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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CLIVEN BUNDY,)	
)	
Plaintiff,)	Civil No. 17-2429
)	
v.)	
)	
JEFFERSON B. SESSIONS,)	Washington, D.C.
U.S. ATTORNEY GENERAL,)	
et al.,)	
)	Tuesday, December 19, 2017
Defendants.)	
)	

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE RUDOLPH CONTRERAS
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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Proceedings reported by stenotype shorthand.
Transcript produced by computer-aided transcription.

P R O C E E D I N G S

(10:03 a.m.)

1
2
3 THE DEPUTY CLERK: This is Civil Action 17-2429,
4 Cliven Bundy versus Jefferson B. Sessions, et al.

5 Counsel, please step forward to the podium and state
6 your appearances for the record.

7 MR. KLAYMAN: Good morning, Your Honor. Larry
8 Klayman for Cliven Bundy.

9 THE COURT: Good morning.

10 MR. SCHAEFER: Good morning, Your Honor. Assistant
11 United States Attorney Dan Schaefer for the defendants.

12 THE COURT: Good morning.

13 Mr. Klayman, it's your motion. Why don't you go
14 first.

15 MR. KLAYMAN: Yes.

16 Your Honor, it's regrettable that we're even here
17 today. I'm a former proud prosecutor of the Department of
18 Justice. I was in the antitrust division. I helped break up
19 AT&T, as you may know. I'm the founder of Judicial Watch and
20 Freedom Watch, two organizations that I founded to enforce
21 the rule of law in ethics in government. I kind of became a
22 Hamburger Helper to the bar associations in some ways. I
23 have been non-partisan. I have brought cases not just with
24 regard to the Clinton Administration, as you know, but also
25 the Bush Administration and all administrations. And I

1 believe in justice, I believe in the rule of law.

2 Now, I have offered to settle this case with regard
3 to just doing a simple ethics investigation of what has been
4 going on with the prosecution in Las Vegas. I had even
5 spoken with the Attorney General about nine months ago, right
6 after he was confirmed. And he said he would do an impartial
7 review. I didn't tell him how to come out. But the
8 situation has gotten much worse. We have seen that in recent
9 revelations just in the last few days with regard to this
10 whistleblower, Larry Wooten, who was one of the top
11 investigators in terms of the Bureau of Land Management of
12 what was going on with regard to the disagreement over the
13 land and over who owns the land and whether grazing fees
14 should be paid and whether cattle should be seized, so on and
15 so forth, at the Bundy Ranch.

16 Now, I'm not even talking about who is right or wrong
17 with that. I have strong views on that. But the fact here
18 is, is that documents have been shredded. Documents have
19 been withheld, *Jencks* material, *Brady* material. We know now
20 there has been disparagement of Mormons. The Bundys are of
21 the Mormon faith. I might add, I have gotten to know the
22 Bundys. They are a very fine family. I actually have a
23 Mormon working for me. We also know that there was a kill
24 list that was put up on the wall at the Bureau of Land
25 Management with an X on the face of Cliven Bundy. We know

1 there were snipers. We know there were all kinds of things.
2 All of this has been withheld during the course of the case.

3 Now, the issue is not what Judge Gloria Navarro is
4 doing in Las Vegas. She is addressing these issues. There
5 are certain concerns there, even the *Las Vegas Review Journal*
6 has written -- this is a mainstream publication, it is not
7 right wing or anything to that effect, it is the town
8 newspaper -- it said the prosecutor has a friend in Judge
9 Gloria Navarro. She, of course, was recommended to the bench
10 by Harry Reid. There's all kinds of intrigue there. I'm not
11 making any allegations here. That's for that case.

12 But here's what I'm asking for just simply. And
13 there is a duty, if you just go up on the websites for the
14 Office of Professional Responsibility and the Inspector
15 General, who work together at the Justice Department. They
16 recognize their duty to investigate ethical misconduct by
17 their own people.

18 THE COURT: Let me ask you a basic question. Have
19 either of those entities, the OIG or the OPR, have they told
20 you, no, we're not conducting an investigation?

21 MR. KLAYMAN: Worse than that, Your Honor. They
22 won't confirm that we sent them complaints. You can see in
23 the file in the original complaint I was communicating with
24 General Sessions. I had asked to meet with him, I was told
25 by his scheduler, Erical O'Brien, who sent memoranda updating

1 the status of the case. Eventually, I appeared because I
2 wasn't getting the meeting as General Sessions said he would
3 have, they would have the prosecutors there and me, we would
4 talk about it. I eventually went to the Department of
5 Justice. And no sooner than that, a letter was sent to me,
6 we sent everything off to the prosecutors in Las Vegas.
7 That's like sending it into the henhouse near the fox. We
8 have never heard anything back. And then I sought to confirm
9 that they simply even had the complaint, and they refused to
10 respond, confirm, or deny that they're conducting an
11 investigation.

12 THE COURT: The short answer is no, they have never
13 said no, we will not conduct --

14 MR. KLAYMAN: That's correct. But I don't understand
15 why if the answer is not known that they would go to such
16 lengths to take up your time, to take up my scarce financial
17 resources, and the Bundys', and just not simply say we will
18 conduct an investigation, particularly when it's reached this
19 level of alleged misconduct.

20 And we have a whistleblower. Your Honor, you haven't
21 been able to see this and it is sealed, but my understanding
22 is, particularly given the reports, this is a very detailed
23 professional report by the whistleblower to the misconduct
24 that is involved here. It goes right to the acting U.S.
25 Attorney, Steve Myhre, who covered this up, who didn't want

1 to deal with it. It is not the only thing that's gone on in
2 this case.

3 At the outset of the case, the Bundys were kept in
4 prison without bail. Cliven Bundy was thrown into solitary
5 confinement. They have been there for two years, and there's
6 been never any trial during that period. Bail was denied.

7 You have a situation where certain witnesses took the
8 stand and information was not provided. The key government
9 investigator for the BLM, Dan Love, was removed from the BLM
10 for an IG report ironically of --

11 THE COURT: Taking bribes.

12 MR. KLAYMAN: -- taking bribes and coercing people
13 not to testify due to his position.

14 You have other individuals by the name of Jenkins,
15 government witness. There was a report that wasn't even
16 submitted. And in the second trial, the judge gave only one
17 day to do an investigation when that came out. You've got
18 Eric Parker who's been on the stand, where the government
19 supported ripping him off the stand and not letting him
20 testify, and he was a defendant simply because he wanted to
21 talk about his constitutional rights. The Judge complied at
22 that time.

23 You have a stonewalling of Freedom of Information Act
24 requests which I filed in my capacity as the Chairman of
25 Freedom Watch. Now I understand why the FBI and the BLM have

1 come back and said it will take us 41 years to produce
2 documents. Your Honor has a copy of that FOIA request.
3 There is no way that they don't have those documents. They
4 had to cull them to prepare for the prosecution and
5 ultimately to indict my client, Cliven Bundy. In 41 years we
6 will all be dead. Even the young government lawyer will be
7 dead. It will be of no good. Who ever heard of such a
8 thing? I can't get discovery in that case even with regard
9 to the search, unfortunately. You've got, of course, this
10 new whistleblower, and I have talked about the kill list.

11 The issue here is not litigating the case in
12 Las Vegas. The issue is having the Justice Department do its
13 job. As I said, I'm a proud alumnus. Your Honor, you have
14 sue sponte powers here as a judge. I'm not saying it needs
15 to resort to that. I hope that my colleague here will say
16 yes, we're doing an investigation, we'll do it expeditiously.
17 But a lawyer, particularly a federal judge and someone like
18 me, the head of Freedom Watch who believes in ethics and the
19 rule of law, we have a duty when we see that there is a
20 likelihood that a crime has been committed to report that to
21 appropriate authorities. If we walk down the street and see
22 someone being assaulted or killed, we have a duty as officers
23 of the Court to order -- not order -- but at least inform
24 the appropriate authorities.

25 I know you to be, from your reputation, a very honest

1 man and a fair man. I know Judge Royce Lamberth quite well
2 after all these years at Judicial Watch, and he speaks very
3 highly of you. I hope that you will take the bull by the
4 horns here. We did not ask for the Department of Justice to
5 prosecute the prosecutors or the FBI agents that have covered
6 this up, and that is why these cases that were cited by the
7 Justice Department were inapplicable.

8 THE COURT: In your pleading, you try to distinguish
9 the Heckler case by saying that's prosecutorial discretion.
10 What you want here is an investigation rather than a
11 prosecution --

12 MR. KLAYMAN: Correct.

13 THE COURT: -- but the other cases cited refer
14 specifically to investigations, that the same standard
15 applies to requiring an investigation as it does for
16 enforcement. You don't cite a single case in support of your
17 position --

18 MR. KLAYMAN: I cited the case of the Maryland Bar
19 and Ty Clevenger, who filed a complaint. He had tenuous
20 standing. He was just a private citizen and activist. He
21 was concerned that the Law Firm of Williams & Connolly, David
22 Kendall, Cheryl Mills -- who is not with the firm -- and
23 others had destroyed, as the case in this particular matter,
24 e-mails of Mrs. Clinton. And that would have been a
25 violation of the rules of ethics of the Maryland Bar as well

1 as law. That would be obstruction of justice. He went
2 before a Maryland Court. A Maryland Court ordered the
3 Maryland Bar to do an investigation. The Office of
4 Professional Responsibility is the equivalent of disciplinary
5 bar counsel. We're not saying how to come out; we're saying
6 just do an investigation.

7 THE COURT: No, I understand your position. Do you
8 have a single federal case that has required any part of DOJ,
9 whether it be DOJ, FBI, OPR, or OIG, to investigate a
10 particular matter?

11 MR. KLAYMAN: We do not currently have that case.
12 But this is a case of first impression. I don't think
13 anything has ever come up like this before.

14 We live in an age, Your Honor, whether you're a
15 Democrat, Republican, conservative, liberal, moderate, where
16 the rule of law has broken down, I regret to say, even at my
17 alma mater, the Justice Department. Consequently, the days
18 that we lived through -- I'm probably older than you are, I'm
19 66 -- I don't know how old you are, you look younger -- but
20 in those days there wouldn't have been a question about it.
21 You get a letter back saying we're investigating at least. I
22 offered to meet with OPR and an Inspector General. You don't
23 get stonewalled and say we don't have to tell you anything.
24 This is unique. It is a different age.

25 And I did not find such a case. I can continue to

1 look for such a case. I had my staff looking for such a
2 case. I have been in trial with Bundy, sitting there, as to
3 what is going on and observing and doing various different
4 things nearly every day. Only on Friday am I free except for
5 today I came here. Of course, the Court is not in session
6 today because of this issue of Larry Wooten coming back
7 tomorrow. But this is a case of first impression. And I
8 guess what I wanted to say is that, Your Honor, whether or
9 not there is case precedent or not, you have the ability as a
10 federal judge to order the Department of Justice to do an
11 ethics investigation, and I believe that you have a duty to
12 do so, as I had a duty to come forward when I found out about
13 this. This is not the kind of thing that one can continue
14 on.

15 Those cases that they cited were primarily dealing
16 with criminal investigations leading to a potential
17 indictment. We're not talking about a criminal
18 investigation. We're not talking about a grand jury
19 investigation. We are talking only about ethics.

20 As we also cited, Your Honor, the Supreme Court case
21 of *Strickler v. Green*, at page 281, 1999, the oath of office
22 which prosecutors take and which the individuals who run the
23 Office of Professional Responsibility and IG also take --
24 which I took when I became a Justice lawyer -- requires,
25 according to the Supreme Court of the United States, the

1 prosecutor has the responsibility to administer justice, not
2 simply as an advocate. This responsibility carries with it
3 specific obligations to see that the defendant is accorded
4 procedural due process. And thus, the prosecutor must act
5 impartially and not give preferential treatment to any
6 private organization or individual, shall not engage in
7 criminal, infamous, dishonest, immoral, or disgraceful
8 conduct or conduct otherwise prejudicial to the parties.

9 By taking that oath of office, there is an absolute
10 duty to investigate this if you are the Attorney General of
11 the United States, if you are the head of the Office of
12 Professional Responsibility, if you are the head of IG. And
13 even if it was discretionary, this would be an abuse of
14 discretion.

15 THE COURT: Under the mandamus statute, if it is
16 discretionary, you lose.

17 You're asking two things, really. You're asking not
18 just that there be an investigation, you're asking that it
19 begin immediately. And my knowledge, my little knowledge I
20 have of OPR, is that they typically hold back until the
21 courts are done. It is unclear to me that you may not
22 eventually get what you want, but I think it is pretty
23 unusual -- and you can cite a case to me if you have one --
24 in which OPR jumps in while the case is still ongoing.

25 MR. KLAYMAN: This is an extreme circumstance, Your

1 Honor. It's been out there for a very long time.

2 OPR recently, it was cited by Deputy Attorney General
3 Rosenstein in recent testimony last week with regard to
4 certain allegations of what's been going on in the Mueller
5 Investigation and with regard to Fusion GPS and Uranium One
6 and those kinds of things, testified that there is a
7 \$200 million budget at OPR. They have the resources to
8 simply respond to my letter saying whether they're going to
9 investigate or not. That's why I ask you to use your powers
10 as a federal judge, Your Honor, to, using whatever means
11 appropriate, convince them to conduct an investigation.

12 Again, there is strong evidence here of a crime. The
13 *Las Vegas Review Journal* just moved the court expeditiously
14 to have this document unsealed. And I will be blunt, okay.
15 As I said, I'm nonpartisan. I am conservative, I am proud of
16 that, Libertarian conservative. People know that. I held
17 Bush accountable for the misuse of the NSA. I held him
18 accountable for other things. I am not here to disparage
19 anyone, but this judge in Nevada, Judge Gloria Navarro, is
20 very partisan, and she is only waking up now because the
21 prosecution has come crashing down.

22 I have two other clients that were acquitted in the
23 last trial because there was a trifurcation of the trial.
24 And their lawyers didn't present any evidence. The jury
25 said, hey, there is no evidence, and dismissed them, simply

1 acquitted them.

2 THE COURT: Despite your claims of her lack of
3 impartiality, which I have no way to assess, she may still do
4 what your client is seeking in that case, or the Ninth
5 Circuit may do it, and then OPR or OIG can take a
6 retrospective analysis of what occurred. Why isn't that
7 enough?

8 MR. KLAYMAN: Because we're not asking for dismissal
9 of the lawsuit, the prosecution out there. We're not asking
10 for remedies within her purview. What we're asking for is
11 the equivalent of a bar association investigation of
12 unethical conduct inside of the Department of Justice.

13 THE COURT: I understand that. But what you're
14 asking for is an immediate investigation. And why would they
15 be required to do that when the courts may still do what you
16 need and then they can take a more thorough and detached
17 investigation of what happened historically?

18 MR. KLAYMAN: Because her findings are not likely to
19 reach the issues that I'm discussing.

20 There is a tendency, Your Honor, to protect one's
21 own, okay? I have seen it in my 40 years of practice. There
22 is a tendency not to excoriate the prosecutors but just
23 simply deal with the exclusion of evidence and the hiding of
24 evidence, the spoliation of evidence. It will not reach the
25 ethical issues here. I feel strongly about those ethical

1 issues. That's why I cited my history. Certainly it's okay
2 for the department to wage ad hominem attacks on me, which I
3 thought was disgraceful, rather than trying to deal with
4 these issues, so-called government, okay. Unfortunately, I
5 don't think the Department of Justice in some sectors
6 represents the government anymore. I'm proud of having been
7 part of the government. It's broken away from the
8 government. It represents itself. And that's what's
9 happening here.

10 Right before court, I came in here and I asked
11 Mr. Schaefer, "Are you willing to do an investigation?" He
12 said, "Absolutely not."

13 So how do you live in a world like that? How do you
14 believe in the rule of law and expect the American citizenry
15 to respect what I thought was the equivalent of going to
16 Harvard or Yale? I went to Emory Law School in Atlanta,
17 which is a good law school. But when I went to the Justice
18 Department, that was the proudest moment of my legal life at
19 that time. This is not the way it should work. Whether it
20 is immediate or not, I want a recognition, and I asked Your
21 Honor to get it, that they're going to conduct an
22 investigation of this. Otherwise, what we have at the
23 Justice Department is a charade.

24 I tell you something, I have known Attorney General
25 Jeff Sessions when I was a young lawyer. I had a case with

1 him in Mobile. He is a very, I would say, diplomatic and
2 nice man. And I met with him. And I have seen him over the
3 years at various events. And he said to me he would review
4 this thing. And he didn't review this thing. Instead, he
5 went out to Las Vegas and gave a press conference on
6 sanctuary cities. I tried to meet with him when I was there.
7 I was there visiting Bundy in prison. I was told he was too
8 busy. Instead, he issued a statement that he has confidence
9 in the courage of the prosecutors but, quote, he is not
10 taking sides. The Attorney General of the United States is
11 not taking sides? Why are you there? I didn't ask him to
12 take sides.

13 There is a total breakdown over there. It is called
14 circling the wagons and protecting your own, because there by
15 the grace of God go thee once I am out of office. I have
16 lost a lot of respect for Attorney General Sessions because I
17 didn't ask him to come out in favor of my client, just have
18 his people do a neutral review.

19 And I would hope at a minimum that at least this
20 Court would contact the Attorney General and say: You need
21 to look into this. It is not right. It is a huge
22 miscarriage of justice. You can't have a situation where
23 Justice Department prosecutors are covering up kill lists to
24 kill my clients. You had the U.S. Attorney, former U.S.
25 Attorney Daniel Bogden and the current acting U.S. Attorney,

1 Steven Myhre, and his assistant U.S. attorneys, go to the
2 Bundy Ranch even before the standoff. They were in effect
3 being set up for what's going on. None of that came out
4 until recently either.

5 You have videos, surveillance feeds. There's a
6 conspiracy charge that my client arranged for people to come
7 to the ranch bearing arms, using their Second Amendment
8 rights, which was perfectly their right to do when they saw
9 that the Bundy family had been assaulted and their sons tazed
10 and the dog violently kicked and cattle killed and buried in
11 a mass grave. They came to protect themselves. It was a
12 peaceful protest. But they were being set up for this.
13 There's a conspiracy charge here. There was video feed of
14 surveillance showing that Cliven Bundy wasn't there at the
15 time that these alleged threats to the government occurred.
16 They withheld that. The prosecutor knew that.

17 So this is an untenable situation which only someone
18 like Your Honor can resolve. It is not just the Bundys, it
19 is not just me; it is the American people need to have
20 confidence in their system of justice, that there is somebody
21 who will step in, somebody who will do the right thing.

22 Years ago I had a case in front of Judge Stanley
23 Sporkin. I don't know if you know Judge Sporkin.

24 THE COURT: I do.

25 MR. KLAYMAN: I call him Stanley now because he has

1 become a friend. Stanley stepped in in difficult situations.
2 He even stepped in as a Republican to, I believe it was,
3 dismiss an indictment of Congressman Alcee Hastings, who was
4 accused of taking bribes in Miami when he was a federal
5 judge. Stanley found a way to rule in a way that he thought
6 was just, and there is law here. Even if there is not a
7 specific case, it is the unequivocal duty of the Office of
8 Professional Responsibility to do its job. They advertise
9 it. They're proud of it. They admit it. That's the duty.
10 But we have never seen this kind of a situation before.

11 So I ask Your Honor to step in and do whatever you
12 can do to enforce the rule of law to, at a minimum, get a
13 commitment from the Justice Department that at the
14 appropriate time they will do a review. But if there's
15 41 years worth of information there, I think they should
16 start pretty soon, which obviously was false. That was
17 another misstatement. No one can ever believe that it would
18 take 41 years to respond to a Freedom of Information Act
19 request. When I narrowed it, it went down to 17 years. At
20 that point, I will be well into my 80s and Cliven will have
21 potentially done life in prison.

22 I thank you, Your Honor, for your time, and I ask for
23 an opportunity to rebut anything that may be said.

24 Thank you.

25 THE COURT: Thank you.

1 Mr. Schaefer.

2 MR. SCHAEFER: Thank you, Your Honor.

3 As Mr. Bundy put it quite succinctly in his
4 opposition --

5 THE COURT: Mr. Klayman.

6 MR. SCHAEFER: -- Mr. Klayman put it very succinctly
7 in his opposition brief, the crux of Mr. Bundy's claim is
8 simple; defendants must simply be made to do their jobs.
9 That's plaintiff's opposition brief at page 13. And as
10 counsel stated today, he would ask Your Honor to do that by
11 any means necessary. Well, quite simply, this petition asks
12 the Court to order defendants to conduct an investigation and
13 seeks relief that, if granted, would be a significant -- and
14 yes -- very dangerous violation of the separation of powers.
15 There are very fundamental constitutional constraints at
16 issue here. And it would be unprecedented for a federal
17 court to order the executive branch to initiate an
18 investigation which is squarely within prosecutorial
19 discretion. And I believe that the arguments that the
20 defendants made on the papers do speak for themselves, but I
21 would like to respond to a couple of points that Mr. Klayman
22 raised today and in the opposition brief.

23 THE COURT: Sure.

24 MR. SCHAEFER: Let me just say, first off, that a
25 writ of mandamus is available only if the plaintiff has a

1 clear right to relief, defendant has a clear duty to act, and
2 there is no other adequate remedy available to the plaintiff.
3 A writ of mandamus may be granted only if the duty to be
4 compelled is nondiscretionary, ministerial, clearly defined,
5 and undisputable. The law must not only authorize the
6 demanded action but require it.

7 THE COURT: The petitioner has to establish all
8 three?

9 MR. SCHAEFER: Yes. Yes. And this petitioner can
10 establish none of these elements.

11 To go first to a threshold issue that we raised in
12 our brief, the Court lacks jurisdiction to order defendants
13 to exercise their prosecutorial discretion to initiate the
14 investigation.

15 Now, counsel stated today that the *Heckler v. Chaney*
16 case is distinguishable because that was an enforcement
17 action; whereas, here Mr. Bundy's counsel says that they're
18 not seeking enforcement action but rather just an
19 investigation. In *Heckler v. Chaney*, among the issues under
20 consideration there was the FDA's decision not to investigate
21 purported violations of the FDCA. In that case, that
22 involved petitioners who were convicted of capital offenses
23 and petitioning the Food and Drug Administration and
24 requesting that the FDA take investigatory and enforcement
25 actions to prevent what they perceived to be violations of

1 the FDCA. Prosecutorial discretion in the context of that
2 case, enforcement discretion, included specifically, if you
3 look at that opinion, investigatory judgment. As Your Honor
4 noted during argument today, we also cite two cases,
5 *Ning Ye v. Holder*, a case with nearly identical facts decided
6 in this Court in 2009, and also *Schlesinger v. Mukasey*, 2009.

7 In *Ning Ye v. Holder*, which applies the *Heckler*
8 rationale, the court specifically uses the phrase
9 "prosecutorial discretion to initiate an investigation."
10 Defendants are using the term in the same way here. In those
11 two cases and in others that we cite in our brief relying on
12 the *Heckler v. Chaney* rationale, the courts have unanimously
13 held that prosecutorial discretion such as the acts that are
14 being requested here are enforcement proceedings that are not
15 subject to judicial review, and for that reason the complaint
16 should be dismissed for lack of jurisdiction.

17 In addition, we also note that the plaintiff has no
18 entitlement to writ of mandamus. As I said earlier,
19 Mr. Bundy can demonstrate none of the required elements for
20 such a petition. There is no clear duty to act, no clear
21 right to relief, and there are adequate alternative remedies
22 in the trial court, and should a conviction be made, in a
23 direct appeal of the conviction to the Ninth Circuit.

24 Now, Mr. Bundy asserts in the opposition brief, and
25 Mr. Klayman does here, that defendants have a "clear legal

1 duty." But nowhere in the complaint or any of the papers
2 filed with this Court does plaintiff identify such a clear
3 legal duty. If you look specifically, for example, at the
4 OPR, for example, in the motion to supplement that Mr. Bundy
5 filed, he cited OPR's policies and procedures. This is ECF
6 number 18 at page 6. The quoted portion of the OPR's
7 policies and procedures states as follows: "OPR reviews each
8 allegation and determines whether further review is
9 warranted. The determination whether to close the matter or
10 to obtain more information about the allegation is a matter
11 of investigative judgment. It involves many factors,
12 including the nature of the allegation, its apparent
13 credibility," and the quote continues. The quotation
14 continues to say that the majority of complaints received by
15 OPR are not investigated for a multitude of reasons.

16 So even the language that Mr. Klayman cites in the
17 papers on the face of the quoted language shows that the
18 relief being sought here is a matter of discretion of the
19 agency. I could go through other examples with respect to
20 the other components that are involved here, the Inspector
21 General's Office, the Attorney General himself, the FBI, but
22 in each case, there is abundant case law and authority that
23 the decision to investigate is a matter of executive branch
24 discretion and should not be infringed by the courts.

25 So I'm happy to address any further questions that

1 Your Honor has. But in summary and in conclusion, I would
2 say that I'm not going to speculate or guess about the
3 reasons that, for example, the Attorney General decided not
4 to initiate investigation at a particular point in time. If,
5 for example, OPR has not responded to the inquiries that
6 Mr. Bundy's counsel has made, there may be reasons for that.
7 I'm not going to presume to know what those are. I am here
8 to defend these agencies' discretion to make that decision.
9 And time and time again, when petitioners just like Mr. Bundy
10 have made similar requests, the courts have dismissed those
11 petitions and denied the request for injunctive relief.
12 While this may be indisputably a high profile matter, it is
13 certainly not unique. These are not uncommon petitions,
14 particularly in this court where petitioners are challenging
15 decisions, whether it is in connection with prosecution of
16 themselves or another matter that a private citizen has
17 brought to the attention of the Attorney General, for
18 example, or the IG's office. These petitions are not
19 uncommon, and they are routinely denied, and Mr. Klayman has
20 identified no reason why the same conclusion shouldn't be
21 reached here.

22 Actually, one final point that I forgot to mention
23 earlier with respect to the adequate alternative remedies.
24 The adequate alternative remedies that are available in the
25 trial court, that's an independent basis for denying the

1 petition. The additional filings that Mr. Klayman has made
2 since filing the opposition with the news updates --

3 THE COURT: With respect to adequate alternative
4 remedy, I take it your position, to be consistent, would be
5 that the Nevada court also does not have jurisdiction to
6 require an investigation by OPR or OIG; is that right?

7 MR. SCHAEFER: That's right.

8 THE COURT: Given the relief sought here, that would
9 not be an adequate alternative remedy?

10 MR. SCHAEFER: That's correct. That's correct. My
11 position is simply that the relief that is being sought here,
12 the relief that Mr. Bundy could seek in the trial court, for
13 example, by filing a motion to dismiss based on these
14 purported discovery abuses and the other sanctions motions
15 that are being raised right now before the trial judge,
16 surely if those were to be granted, that would address the
17 fundamental injuries that plaintiff is seeking in this case.
18 So that goes both to undermining the basis for awarding the
19 writ of mandamus, also it speaks to the lack of irreparable
20 injury because surely if Mr. Bundy is not convicted, that
21 would greatly diminish a need for the injunctive relief here.

22 THE COURT: Okay. Let me talk a little bit about
23 just some of the housekeeping matters, these various motions
24 to keep things under seal and not to keep things under seal
25 and the like. Where are we with all those?

1 MR. SCHAEFER: The defendants have not opposed any of
2 Mr. Bundy's requests to file materials under seal, and so we
3 agree that anything that has been filed at this point under
4 seal in the District of Nevada should also be filed under
5 seal here. The response that we filed to the motion to
6 unseal, our limited response to the motion to seal that
7 Mr. Bundy filed is still pending. If that's granted, that
8 would only unseal the response that defendants filed, which
9 doesn't have any sealed materials.

10 THE COURT: Okay. And then there was one where you
11 wanted a cut-out so that you would be able to share
12 information with the Nevada office; is that right?

13 MR. SCHAEFER: Yes, Your Honor.

14 THE COURT: Do you have anything to add to that?

15 MR. SCHAEFER: Nothing to add to that. The proposed
16 order that defendants filed in support of that filing has the
17 precise language that we would be looking for to give counsel
18 in this case permission to share the materials with trial
19 counsel in Nevada.

20 THE COURT: Thank you.

21 Mr. Klayman, let's quickly address some of those
22 housekeeping matters. You didn't file an opposition, but do
23 you have any opposition to their proposed order that allows
24 them to share some of the under-seal matters with the Nevada
25 office?

1 MR. KLAYMAN: The Nevada prosecutors already have
2 those materials.

3 THE COURT: I assumed the same, which makes kind of
4 the relief moot, but do you have an opposition to the order
5 itself?

6 MR. KLAYMAN: I didn't want to take a position
7 because I didn't want to be seen as advocating violating
8 Judge Navarro's order. She is not exactly friendly towards
9 me.

10 THE COURT: Okay. Then, obviously, you want certain
11 of the things you filed under seal. Do you have an
12 opposition to them unsealing that pleading that they moved to
13 unseal?

14 MR. KLAYMAN: I don't, not if the government wants to
15 do it.

16 THE COURT: All right. Let's hear your reply to the
17 substantive arguments.

18 MR. KLAYMAN: Your Honor, it's not a question of
19 separation of powers. If that was the case, this court would
20 have no reason for being. Every day of the week multiple
21 decisions are reached by this court, which reviews conduct of
22 the executive branch. That is the reason our founding
23 fathers created a judicial branch, an independent judicial
24 branch and the checks and balances. And in fact, just
25 referring to my own ideology, I'm not one of those

1 conservatives that believes that the judiciary is an inferior
2 branch of the other branches of government. I believe, if
3 anything, it's a superior branch because you're the last line
4 of defense when it comes to tyranny by the other two branches
5 of government, and that's what we have here. I'm not even
6 overstating it. We have government tyranny. You don't have
7 kill lists with regard to putative defendants and not call it
8 tyranny.

9 So yes, you have the authority to rule on this. As
10 Your Honor pointed out, that is not an alternative remedy in
11 Nevada. We're not asking for dismissal of the indictment;
12 we're asking for the Justice Department to do its job and to
13 police its own employees and to do an ethics investigation.
14 It is not just injury to Bundy; it is injury to the system of
15 justice. It is injury to the American people when it does
16 not carry out its functions, particularly when \$200 million
17 of taxpayer money, including yours and mine, goes to fund the
18 Office of Professional Responsibility. What are they doing?
19 Having parties over there with the \$200 million, or are they
20 supposed to investigate severe ethical misconduct.

21 As a result, as I said, I can't emphasize this more.
22 I don't know how Your Honor is going to rule. I would like
23 an opportunity before you do rule to go back, in light of the
24 arguments made today, and re-research some of the case law
25 here because I cannot believe there is nothing there. We

1 have been under a lot of pressure in terms of time in the
2 last few weeks with regard to that Bundy trial and other
3 briefs that we had due. But as I said before, you, as an
4 officer of the court, me as an officer of the court
5 subservient to you, we have an ethical obligation to report
6 this to the branches of government that aren't affected. I
7 trust that however Your Honor rules that you will, in
8 whatever way you can, convince the Department of Justice to
9 do an investigation here and to do it expeditiously. Even if
10 they can't do it expeditiously -- I can't see why they can't,
11 with \$200 million they have enough people to do the job -- to
12 do it, simply do it. Because we can't have a breakdown here.
13 People are watching what is going on today. They're passing
14 the tax bill and everything else is going on here in
15 Washington, D.C., and they are not in this courtroom right
16 now, but they will be looking at what happened here today
17 because Your Honor is the only recourse here that we have to
18 keep the Justice Department -- I think you're an alumnus,
19 too, are you not?

20 THE COURT: I am.

21 MR. KLAYMAN: -- the way it was intended to be. And
22 I feel strongly about that, which is why I started Judicial
23 Watch in 1994.

24 So I ask Your Honor to step in here and do whatever
25 you can to preserve the rule of law and to preserve ethics,

1 just like the judge in Maryland did with regard to Ty
2 Clevenger's case. And there is an unequivocal duty to
3 investigate violations of misconduct, particularly when they
4 rise to a criminal level, we know from Larry Wooten, someone
5 inside. I ask Your Honor to ask Judge Navarro, perhaps it
6 will come out very soon, perhaps it will be tomorrow with the
7 *Las Vegas Review Journal* seeking to have it unsealed, to at
8 least defer to look at that to see how serious this is. This
9 is a major scandal, and the American people deserve to be
10 represented by the courts.

11 Thank you very much.

12 THE COURT: All right. Thank you.

13 I have read all the briefs. I've conducted
14 independent research on my own, and I've heard the arguments
15 now.

16 Petitioner, Cliven Bundy, brings this action pursuant
17 to the Mandamus Act to compel the Department of Justice and
18 its components, the Office of Professional Responsibility
19 (OPR) and the Office of Inspector General (OIG), to conduct
20 an expedited investigation concerning alleged wrongdoing and
21 unethical behavior by DOJ personnel in his investigation and
22 criminal prosecution in Nevada.

23 The extraordinary remedy of the writ of mandamus is
24 available to compel an "officer or employee of the United
25 States or any agency thereof to perform a duty owed to

1 plaintiff." 28 U.S.C. § 1361. A petitioner bears a heavy
2 burden of showing that his right to a writ of mandamus is
3 clear and undisputable.

4 Relief through mandamus may only be granted where
5 (1) the petitioner has a clear right to relief; (2) the
6 respondent has a clear duty to act; and (3) there is no other
7 adequate remedy available to the petitioner. The petitioner
8 must prove all three.

9 Moreover, mandamus relief is not available to compel
10 discretionary acts. The duty to be compelled must be
11 nondiscretionary, ministerial, clearly defined, and
12 undisputable. It is established that the United States
13 Attorney General has absolute discretion in deciding whether
14 to investigate claims for possible criminal or civil
15 prosecution, and such decisions generally are not subject to
16 judicial review. That's *Shoshone-Bannock Tribes v. Reno*,
17 56 F.3d 1476 (D.C. Cir. 1995).

18 Despite the government's brief citing a number of
19 cases in this circuit concluding that the courts may not
20 compel the Department of Justice to investigate matters,
21 including cases specifically involving requests for the OPR
22 and the OIG to investigate matters, petitioner fails to cite
23 to a statute, regulation, or even a single federal case
24 supporting his entitlement to compel such an investigation.
25 Although judicial review may be had if Congress has indicated

1 an intent to circumscribe agency enforcement discretion and
2 provide meaningful standards for defining the limits of that
3 discretion, all petitioner cites in support of his position
4 are the components' websites, which is clearly insufficient
5 to demonstrate that Congress has limited the DOJ's discretion
6 in this context. Accordingly, petitioner has failed to
7 demonstrate that DOJ has a clear duty to act or the
8 petitioner has a clear right to relief. Petitioner does not
9 cite to any statute or DOJ regulation that cabins that
10 discretion.

11 Moreover, petitioner attempts to distinguish
12 *Heckler v. Chaney* by claiming that requesting an
13 investigation is different than the exercise of prosecutorial
14 discretion. But again, the numerous cases cited by the
15 government specifically address requests for investigations.
16 Petitioner simply ignores these cases and cites no federal
17 cases of his own.

18 Accordingly, having failed to meet the high standard
19 for meriting mandamus relief, the Court dismisses
20 petitioner's claim for mandamus relief, dismisses the
21 complaint, and denies as moot the motions for a temporary
22 restraining order and preliminary injunction.

23 I will go ahead and clean up those motions on the
24 orders to keep things under seal or unseal.

25 Is there anything else we need to resolve today,

1 Mr. Klayman?

2 MR. KLAYMAN: I would ask Your Honor to exercise your
3 judicial powers and inform the Attorney General that there's
4 something here that needs to be looked at. I ask you to do
5 that, Your Honor, in all due respect.

6 I actually didn't cite the right analogy. If I may
7 just take a few minutes. It is my concept of if I was a
8 judge what I would do.

9 I remember many years ago, I was a young lawyer, I
10 was about 30, and I tried to rent space over at 601
11 Pennsylvania Avenue where Capital Grille is today, on the
12 sixth floor. And I had a letter of intent with
13 B. F. Saul, who at that time was the biggest real estate
14 developer and owned Chevy Chase Federal. And I relied on
15 that, and I stopped looking for space. And I got a call one
16 day, and his representative told me, sorry, we have rented it
17 to somebody else. I filed a lawsuit. It was assigned to
18 Judge Sporkin.

19 At the first status conference, I came in front of
20 him. And he said, "What's this case about, Mr. Klayman?"

21 I said, "Well, you know, I have a letter of intent,
22 and unless I die I would assume that they're required to
23 present the lease to me because I was willing to adhere to
24 all the terms that we agreed on."

25 And Judge Sporkin said to me, he says, "You know,

1 same thing happened to me last week. I rented a hotel room
2 in New York City. I got there. They gave it away to
3 somebody else." He said, "Do you know what I did,
4 Mr. Klayman? I told them to give me one that was 10 times
5 nicer."

6 Now, we went on with the case, and it went to summary
7 judgment. The B. F. Saul in Westminster -- that was his
8 company, the leasing company -- took the position that
9 because they had a disclaimer at the bottom of the letter of
10 intent that you don't have any kind of agreement until you
11 have a lease. That let them out. They withheld documents
12 from Judge Sporkin about the letter that I had written saying
13 I'm relying on you.

14 I said, "Your Honor, may I approach the bench?" I
15 showed it to him.

16 He said, "My God, Mr. Klayman, this is a smoking
17 gun." He looked at counsel for B. F. Saul, Shawn Pittman,
18 and said, "You ever withhold something from me again and I
19 will take a personal interest in having you disbarred. More
20 important than that, I'm not talking about disclaimers. I'm
21 talking about something higher than that. I'm talking about
22 ethics. And you go to the back room right now and you settle
23 with Mr. Klayman." And that's what we did. We settled it.

24 Judge Sporkin used his judicial powers to create an
25 equitable and fair situation. You have those powers, Your

1 Honor. You have the powers to, at a minimum, communicate
2 with the Attorney General and ask him to have his people look
3 into this because this is a huge miscarriage of justice.

4 And I have not been in front of you except for one
5 other case. I'm pleased to get to know you, as well,
6 professionally. But this is the role of the judiciary, and
7 when you see a crime that is being committed, you at least
8 have to tell appropriate authorities to do their job. And I
9 hope that you will do that, Your Honor.

10 Thank you.

11 THE COURT: Thank you.

12 Anything else, Mr. Schaefer?

13 MR. SCHAEFER: No, Your Honor.

14 THE COURT: Thank you. You're excused.

15 (Proceedings adjourned at 10:52 a.m.)
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CERTIFICATE OF OFFICIAL COURT REPORTER

I, Patricia A. Kaneshiro-Miller, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/ Patricia A. Kaneshiro-Miller

December 19, 2017

PATRICIA A. KANESHIRO-MILLER

DATE

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