

In Search of Atticus Finch

Enter Marcus Mumford, legal warrior—like a bull in a china shop.

By Todd Macfarlane

At approximately 4:15 p.m. on Oct. 27, 2016, after a six-week trial and weeklong deliberations, the federal jury in the Oregon Standoff Trial returned a unanimous verdict of not guilty. It was a grand slam for attorney Marcus Mumford in the biggest case of his career.

Mumford's immediate reward for this remarkable victory was to be tackled in the courtroom by a full squad of U.S. marshals while attempting to address Judge Anna Brown. They took him to the ground, pounded his head into the floor, hit him with a Taser, handcuffed him, and threw him in a jail cell. All this was for arguing that his freshly acquitted client, Ammon Bundy, should be released from incarceration—at least long enough to hug his wife, if not spend a few days helping with the family apple harvest.

The background

I'm going to state my biases right out of the chute. After more than 25 years as an attorney and 30 years closely associated with the legal profession and the judicial system, I acknowledge that I have become jaded about most lawyers, the legal profession in general, many judges, and what I often now refer to as the "so-called justice system."

Over the past few years I have attended several highfalutin legal functions where speakers, including lawyers, judges and "experts," have waxed eloquently about the legal profession and the nobility of lawyers. And it would be impossible to count the number of times on such occasions that speakers have invoked Atticus Finch in "To Kill a Mockingbird," as if he's the only example they can conjure up of that noble ideal they love to talk about.

At a recent federal litigation seminar, a well-seasoned federal judge was talking about lawyers and the legal profession and invoking Atticus Finch as the classic example of lawyerly nobility—based largely on Atticus' representation of a culturally unpopular, underdog client. The judge also suggested that if we look back almost 250 years to John Adams, with particular reference to Adams' legal defense of the British soldiers who killed protesters in the Boston Massacre of 1770, we might actually find a real-life Atticus Finch,

who courageously represented some very unpopular clients of that time.

Do we honestly have to go back 250 years to find a real-life attorney close to the Atticus ideal that everyone invokes? What

about Marcus Mumford and his representation of Ammon Bundy, who is the epitome of current cultural disdain—especially in Portland, Ore.?

Judges these days lament what is often



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described as the “demise of trial lawyers.” This is symptomatic of the so-called justice system where cases drag on for years in “discovery” while lawyers milk cases for all they’re worth but usually settle before going to trial. Add to that the 97-plus percent conviction rate in federal criminal cases and it’s no wonder that hardly anyone—except Marcus Mumford—dares to take on the risk of a trial.

Anna Brown, the federal judge in Portland who presided over the Oregon Standoff trials, has been quoted as saying, “The federal government has so many resources at its disposal, and is so meticulous in its work, that I would never expect to see a criminal defendant acquitted in my court.” So much for the constitutional presumption of innocence until proven guilty beyond a reasonable doubt! After spending a week observing that trial, I wrote a story for the Rangefire blog titled “Addressing Judicial Bias—the Elephant in the Room,” in which I accused Judge Brown of grossly disparate treatment of the parties. For the most part, until the evidence became too overwhelming to ignore, Judge Gloria Navarro, chief federal judge for the Bundy trial in Las Vegas, made Brown look mild by comparison.

What I have learned since then is that this is not unique to the Bundy cases. According to a growing body of evidence, federal judges have become so accustomed to favoring the prosecution that they no longer seem to recognize what they’re doing.

Case in point: A recent article describes the experience of one of Utah’s newly appointed federal judges, Jill Parrish, who served for 13 years on the Utah Supreme Court. Unlike the other more seasoned federal jurists, Parrish wasn’t quite so used to giving the prosecution preferential treatment. In one written decision she openly chastised a federal prosecutor for his work in the case, including efforts to mislead the court. In response, one of the supervising prosecutors requested a favor and Judge Parrish thought he might apologize for what had happened. Instead, she was blindsided with a demand to edit and remove the critical language from her written opinion!

Daniel Medwed, a professor of law at Northeastern University in Boston, says the events in Parrish’s court are part of a growing national debate, “because while prosecutors are very rarely criticized in court, the failings of defense attorneys are routinely highlighted.”

In reaction to this Troy Rawlings, a prominent Utah state prosecutor, says: “Pros-

ecutors should not be in bed with judges, should not act like they think they are, and should not be perceived as being in bed with the judiciary.... The expectation of federal prosecutors that the judge would even entertain such a request, ‘underscores how they have become very accustomed to having more deference than defense attorneys and defendants.’ Consequently, judges who routinely favor the prosecution have created a cli-

Clashes have become as legendary as Mumford’s record of winning complex federal jury trials.

mate where prosecutors ‘believe they are able to hold these kinds of meetings with judges and make these kinds of requests.’”

Rawlings adds: “If, as a prosecutor, you disagree with a judge’s ruling, then file a motion to address it publicly.... Don’t say, ‘Hey, Judge, let us off the hook by changing your ruling because we are the good guys who merely make understandable mistakes,’ wink, wink. ‘However, dear Judge, hammer the hell out of defense attorneys like Marcus Mumford, who keep beating us [and kicking our trash].’”

The bull in a china shop

In an era marking the demise of trial lawyers, enter Marcus Mumford. Since 2015, he and his small team of rag-tag freedom fighters have tried five lengthy major federal criminal trials, including representation of Ammon Bundy in the Oregon Standoff Trial. Not one of these trials resulted in a conviction of any of Mumford’s clients. (Keep in mind that a defense attorney today in high-profile federal cases has a three percent shot at winning.)

Most attorneys (including me) are apprehensive about tangling with increasingly biased and vindictive judges. Not Mumford—who believes that the justice system is supposed to be adversarial. In his bullish approach, Mumford has no reservations about clashing with federal judges who often demonstrate clear preference for their employer’s—the government—side. And such clashes have become as legendary as

Mumford’s record of winning complex federal jury trials.

Some judges can take being challenged without personal animosity. Others can’t. In 2015, Mumford was preparing to try a big, white-collar criminal case before one of Utah’s senior federal judges, a keen octogenarian who had been on the federal bench for over 30 years. “Although this judge had been appointed by Ronald Reagan and was purported to be ‘conservative,’” Mumford says, “he still operated on the basic premise that the concept of checks and balances was largely in theory only, with the basic attitude that the federal government could essentially do no wrong. So, not surprisingly, this judge had ruled against every one of my pre-trial motions.”

At the final pretrial conference Mumford clashed with the judge over some of his rulings and got under his skin to the point that, according to Marcus, “This smallish, temperate, soft-spoken 80-plus-year-old federal judge, who had always been the epitome of judicial decorum, raised his voice and said, ‘Mr. Mumford, if you don’t sit down and shut



Gregory Peck played Atticus Finch in “To Kill a Mockingbird.” This country lawyer in the segregated South was defending Tom Robinson, an innocent black man played by Brock Peters.

up, I’m going to come over this bench and, uh, uh...have the marshal sit you down and shut you up.” After a five-week jury trial, however, in which Mumford’s client walked away with an acquittal, that same judge complimented the defense attorney. “Sometimes you come in like a bull in a china shop,” the judge said, “but you seem to know what you’re doing...and you have potential.”

“It’s one of the best compliments I ever received,” says Mumford.

Mumford also had some epic clashes with Judge Anna Brown in Portland, in which she openly demonstrated her disdain for the attorney and routinely threatened him with contempt citations. In spring 2016, just six

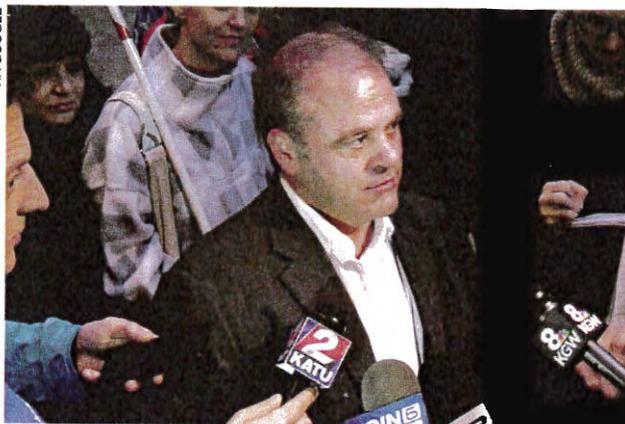
months prior to the Oregon Standoff Trial, he clashed with the Utah chief federal judge, David Nuffer. It was reported that Mumford—known for two primary vices: salty language and caffeinated drinks—may have dropped an F-bomb or two. In admitting to his excessive language that day in court, Mumford said, “I was raised better than to use that kind of language in court,” and pointing out the presence of a reporter, said, “I will probably be getting a call from my mother tonight.” As it turns out, it was a text. “But Judge Nuffer really got after me and threatened me with contempt citations, including fines, for my zealous advocacy of my client, Scott Leavitt.” But following an eight-week jury trial, Leavitt was fully acquitted of 86 counts of white-collar crimes. It’s all part of an amazing record that speaks for itself.

But it was Mumford’s final exchange with Judge Brown in Portland that captures the essence of this fearless, warrior bulldog—who doesn’t know the word “quit”—and sealed his reputation as public enemy number one to the U.S. Department of Justice.

On Oct. 27, 2016, the jury had just returned its verdict acquitting Ammon Bundy and six other defendants of all charges. Mumford said, “Ye-ye-your honor, in light of the jury’s not-guilty verdict, these defendants, including m-m-my client Ammon Bundy, should be released from custody.” Judge Brown responded that she didn’t have any paperwork requiring her to continue to hold Bundy, but perhaps the U.S. marshals might. Mumford responded, “If they h-h-have any such paperwork, I’d like to see it.” The marshals said he should come down to their office on the fourth floor to see what they could come up with but Mumford said, “No, you should go get it, and b-b-bring it into the court so that Judge Brown can make a ruling.” At that point, without any intervention by the judge, the marshals tackled, Tased, and handcuffed the lawyer and locked him up, ultimately charging him with impeding federal officers and creating a disturbance.

Judge Brown remained on the bench for the duration, perhaps relishing in the sweet revenge she and the marshals were extracting as their “pound of flesh” from Marcus Mumford. Speaking to Judge Brown before the marshals hauled him away in handcuffs, Mumford said, “Your Honor, I just want you to know what an honor it has

“There’s no question that they were trying to provoke a bigger shoot-out.”



Marcus Mumford was Tased in the courtroom in Portland, Ore., and knocked to the ground by marshals. This shot was taken after he was released from jail.

been to practice in your court.”

While Mumford sat in a cell—as he says, “trying to think critically about every life decision I had ever made that could have led me to that point”—his staff went down to the marshals’ office to see what they could produce. After searching for approximately 20 minutes, a marshal came out and admitted that either there was no order or they couldn’t produce any paperwork to justify continuing to hold Ammon Bundy in custody.

Later that evening, in jubilation over the verdict, some of the other attorneys, including Matt Schindler, and their clients went to a local establishment to celebrate. While there, they received a text indicating Mumford had finally been released, and asking where they were so he could join them. According to Schindler, when Mumford arrived, he looked like he had just been in a fight. He walked over, slammed his fist down on the table, and instead of mentioning a word about what had happened to him, with a great big smile, exclaimed “NOT G-G-GUILTY, mother-f-f-\$*%#!!!”

Unfortunately, that was just the beginning of Mumford’s troubles stemming from his court victory. The chief federal judge for the

District of Oregon also sought to have him banned for life from practicing in the federal courts of Oregon. Mumford is still fighting that, but the charges against him were dropped like a hot potato when the visiting judge overseeing the case ordered that the U.S. marshals produce all text messages amongst themselves leading up to their assault on Mumford.

Given their respective track records, it seems to be the consensus that Marcus Mumford and Nevada Judge Gloria Navarro should be kept as far apart as possible.

Why so tough?

Marcus Mumford has a speech impediment, which is worse on some days than others. But unlike many lawyers, he is no silver-tongued devil. He has to work very hard at what he does. When he introduces himself to a jury, he often does it with a joke. “H-h-hello, I’m Marcus Mumford. I-I-I-I’m sorry, b-b-but I stutter. So if you call m-m-me, don’t hang up too soon if you don’t hear s-s-someone speak, because I may still be trying to g-g-get the first word out of my mouth.”

Mumford grew up the son of a genteel country lawyer in a family of competitive brothers. Although Marcus’ family noticed that he was very smart, his tongue couldn’t quite keep up with his brain. What he lacked in natural speaking talent, he made up for with hard work and careful listening skills. That’s something he picked up while coming of age on a dairy farm in Clifton, Idaho.

While his father was serving as a military attorney in the Army’s Judge Advocate Generals Corps, Mumford’s parents decided that with six young sons they needed a farm on which to raise them, so dad left the JAG Corps. They returned to southern Idaho to the dairy farm where his father had grown up, and his dad became a rural county prosecutor. “There is no way to describe all the ways growing up on a farm teaches lasting life lessons and gives you a connection to reality,” Mumford says, “including the law of the harvest and the idea that you reap what you sow.” Some lessons he learned the hard way from his uncle, Jeff Mumford, who in his quest for perfection in operation of the farm fired Marcus three times before he turned 15.

Throughout his life, Mumford’s stuttering has been both a blessing and a curse. His parents did everything they could to help with his speech, but they also took a “get tough or die” approach. Once they encouraged him to enter an essay contest. The rub was that the essay was supposed to be recorded on a cas-

sette tape for submission. Young Marcus wrote a great essay but stuttered so badly he couldn't make a suitable recording and was disqualified. Idaho Congressman Richard Stallings heard of his plight, however, and read the essay into the congressional record. Stallings then offered Marcus an internship in Washington, D.C., fresh out of high school.

At some point Mumford wondered if the world was ready for a stuttering lawyer. Although it seemed like a long shot, renowned L.A. trial lawyer Tom Nolan ended up observing in a conversation with Mumford: "I don't know if you've noticed, but with your stuttering, juries seem to listen more carefully and pay better attention to what you say. And that is a huge advantage for any trial attorney."

Mumford's legendary work ethic gave him the opportunity to work with some of the best—including Nolan. Based on his stellar law-school record, he landed a judicial clerkship with 10th U.S. Circuit Court of Appeals Judge Monroe McKay. From there he landed a job with Skadden, Arps, Slate, Meagher & Flom LLP, one of the biggest law firms in the world. During that phase of his career he met and married Michelle Quist, who was also a 10th Circuit appellate court clerk who went on to work at a big New York City power law firm too. Michelle became a very accomplished attorney in her own right—as well as mother of seven children, including a set of twins and a son with Down syndrome. She is currently a columnist and editorial writer for the Pulitzer Prize-winning *Salt Lake Tribune*.

But there are many challenges associated with being a successful trial lawyer. For one thing, it's a financial rollercoaster, virtually impossible to have more than one case going at a time. Even worse, according to Michelle, during trial and in the weeks leading up to it, it's not uncommon for Mumford to work 24/7, with just a catnap at four or five a.m. before getting up and repeating it all over again. He has maintained this kind of schedule for months on end, in multiple marathon federal jury trials. What exacerbates this the most is his quest for perfection, to the point that he is willing to drive himself to unquestionable extremes in striving for success for his clients. These are great characteristics to have on your side if you're the client, but not so much if you're the wife and children.

On that score, Michelle Quist Mumford

has something in common with John Adams' wife, Abigail. According to C. James Taylor, editor-in-chief of the Adams Papers, Massachusetts Historical Society: "Business and politics separated John Adams from his wife and family for much of the time. When Adams was a young lawyer, his travels to distant villages on the court circuit kept him away. Even when he was at home, Abigail scolded him for staying out late at night while attending various meetings. After 1776, he spent weeks and months abroad or in Philadelphia on government business. It seems that John Adams spent little time with his family.

"Abigail often felt lonely and miserable, especially when Adams was not with her for the birth of their children. Usually, she viewed her suffering as a patriotic sacrifice. Her most trying time was in 1777, when she lost her unborn baby while Adams was in Philadelphia. Only the death in 1800 of her son Charles from acute alcoholism ever affected her more."

"Facts are stubborn things; and whatever may be our wishes, our inclinations, or the dictates of our passion, they cannot alter the state of facts and evidence."

JOHN ADAMS (1735-1826)
2ND AMERICAN PRESIDENT



Needless to say, Mumford acknowledges this can be really tough on a healthy family life. In the end, his remarkable record has come at a great cost to his marriage (which didn't survive), his family, and his body. "One time I broke my foot on the first day of trial," Mumford says, "but I couldn't do anything about it. It's one of those life lessons you learn growing up on a farm. You have to make hay while the sun shines. The show must go on." When the trial ended a month later, he had to have his foot rebroken and properly reset. On another occasion, while Michelle was pregnant, she and two children were involved in a bad car accident, but Marcus was not there for them. And when their young, special-needs son was in the hospital fighting for his life, Marcus was in court fighting for his client.

As an attorney, Mumford is fearless. He is a gladiator, inherently driven to extremes to win in a brutal, high-stakes war of words in

which he has a distinct disadvantage. "My basic operating philosophy comes from former NFL coach George Allen," he says. "Hit hard and good things will happen!" Another major influence in his life is Gerry Spence and his book, "The Making of a Country Lawyer."

Influential people in Mumford's life, as well as his own observations and experiences, have instilled and reinforced in him a deep sense of justice/injustice and an abiding distrust for "the powers that be" that seek to oppress and dominate others, especially the federal government. "It's like this big recurring theme in my life growing up in the West. They're coming for you; they're gunning for you."

"Who are they?" I ask.

"You know, the powers that be. You know, Johnston's Army, Dan Love, or the federal marshals. It's usually the federal government."

Mumford is taking over the LaVoy Finicum wrongful death case and says: "There ought to be a college course about how that small, little-known Arizona rancher with a YouTube channel and a Smartphone, challenged the federal government's narrative and PR machine to the point that they were determined to take him out." [Check "A Dead Bill of Rights" by Judy Boyle, Summer 2016, at rangemagazine.com.] There is no question in Mumford's mind that there was a pre-planned, fully premeditated hit on Finicum. "There's no question that they were trying to provoke a bigger shoot-out and to take out others too, but LaVoy was their high-priority target."

With this in mind, one cannot help but wonder whether Mumford is on a similar path. The irony of it all brings this discussion full circle. Because if there were another human being who was not a trial lawyer but who might have embodied many of the virtues represented by Atticus Finch, it was LaVoy Finicum.

So, in the end, as much as I admire Marcus Mumford and the legal successes he has achieved against all odds, in a world inhabited by mere mortals the reality is that there is no such thing as a real-life, flesh-and-blood Atticus Finch embodied in just one human being. But checking trial lawyers over the past 250 years, Mumford comes awful close. ■

Todd Macfarlane is an attorney, rancher, writer, rabble-rouser and perpetual boat-rocker. He calls Turkey Track Ranch, located just outside Kanosh, Utah, home.