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Acquittal Of 7 Oregon Occupiers Poses Questions On Fate Of 7 More

by **Gillian Flaccus** AP | Nov. 8, 2016 11:32 a.m. | Portland



A supporter displays a "NOT GUILTY!" button following the not guilty verdict delivered in the trial of seven occupiers of the Malheur National Wildlife Refuge.

Bradley W. Parks/OPB

The U.S. Attorney's office in Oregon has taken a beating since a jury acquitted seven defendants of conspiracy and weapons charges in an armed takeover at a federal wildlife refuge — and government prosecutors still have a long road ahead.

Seven more defendants are set for trial in February in a second high-stakes airing of the same evidence and the same witnesses. Under intense scrutiny after the acquittals, the government now must decide whether it wants to press forward with an almost identical case, make changes or give

up entirely.

"I'm sure it was a surprising verdict for the government. I'm sure most observers were assuming it would be a fairly slam-dunk case, and we were all wrong about it," said Tung Yin, a former criminal defense attorney and professor at Lewis & Clark Law School in Portland. "Knowing what we know now, how would they have approached this case differently — and how will they approach these other defendants differently?"

The U.S. Attorney's office in Portland declined to comment on the acquittals and the upcoming trial.

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Defense attorneys, however, questioned whether government prosecutors would be wise to proceed, given that the first jury didn't buy the government's conspiracy case. The next round of defendants is also emboldened by the acquittals and considers



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Faces Of The Malheur Refuge Occupation Trial

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another trial a forum to bring their brand of political protest to a national audience for a second time.

“Watching the trial, it was clear: This is what they wanted to do and, to some extent, has the government played into their hands? Are they playing into their hands in trial No.2?” said Andrew Kohlmetz, an attorney for Jason Patrick, who has pleaded not guilty to conspiracy and weapons charges.

“They’re giving them a soap box to stand on, and I think they need to make some tough policy decisions,” he said of government attorneys.

Brothers Ammon and Ryan Bundy and five others were acquitted on Oct. 27 of felony charges of conspiracy to impede federal employees from doing their job and possession of firearms in a federal facility after a six-week trial in U.S. District Court in Portland. The heavily armed occupiers seized the Malheur National Wildlife Refuge on Jan. 2 to protest the imprisonment of two Oregon ranchers who were convicted for setting fires on public land.

More than two dozen others eventually joined the 41-day occupation, which grew into demands for the U.S. government to turn over public lands to local control.

Now, prosecutors face a range of unsavory options for the second trial, legal experts said.

They can proceed and risk another acquittal, dismiss the case entirely, add lesser charges such as trespassing to give the next jury more options or offer plea deals to defendants.

“If they came to me with jaywalking and time served, I’d tell them to go to hell. I want to fight,” said Patrick, a 52-year-old roofer who was jailed for six months before a judge released him to await trial. “If you fight the government outside of court, they will kill you. But if they invite you into court to fight — and your fight is right —then fight.”

Complicating matters, the first group of defendants included brothers Ammon and Ryan Bundy, the self-professed leaders of the standoff. The February trial includes defendants largely seen as lesser players in the occupation, but the charges are just as serious.

A judge has set a Nov. 16 date for attorneys from both sides to file court papers indicating how they would like to proceed.

In the meantime, legal experts cautioned about thinking of last month's acquittals only in terms of a defeat for prosecutors.

Government attorneys are sure to comb over every decision they made during the first trial and make changes to counter perceived weaknesses, said Laurie Levenson, a former federal prosecutor and law professor at Loyola Law School in Los Angeles. That will likely make them stronger at a second trial, if it happens, she said.

For example, in the first trial, standoff leader Ammon Bundy testified for three days in his own defense but was only cross-examined for 15 minutes.

Prosecutors likely felt that most of his testimony was irrelevant, but Bundy's charisma and earnestness on the stand may have impacted the jury, she said.

"Someone who spends three days on the stand really develops a relationship with the jury, and you really have to anticipate that. It sounds like Bundy was able to plant the seeds of jury nullification," Levenson said. "And I don't know if the next defendants would be able to do that."

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