

Ammon's Slam Dunk

Was it good ranch families or the federal government that were ultimately on trial in Portland? By Todd Macfarlane

In case you missed it, this past fall, in a collaborative effort, *RANGE* magazine and its affiliate blog, *RANGEFIRE.us*, offered live coverage and ongoing commentary about the Oregon Standoff Trial No.1 in Portland. Although entire books could be written about the background, underpinnings and machinations of the case, on Oct. 26, 2016, after a six-week federal trial, a 12-member jury returned unanimous “not guilty” verdicts on 12 of 13 charges, acquitting all seven of the defendants on trial for conspiracy and unlawful possession of firearms. The 13th and last charge, against only Ryan Bundy, was for aiding and abetting the alleged theft of FBI surveillance cameras that were removed from tall poles to monitor activity at or near the Malheur National Wildlife Refuge. The jury failed to reach consensus on that one.

At this point, it is old news that the controversial case stemmed from the armed occupation of the refuge managed by U.S. Fish & Wildlife Service (FWS) in southeast Oregon in January and February 2016. The occupation began as a protest regarding the perceived mistreatment of local Harney County ranchers Dwight Hammond and his son Steven, who had been resentenced to serve a full five years for starting a backfire on their own private property that spread to their adjoining federal grazing allotment. That burn eventually consumed forage on approximately 140 acres, valued at a few hundred dollars. (Read “Enemies of the State” by Hank Vogler, Spring 2013, at www.rangemagazine.com.)

Ammon Bundy organized the protest in support of the Hammonds, which grew into more general protests about federal government overreach and oppression in the West, particularly with respect to federal land and resource management policies. Although technically the defendants in the case, including Ammon and some of his closest associates and his brother Ryan, were on trial, it turned out that it was the federal government and its general western land-use poli-

cies, as well as its tactics in the case, that were ultimately on trial.

The Bundys were arrested in a fateful stop in which their friend, Arizona rancher LaVoy Finicum, was shot and killed by law enforcement, Ryan Bundy ended up with bullet shrapnel in his shoulder, and the other occupants of Finicum’s vehicle were thoroughly terrorized (see “A Dead Bill of Rights” by Judy Boyle, Summer 2016). At this point we know that there were no arrest warrants, indictments, or probable cause for the stop. We also know that there is an ongoing investigation into an obvious cover-up by the FBI about its role in LaVoy’s death. In

In order to prevail at trial, the feds had to prove beyond a reasonable doubt that Bundy and friends had entered into a conspiratorial agreement...to impede or interfere with government officials.

addition to the cowboy’s bullet-riddled pickup truck, there is mounting evidence of an FBI plot to stage a provoked shoot-out intended to result in even more casualties.

Ultimately a total of 26 defendants—alleged co-conspirators—were charged in the case. Although most of them were ultimately released from custody pending trial, despite numerous motions for pretrial release the government insisted on continuing to hold some defendants—including Ammon and Ryan Bundy and David Fry—in custody and without bail, essentially as political prisoners and based entirely on their political and philosophical views.

After a number of pretrial motions in which some charges were dismissed, all of the defendants faced the common charge of conspiracy to impede or interfere with federal officers. Some of the defendants were charged with possession of firearms in a federal facility while *allegedly* committing another crime (conspiracy). A few of the defendants were charged with isolated counts of theft of government property, including the FBI surveillance cameras,

which Ryan and friends took down and offered to give back to the FBI. After the government applied immense pressure on some of the “lesser defendants” to take plea-agreement deals, 11 of them did, leaving 15 defendants to move forward to trial.

At some point the case was bifurcated into two separate trials, with the first starting in September 2016, and the second scheduled for February 2017. The first trial was based on the charges against some of the leaders and primary defendants in the case, including Ammon Bundy, Ryan Bundy, Shawna Cox, David Fry, Kenneth Medenbach, Jeff Banta and Neil Wampler. That trial originally included defendant Pete Santilli, an alternative-media journalist who was held in custody for 210 days on the Oregon charges. In a surprise move just one week before the trial started, however, the Department of Justice unilaterally dismissed all Oregon charges against Santilli, who is still being held in custody based on Nevada charges associated with the Bunkerville standoff led by Ammon’s father, Cliven Bundy, in April 2014.

In order to prevail at trial, the government had to prove beyond a reasonable doubt that the defendants had entered into a conspiratorial agreement, and that the primary purpose or intent of that agreement was to impede or interfere with government officials. In opening statements, the government made grand representations about all the evidence it was going to present to make conviction of the defendants a slam-dunk proposition.

At trial, federal prosecutors ended up calling 47 witnesses, including several paid informants. These lawyers relied heavily on Facebook and social-media evidence in their attempt to prove the defendants’ intentions and motivations. And the government presented mountains of evidence, including loads of guns and ammunition, but in the end it was not able to tie much of its evidence to the seven defendants on trial.

Eventually, the jury learned that at least 15 paid government informants were involved—with at least nine at the refuge—and its agent provocateurs outnumbered the defendants on trial, and that those agents had “created” much of the evidence the government was relying on. One of the paid informants, Mark McConnell, had actually driven Ammon Bundy into the trap at the



AP PHOTO / RICK BOWMER

Bearded Ammon Bundy, center, one of the sons of Nevada rancher Cliven Bundy, arrives for a news conference with supporters at the Malheur National Wildlife Refuge on Jan. 8, 2016, near Burns, Ore. Ammon spoke to reporters after meeting with a local sheriff who asked the group to go. From Left: Thara (Finicum) Tenney, Morgan Tenney, Brittney (Finicum) Beck (wearing her dad's cowboy hat), Tean Finicum (with baseball cap), LaVoy Finicum holding granddaughter Payton Beck, Janna Lee Tobias (way back), Ammon Bundy, Tawny (Finicum) Crane carrying Hawk Crane, James Male, Shawna Cox, Ryan Bundy (in brown leather vest), and Jon Pratt. Do they look dangerous? Bundy led the small group occupying the refuge in Oregon and told the press they had no immediate plans to leave. They were arrested on Jan. 26, 2016, after LaVoy was killed by law enforcement agents at a roadblock between the refuge and Burns.

fateful arrest stop while they were en route to meet with the sheriff of the next county.

Some of the defendants, including Ryan Bundy and Shawna Cox, represented themselves, with standby legal counsel appointed by the court, because they did not believe their court-appointed public defense attorneys would zealously advocate their views. By many accounts, momentum in the trial completely shifted when Ammon Bundy testified. He was on the witness stand for the better part of three days. Based on the Fifth Amendment right to remain silent against self-incrimination, it is unusual for criminal defendants to testify, but like many of the other defendants who also testified, Ammon said he had nothing to hide and wanted to explain his intentions, motivations and actions to the jurors.

Ammon testified that although the primary objective of the occupation was to protest treatment of the Hammonds (who are currently serving time for “domestic terrorism” in a federal prison in Southern California), he was also seeking to challenge federal ownership and jurisdiction of the refuge and public lands throughout the West. He said he was motivated by his intention and desire to stake an “adverse possession” claim at the refuge and admitted that a natural consequence of their actions might have been to impede or interfere with federal officers but that that was not their primary

objective or the object of any conspiratorial agreement. And try as it might, the government couldn't prove otherwise.

By most accounts, Judge Anna Brown, the federal court judge assigned to the case, was clearly biased against the defendants and did everything she could to stack the deck against them. Likewise, mainstream media coverage of the trial suffered from many of the same symptoms as media coverage of the presidential election—serious bias—that made it difficult to get the straight scoop. That is why RANGE helped me resurrect the blog RANGEFIRE.us to offer ongoing coverage and commentary about the trial. With the mainstream media completely dominating the narrative, many in the public were surprised and outraged by the jury verdict, because they had been completely brainwashed into thinking that anything besides slam-dunk convictions were not even a possibility.

So was the outcome of the case the result of legal brilliance and razzle-dazzle? If anything, just the opposite. Not that the legal defenders were not plenty capable, but the core team was essentially a ragtag band of freedom fighters, making significant sacrifices while operating on a shoestring and at significant disadvantage, giving it everything they had and praying for the hand of providence to fill the gap.

Above and beyond divine providence

and intervention, two things really determined the outcome: the good, open-minded people on the jury who judged the case based on the merits of the evidence presented during the trial and the weakness of the government's case. When all was said and done, the government had overpromised and underdelivered in terms of the evidence that was actually admissible at trial, and the jury was able to cut through the rhetoric and see that its flimsy case was insufficient to prove guilt beyond a reasonable doubt.

It is fair to say that the outcome of the trial creates confusion. What about the remaining “lesser defen-

dants” who are scheduled to go to trial in February? What about the defendants who made plea deals? And what does this mean for the Nevada case, which includes many of the same charges against some of the same defendants? At this point, Ammon and Ryan Bundy (along with their father, Cliven, and brothers, Mel and Dave), and Ryan Payne are still being held in custody without bail, pending trial in Las Vegas, Nev., which is scheduled to begin in February 2017.

Between the outcome of the first trial and the radical change of administration based on Donald Trump's win, however, the future status of these cases is highly uncertain at this point. But at least there is a new sense of optimism in the air. ■

Todd Macfarlane is an attorney, rancher, writer, and editor of the RANGEFIRE.us blog. He calls Turkey Track Ranch in Kanosh, Utah, home. For more info on the Bundy's Nevada story and the Malheur standoff in Oregon, including LaVoy Finicum's death, go to www.rangemagazine.com. Click on Back Issues, Fall 2014, for “Patterns of Harassment” by Vin Suprynowicz, and Summer 2016 for “A Dead Bill of Rights” by Judy Boyle, “Bundy Scares the Feds” by Vin Suprynowicz, and “The Professionals” by Dave Skinner. RANGE won a Freedom of the Press award from Nevada Press Association (judged in Wyoming) for its coverage of the Bundy story.