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## Prosecutors blamed for bungling Bundy case by forcing conspiracy charge

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Federal prosecutors were faulted for overreach Friday by pursuing tough-to-prove conspiracy charges against seven Oregon occupiers instead of settling for slam-dunk counts like trespassing and vandalism.

The result was that all seven defendants, including brothers Ammon and Ryan Bundy, were acquitted Thursday in a stunning verdict stemming from the 41-day occupation of the Malheur National Wildlife Refuge.

In an email to the Oregonian, Juror 4 said that the “not guilty” verdict did not mean the jury believed the defendants were innocent.

Rather, the prosecution failed to prove the occupiers intended to engage in a conspiracy to stop federal employees from performing their jobs through intimidation, threats or force.

“It should be known that all 12 jurors felt that this verdict was a statement regarding the various failures of the prosecution to prove ‘conspiracy’ in the count itself — and not any form of affirmation of the defense’s various beliefs, actions or aspirations,” said the juror.

Debate over the verdict raged Friday on social media, with some critics blaming racism because all defendants and jurors were white. The Oregonian reported that the state’s adult population eligible for jury duty is 84 percent white.

“[W]atch whiteness work,” said Black Lives Matter leader DeRay Mckesson on Twitter.

Elsewhere, the verdict was seen as a victory for rural Americans in their decades-old struggle against what they describe as unreasonable restrictions on public lands.

“We won the battle, but not the war. We want freedom,” said the Bundy Ranch in a Facebook post.

Randal O’Toole, a Cato Institute senior fellow who followed the trial from Oregon, said the conspiracy charge was problematic from the beginning.

“I think the key to the Oregon trial was that they charged them with conspiracy and the jury just didn’t buy it,” said Mr. O’Toole. “

He said prosecutors would have been better off sticking to the basics.

“Maybe we should just give up that kind of a charge and go after what’s really wrong here,” he said. “It wasn’t charging people with preventing federal employees from getting their work done, it was charging people with a conspiracy to prevent federal employees from getting their work done.”

The occupation began Jan. 2 after several dozen armed demonstrators took over the refuge headquarters, which was vacant at the time, as part of a protest against federal land-management policy.

The Bundy brothers still face trial on conspiracy charges stemming from the 2014 standoff with the Bureau of Land Management at the Bundy ranch near Bunkerville, Nevada.

Lewis and Clark Law School professor Tung Yin said prosecutors may end up reconsidering their strategy in Nevada in light of the Oregon verdict.

“If I were the U.S. Attorney in Nevada, I would be somewhat concerned about this verdict,” Mr. Yin told KGW-TV in Portland.

One consideration for prosecutors may have been that a federal conspiracy verdict carries a more severe sentence than a trespassing or vandalism conviction.

“If they charged them with vandalism or something like that, they would have been able to get a conviction, although they might not have been able to put them in prison for as long as they would with a conspiracy charge,” Mr. O’Toole said.

Despite Thursday’s verdict, federal prosecutors are still battling over 500 with the Malheur protesters. Eleven occupiers pleaded guilty previously to charges stemming from the occupation, while another seven are scheduled to go on trial in January.

“While we had hoped for a different outcome, we respect the verdict of the jury and thank them for their dedicated service during this long and difficult trial. We strongly believe that this case needed to be brought before a court, publicly tried and decided by a jury,” said U.S. Attorney for Oregon Billy J. Williams in a statement.

Juror 4 said all 12 jurors agreed that “impeding existed, even if as an effect of the occupation.”

“But we were not asked to judge on bullets and hurt feelings, rather to decide if any agreement was made with an illegal object in mind,” said the juror, whose name has not been released but who was identified in the Oregonian as a Marylhurst University student.

“It seemed this basic, high standard of proof was lost upon the prosecution throughout,” the juror said.