S. marshals tackled and tased Ammon Bundy’s attorney in the courtroom. Ammon and Ryan Bundy were denied release and transported to a Nevada prison to face the Nevada indictment along with Cliven, brothers Dave and Mel and a dozen others (while a half-dozen others awaited a second trial in Oregon).

The Oregon ‘not-guilty’ verdicts gave hope to two-dozen other defendants, who mostly stuck to their guns (no pun intended) and refused to plead guilty or negotiate with prosecutors. Courts were forced to split the Oregon case into 2 trial groups and the Nevada case into 3 trial groups. The first Nevada trial (of “gunmen”), commenced in February 2017 with Eric Parker, Scott Drexler, Greg Burleson, Steve Stewart, Todd Engel and Rick Lovelien facing multiple serious charges. Jurors couldn’t agree on most counts but convicted Engel and Burleson (mostly based on Facebook comments) of some accusations. Burleson was sentenced to 68 years in prison.

Then came one of the most disgraceful “trials” in U.S. history. Parker, Drexler, Stewart and Lovelien were retried in Las Vegas in August 2017. The prosecution exploited every possible advantage, winning rulings from the judge which barred the defendants from even mentioning most of their possible defenses. (They couldn’t even say that the BLM was overbearing or heavily-armed, or even that there were government snipers above them.) Jurors were treated to a one-sided display of 2014 photos showing the men with guns while overlooking BLM officers from a bridge on Interstate 15. BLM witnesses—either exaggerating or lying—cried in the courtroom while claiming they saw the defendants pointing rifles at them. (Not a
single photo or video corroborates this—and there were hundreds of cameras recording almost
everything at the time; there were even Nevada trooper dashcams capturing 80 percent of the
movements of the defendants during the period.)

The judge even ordered Eric Parker off the witness stand for saying he looked “up and to
the right” during the 2014 “standoff.” Prosecutors strenuously objected (in a sidebar hearing)
that such a statement might tell jurors that there were BLM snipers on a mesa above; and thus
Parker was unable to rebut the government’s claim that he aimed his rifle down-and-to-the-left at
a crying BLM agent (who was photographed very-much-not-crying at the time).

Defense lawyers were so stifled by the judge’s orders that they opted not to even make
closing arguments—a gutsy move almost without precedent. It was like a cry for help to the
jury. And the jury heard it loud and clear. On August 22, 2017, the jury fully acquitted Stewart
and Lovelien, and acquitted Parker and Drexler of most counts. (They hung on a small number
of charges for the two men.)

The not-guilty verdicts sent shockwaves throughout the Judiciary and the Justice
Department. Here, in the biggest case in the country, with the prosecution spending untold
millions of dollars and the judge imposing rules of evidence which almost choked the defense
from speaking, the Justice Department was unable to get convictions.

When the “big trial” (involving Cliven, Ryan, Ammon, and Ryan Payne) began in
October 2017, defense attorneys demanded to see evidence that had been withheld by the
prosecution. There were pictures (but no explanations) of immense piles of shredded documents
left by the BLM at the scene in 2014. And Ryan Bundy remembered surveillance cameras
pointed at the Bundy house in 2014 yet Bundy had never been provided with the footage.
Prosecutors insisted they possessed no such evidence. Even if there was a surveillance camera here or there it hadn’t recorded anything. But such questions seemed to produce more startling disclosures. Ultimately it was revealed that there had been an elaborate FBI surveillance operation which had been concealed from the defense. And it seemed that prosecutors had been coaching witnesses to change their reports to censor out inconvenient facts.

By the third week of trial in November, Chief Judge Gloria Navarro—the very judge who had given prosecutors everything they wished for in the previous two trials—was visibly weary of the DOJ’s barbarous tactics. A mistrial was declared just prior to Christmas, and all defendants except Cliven were released on conditions while lawyers argued over whether the case warranted another trial. And on Monday, January 8, 2018, in a packed courtroom in Las Vegas, the Judge granted Ryan Payne’s motion to dismiss. A “universal sense of justice has been violated,” proclaimed Navarro. The judge said further that she was unaware of a more egregious case of FBI misconduct.

It should be noted that there are currently a half-dozen additional pending motions to dismiss, citing even graver prosecutorial misconduct. It has recently come to light that lead prosecutor Steven Myhre was approached during the first Nevada trial by a government case investigator who informed the prosecutor that he was breaking the law by withholding evidence from the defense. Myhre’s response, according to some reports, was to fire the agent and order him to keep quiet. Even as Cliven Bundy was released from jail after serving 700 days, the case continues for others. Stay tuned!

The Best of Roger I. Roots, J.D., Ph.D.

Dr. Roger Roots [send him mail] is an attorney for Cliven Bundy in two pending civil
cases and has worked on both the Ryan Bundy defense team in Oregon and the Cliven Bundy defense team in Nevada. Roger is the only lawyer who observed all four Bundy trials beginning in October 2016. (He missed seeing only the second Oregon trial in February 2017 because it conflicted with the first Nevada trial.) Roger is also a founder of Lysander Spooner University, www.lysanderspooneruniversity.com and author of The Conviction Factory: The Collapse of America’s Criminal Courts.

Previous article by Roger I. Roots, J.D., Ph.D.: Jury Delivers Devastating Blow to US Justice Department


No changes have been made to this article.