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On Jan. 15, Snohomish County Judge Anthony E. Howard handed down sentences to five people who say our political system is rigged to destroy the planet.

The trial was the latest in a series of protests against the increasing volumes of fossil fuels traveling through the Pacific Northwest, bound for Asian markets, despite the considerable damage to regional eco-systems already resulting from climate change, including ocean acidification, loss of snowpack in the Cascades, rising stream temperatures and summer deadzones along the coast.

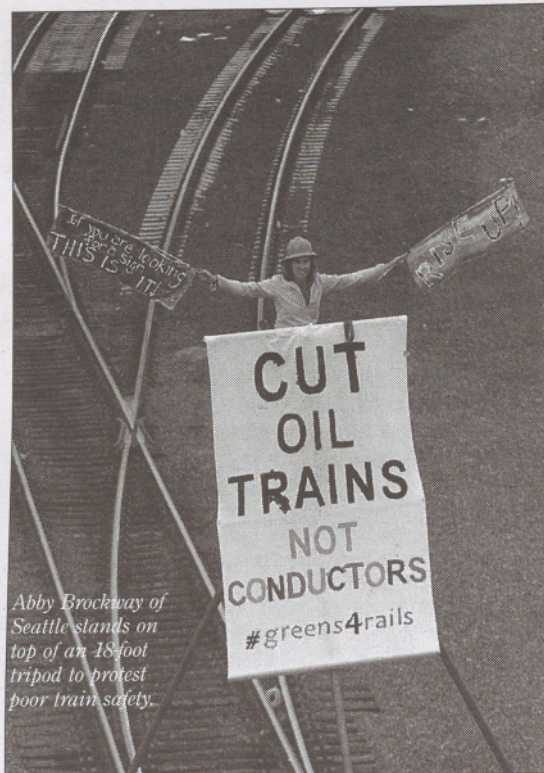
In September of 2014, Abby Brockway, Patrick Mazza, Jackie Minchew, Mike LaPointe, and Liz Spoerri locked themselves to a 20-foot tripod at the BNSF railroad's Delta yard in downtown Seattle. Dubbed the Delta 5, their protest was designed to draw attention to the danger of crude oil on rail lines in the Pacific Northwest, and to their contribution to irreversible climate change. ("Dr. Strangeweather," Street Roots, July 30, 2015)

In a historic and highly anticipated trial that lasted four days, the Delta 5 were allowed to argue that their action was the lesser of two evils when compared to the status quo. In court shorthand, it's called the necessity defense. Specifically, the Delta 5 presented evidence and legal arguments showing that their occupation of BNSF property was necessary to protect the public's safety, calling numerous expert witnesses who testified to the public health risks of oil trains, both in their immediate risks to neighborhoods, and to the damages climate change is bringing to Washington state. They included Dr. Richard Gammon, professor of chemistry and oceanography at the University of Washington, and Fred Milar, a hazardous materials expert and former consultant to the railroad industry.

In another groundbreaking lawsuit concluded in November, King County Superior Judge Hollis Hill ruled that the state of Washington had a constitutional duty to uphold the public trust in natural resources and that this created a binding obligation for the state to protect the atmosphere for future generations. In an unusually dire ruling, Hill said "... survival depends upon the will of their elders to act now, decisively and unequivocally, to stem the tide of global warming ... before doing so becomes first too costly and then too late."

One of the elders in that room was Abby Brockway. Reflecting on the trial, she recalled, "Everybody wants to kick the can down the road ... they said 'Well, the legislature's supposed to do it,' and they're saying 'No, ecology's supposed to do it,' so nobody wants to try."

Andrea Rodgers, who represented eight youth plaintiffs in the November climate lawsuit, who in turn brought the lawsuit on behalf of future generations, explained "What Judge Hill said in our case is really important for the world to know: that the climate crisis is real, it's happening now, and the government in Washington state is not doing anything to address it. And they need to step up and protect the fundamental rights of these people ... people are starting to speak out and defend their own rights in a variety of ways, and hopefully the judges of the justice system will catch up



Abby Brockway of Seattle stands on top of an 18-foot tripod to protest poor train safety.

PHOTO BY CHARLES A. CONATZER

Apocalypse on trial

Seattle's Delta 5 become the first ever to argue in a U.S. court that civil disobedience was necessary to slow down climate change.

with that."

Under U.S. law, the necessity defense can be used when a law is broken to protect the public, and no reasonable legal alternative was available. One classic example: A person is trapped in a burning building, and another person breaks down the door to rescue the trapped person. If such a person were ever prosecuted, they could invoke necessity to avoid the charge of breaking and entering. Other classic examples include stealing food to avoid hunger, breaking out of a burning prison, and organizing a mutiny when a ship is unseaworthy.

In 2008, six defendants known as the Kingsnorth 6 cut the power to a coal-fired power plant in Kingsnorth, England, and successfully argued in court that their action was taken to prevent the greater harm of climate change. In a successful application of the "lawful excuse" doctrine – the English equivalent of the necessity defense – the jury agreed with their argument, and the activists were cleared of all wrongdoing.

By combining the imminent threat of oil trains with their long-term contribution to climate change, the Delta 5 became the first ever to argue in a U.S. court that civil disobedience was necessary to slow down climate change.

The five defendants finished their testimony on Jan. 13, with expert witnesses completing their testimony the following afternoon.

In public statements, Brockway said she felt

compelled to take action against oil trains after one of them derailed under the Magnolia Bridge just a mile from her daughter's school. "After that day I realized that I couldn't wait any longer – I needed to take action," Brockway said.

By timing the protest a week before a railroad union voted on single-person crews, the Delta 5 had designed the action, the court was told, to send a political message and exercise free speech. Soon after the protest, the union representing conductors unanimously rejected one-person crews in one of the largest voting turnouts in the history of the United Transportation Union. Mike Elliott, a lobbyist with the Brotherhood of Locomotive Engineers and Trainmen, testified Jan. 14 that worker safety would have been compromised by the move and that the Delta yard protest helped affect the vote.

In the United States, past attempts to use such a defense have not been permitted.

In November 2009, Tim DeChristopher was forbidden to argue necessity after disrupting an oil and gas auction run by the Bureau of Land Management, where he won 14 bids for mining rights before being revealed as an activist. At trial, District Judge Dee Benson of Utah refused to allow DeChristopher to argue the necessity defense. DeChristopher served two years in prison.

On May 15, 2013, Jay O'Hara and Ken Ward used a tiny lobster boat to block a 40,000-ton coal barge in Somerset, Mass. After a Massachusetts judge cleared them to use the necessity defense, the district attorney agreed to drop all criminal charges. As he announced the settlement outside the courthouse, District Attorney Sam Sutter held a copy of Bill McKibben's Rolling Stone article "Global Warming's Terrifying New Math," and told the crowd outside, "Climate change is one of the gravest crises our planet has ever faced. In my humble opinion, the political leadership on this issue has been gravely lacking."

Ward, O'Hara and DeChristopher were all present at the Delta 5 Trial in Snohomish County, helping to raise funds and speaking at public events promoting civil disobedience. O'Hara explained, "Our top priority is making sure that those of us who have had the experience of doing this type of work in the movement are able to have the backs of others who are willing to take high levels of risk." The three activists, together with Marla Marcum, founded the Climate Disobedience Center to support civil disobedience actions and promote use of the necessity defense, which their website describes as "a moral argument couched in the language of criminal law."

In order to prove they acted out of necessity, the Delta 5 had to meet four conditions: that they were faced with a clear and imminent danger, that they reasonably expected their actions would be effective in addressing the danger, that they did not create the danger they were avoiding and finally, that there were no legal alternatives that would have been effective in addressing the danger.

Last Thursday, Judge Howard announced that defendants had met the first three conditions of the

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