

TRIAL, from page 10

necessity defense – but not the fourth. As a result, he did not allow the jury to consider whether the defendants acted out of necessity. The next morning the jury returned their verdict: the Delta 5 were found guilty of trespassing and not guilty of obstructing a train (the more serious charge).

In the court recess that followed, three jurors gathered with defendants and their supporters in the halls of the courthouse, thanking them for the action they took, and telling them that they would have been acquitted if a necessity instruction had been given.

Hours later the judge handed down the sentences: none would go to jail, but they would all be on probation for two years.

Brockway explained after the trial, “It wasn’t that we just decided to break the law on a whim, but we tried everything else and we felt like we had no other legal alternative, and that is exactly why we had to break the law – to enforce the law.”

“Since 1998 I have worked professionally advancing solutions to the climate crisis,” said Patrick Mazza, a co-founder of Climate Solutions. “I have spent a lot of time sitting in front of a computer trying to stop global warming. But after many years of seeing the climate crisis only worsen, it was time to sit in front of a train.”

DeChristopher criticized the judge’s reasoning Friday evening, comparing it to the ‘Nuremberg defense’.

“The judge disregarded the question of sufficiency,” DeChristopher argued. Discussing the classic case of breaking a door to save someone in a burning building, DeChristopher argued “there’s plenty of other alternatives ... you could call your rural fire department that might be 15 minutes away and hope that they get there in time, you could throw a bucket of water from the stream that’s nearby, you could pee on it, you could spit on it, you could try

to blow it out like a birthday cake ... There’s plenty of things that you could do to that fire. The question is: are any of those things actually going to save the life of that child?”

Mazza articulated the same point during oral argument on Jan 14, observing:

“The critical word here is ‘effective.’ In a limited sense, as I testified, I’ve personally seen effects of my work over the years on climate and clean energy. But is it effective in terms of it being a proportional response to what is demanded, what is needed, to truly address the issue? And I have to say it’s not. Because of the way the political system has been twisted and rigged by large corporations, in this case the fossil fuel corporations, we haven’t, we cannot act, it is not reasonable to expect the system to act in proportion to what we really need to accomplish.”

“Direct action is kind of a shock to the system. It’s a piece of dissonance, it’s a friction, that sets up a dynamic, that focuses attention, that shows that people are willing to take extraordinary risk, that people are willing to potentially suffer jail and prison time, fines, probation and all the downsides that come with having a criminal record. People are prepared to do that because they see that the system they’re up against is not capable of responding proportionally to the threat we face.”

DeChristopher said Judge Howard’s statements also reinforced the point that the government is unable to deal with the climate crisis. When announcing his rejection of the necessity defense, Judge Howard even acknowledged this, and said

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– PATRICK MAZZA
CLIMATE CHANGE ACTIVIST

the Delta 5 “are tireless advocates who we need in this society to prevent the kind of catastrophic effects that we see coming and that our politicians are ineffectually addressing.”

Despite this, he emphasized that he was bound by precedent, and therefore instructed the jury to ignore the expert testimony that summarized those catastrophic effects and the urgent action that will be needed to address them – in effect, instructing the jury to temporarily join the political mainstream, ignoring the warnings of scientists and safety experts.

In his closing statement to the court, Mazza addressed the jury, arguing that their decision did not actually depend on the judge. “Ultimately

you don’t have to explain your decision to anyone,” he said. “No one can second-guess you. You can’t get into trouble for any decision you make. As the judge just told you, you’re the sole judge of what you’ve heard.”

He added, “We don’t have a computer sitting in here, we have human beings.”

Minutes earlier, the prosecuting attorney Adam Sturdivant had told the jury, “You must not let your emotions overcome your rational thought process.”

Although the defendants have not yet made any formal declaration, Brockway said she is very much looking forward to an appeals trial, and believes they will have a better chance at winning in a higher court, where existing precedent can be challenged.

Local attorney Stu Sugarman, who has represented political defendants in

Multnomah County for the past 20 years, said he has often won cases of civil disobedience on the basis of both necessity and freedom of speech.

In December 2007, Sugarman won a necessity defense for a group called The Seriously Pissed Off Grannies. On April 6, 2007, the group had held a silent vigil at a U.S. Army and Marine recruiting center, where they used red paint to put bloody handprints on the building’s windows. The Grannies argued they were stopping the greater harm of killing young people in a senseless war, and the jury agreed – with the foreman openly criticizing the district attorney’s office for bringing the prosecution.

Reflecting on his success with The Seriously Pissed Off Grannies, Sugarman admitted, “I can’t tell you the reason why the Seriously Pissed Off Grannies got the necessity defense, because we never expected to win. But you argue it, and there it was: the judge allowed us to argue it before the jury ... and the jury agreed with us: that the protesters should never have been prosecuted because they were working for a just cause. And it is just a beautiful defense if the jury gets to consider it. I couldn’t tell you of any magic wand we waved to make it work. Sometimes the judge agrees with you ... and that’s it.”

No one can predict whether the Delta 5 will win on appeal, or whether their argument will gain ground in other parts of the country. But like Portland’s fossil fuel export ban, the action of the Delta 5 is unprecedented, and what it lacks in certainty, it makes up for by speaking directly to the problem. As the effects of climate change continue to stack up, and the accepted ways of reforming policy fail, it might be efforts like these that create lasting change.

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