

Notes from Kevin Tubbs' Sentencing

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Summary:

On Thursday, 5/25, Judge Ann Aiken sentenced Kevin Tubbs to 151 months in federal prison. The terrorism enhancement was applied for Oakridge, Romania, Jefferson Poplar, and the EPD substation. Complete notes below

Notes from Kevin Tubbs' Sentencing - 5/24/07

Government Arguments

Asst. US Atty. Kirk Engdall started the day's arguments by talking about Kevin Tubbs' Warner Creek history, and his history prior to involvement in the "Family", citing involvement with PETA actions including one in which Tubbs allegedly threw cat excrement at execs. [It later turns out that this statement was utterly false and exaggerated: in truth the act of civil disobedience included dumping kitty litter as a prop.] He said Tubbs was involved in 14 arsons. He characterized him as an organizer, not a leader, saying that he was a "catalyst" for the arsons - a facilitator. Engdall said that Tubbs and Meyerhoff had had a meeting with Paul Watson at the 2000 PIELC (Environmental Law Conference in Eugene), where Watson allegedly paid 1000 dollars to Meyerhoff to go to Michigan and train another person in the art of incendiary device construction [this too was disputed as Stan's informant report made it clear that he did not recall whether it was Tubbs or Rodgers]. He enumerated how Tubbs had registered vehicles for actions with falsified documents, that he had researched targets, done reconnaissance, and recruited others, especially at the Cavel West action. He then called Tubbs the "least courageous" in the group, choosing to be the driver instead of placing and lighting devices. He said Tubbs left the cell in 2001, but that he remained ready to assist in direct actions, and stayed in touch with others in the group. He characterized Tubbs as a "true believer" who loved the cause and was willing to die for it. He attempted to illustrate his point by showing a video clip from PickAxe (a documentary about the Warner Creek blockade) in which a bushy-haired Kevin is in a tripod and calmly states that if the pod were hit, he would fall and die, and expressed hope that the USFS would have more concern for him than the forests they regularly destroy.

He listed other actions Tubbs was involved with such as the arson at Dutch Girl dairy in Eugene and then mentioned the Oakridge ranger station arson. Engdall said the defense would argue that Tubbs was

asked to give Jake Ferguson and Josephine Overaker a ride and thought they were only intent on simple vandalism. Engdall said that Ferguson asserts that Tubbs made the devices. He then showed video from Cascadia Alive! (a now-defunct live cable access show from Eugene) in which Tim Ream, on behalf of Cascadia Forest Defenders denounces the Oakridge action in light of contemporaneous legal and campaign victories. For the Cavel West action of a horse slaughterhouse, Engdall said that Tubbs located the target, did the recon, and discussed the target with Ferguson, and Joseph Dibee, deciding they needed more people. He stated that Dibee recruited Jonathan Paul, and that Paul recruited Jen Kolar. He said that Paul and Kolar made "vegan Jell-O", using a mixture of gas, diesel and soap. Engdall said they all drove to Redmond, to the pre-action area, dressed in dark clothing and dug holes to bury the clothing on their return. He said Tubbs stayed with the car while the others went to the meat packing plant and placed the devices. During placement, one timing device that Dibee was placing went off and started burning, so the plan was aborted, all ran back to the vehicle, threw the clothes in the holes that had been dug, poured acid on them and buried them, then returned to Eugene.

The arson at Cavel West was not a failure and the slaughterhouse was destroyed and not rebuilt. Engdall showed video testimony from a first responder who testified that a "vast amount" of Redmond's water supply went into suppressing the fire. He then testified that some failed devices were discovered at the site, and that there was an employee who sometimes lived in a nearby building. Engdall said the communique stated action was done because legitimate methods to change things had failed... "exasperated and desperate". He said the plant was closed and jobs were lost.

Then he spoke about the arson at the BLM Wild Horse Corral (11/30/97). He said the communique for that action referred to the wild horses being on public land, and that the action was retaliation against the government, and a direct attack on government policy, which qualifies that action for the terrorism enhancement. He listed all the actions Tubbs was involved in: at APHIS in Olympia, BLM Rock Springs, Vail, US Forest Industries, Childers Meat Company, and the West Eugene Police Substation, Superior Lumber, Romania, Jefferson Poplar, BLM Litchfield horse corral. He said that Tubbs remained in contact with others from prior actions to organize them for future actions, that he saved lost IDs from his work in case they were needed for future actions.

Engdall asked that the terrorism enhancement be applied for the West

Eugene substation, Romania and Jefferson Poplar (which were all applied in Meyerhoff's sentencing.) He said the government was asking for a sentence of 168 months. He said that Tubbs cooperated three weeks after his arrest and that his cooperation was substantial, but that his initial reluctance to cooperate, after he DARED to get legal advice from an attorney first, (only after he learned of 3 snitches against him: Ferguson, Meyerhoff and Kolar-in that order) was considered. He highlighted Tubbs' "true believer" status, his minor marijuana use, and minor criminal conduct prior to arrest. He stated that Tubbs was "less than remorseful" of his actions prior and after his arrest, and categorized him as a "serial arsonist".

He then called witnesses. Marcia Ledbetter, US Forest Service employee from the Oakridge Ranger Station testified that many documents, research and historical items had been lost, that she had felt intimidated and no longer felt safe. The assistant Fire Manager for the Oakridge district then spoke, saying very little could be done to save anything from the fire, that there hadn't been sufficient water to suppress the fire, and that he believed at the time that a FS employee occasionally slept in the building. He said that he was very angry, and that people were afraid to go into the woods by themselves afterwards.

Defense Arguments

Marc Friedman, Tubbs' attorney, began his arguments by pointing out the government stretched the truth in characterizing Tubbs to fit the story the feds wanted to put out there. He said the story about The Family was dramatic sounding - which the government had committed to the story and stuck with it. He said the government relied too heavily on the testimony of Jacob Ferguson, who was an unreliable witness trying to cast blame on others to get himself out of trouble. He said Tubbs was not a part of the so-called Book Club meetings, that they were a loose association of individuals who made decisions by consensus. He spoke about Tubbs upbringing, raised largely by his mother with a father in the military. He said Kevin was raised to have a fundamental respect for all life and animals; mom took in lots of strays. He characterized Tubbs as a loving and loyal child with a happy childhood, who joined animal rights groups as a teenager. He said that as a person, Tubbs rarely said "no", that he gave his unconditional loyalty to others. [General theme of the defense atty's presentation was that Kevin was a follower, loyal, and would do anything his friends asked him to do, and played the most minor roles in the arsons. While this may be true, this theory of the case backfired with the judge. She was angered by his failure to stand up and

take responsibility, etc.] He said that when Kevin transferred to Humboldt State University, he became aware of PETA and Earth First!, used a little marijuana, became vegan. When Tubbs returned to Nebraska, his life changed with the death of his father, and he engaged in his first animal release action. He was dedicated to helping those who can't speak for themselves. He adopted his dog Pujo. He became more involved with PETA, who encouraged his willingness to get arrested for publicity, and urged an escalation of tactics. He became an editor at the Earth First! Journal in Eugene, got involved in the radical community of the Whiteaker neighborhood, became "indoctrinated". Friedman said Jake Ferguson was his one and only friend in Eugene. That he went to Warner Creek and became a "tool" for the cause, taking risks, exactly what Jake Ferguson was looking for. His girlfriend dumped him for another guy in the 'movement', which devastated him, became isolated. Jake stepped in, gave Tubbs some zines with incendiary device-making techniques. Friedman said Tubbs did the Dutch Girl Dairy action to win his girlfriend Sis back, and that he drove vehicles without knowing what was going to happen, he had no motive.

Friedman said that a year after Oakridge, Tubbs became aware of the slaughterhouse at Cavel West through a DVD he had seen about horse slaughter. He was motivated by saving horses, and nothing else. They then show a very short segment of the horse slaughterhouse where horses are put into tiny metal rooms and a guy repeatedly used a pneumatic battering ram to fracture bones and eventually debilitate the horse as it writhed on the floor, was wrenched up by one foot and was then dismembered while still alive. Shocking footage. Judge stops it before the true suffering was shown. [Go to horsekillers.com or HSUS to see complete footage or how to end this horrific practice.] He said Joseph Dibee devised a plan and took the leadership role. The horses were being slaughtered on a private facility, that public lands were not even on Tubbs' "radar", and that the communique reflects that.

Then Friedman said that Tubbs was in a deep depression during the Burns BLM action planning, that he was enlisted solely to drive and satisfy the needs of others. He said that Tubbs identified Childers as a place that profited from harm to animals which was the sole motivation. Then, in the West Eugene substation arson, Tubbs played a minimal role. For the Superior Lumber action, he was recruited, and had never met Suzanne Savoie and Daniel McGowan prior to that action. Friedman said that for Romania, Tubbs "didn't have a clue" what that action was about... that he had never heard of Free and Critter. His role in Jefferson Poplar was described by Friedman as "minute", those 6 months before he went to

reconnoiter the site with Meyerhoff, and during the action, never got out of the car. He said Tubbs was involved in the Litchfield action only out of loyalty to others. At that point, he was trying to withdraw, and said that would be his last action, he wanted out. Friedman said Tubbs continued contact was only staying in touch with friends and had no nefarious underpinnings.

Friedman showed video testimony from Tubbs' family and friends asking for mercy on his behalf. His fiancée Michelle Paige took the stand and eloquently testified to his deep compassion, kindness and gentleness. She said he had been harassed at FCI Sheridan due to his cooperation.

The feds then countered that Tubbs' story to the court was not credible, that he was avoiding responsibility for his actions.

Kevin then gave a very sad address to the court, speaking to the desperation and sadness that led to his actions. He repeatedly stated that he was sorry for his idealistic but destructive behavior. He enumerated the many things that frighten him for the future of the planet, and said that though that is no excuse for his actions, perhaps it explains what motivated him. He spoke about mass species extinction, ocean dead zones, depleted fish stocks, poisons in our water and food. He said that now scientists were calling global warming "a greater security risk than even terrorism", and went on to say that this did not justify the means, but illustrates where he was coming from. "We are asleep on the tracks of a runaway train. My intent was to wake people up." He apologized to his family and fiancée, and said that if he could go back and undo what he did, he would.

Judge Aiken responded by saying that although he may not be aware of it, SUVs are being torched all over Portland, and Tubbs has some responsibility for that. "You started a chain of events." She said that she gets calls from all over the country from people who say that Oregon is the birthplace of radical action. She said, "None of you are martyrs. You cannot take action on your own and damage peoples' property." She said he should be grateful that the government has offered to let him come back into the community. She said she would have been more impressed if he had taken full responsibility instead of trying to minimize his role and blame others for leading him astray. She said, "You have created fear, made people fearful in their workplaces and homes," and exhorted him to remember, "Fear and intimidation can play no part in changing hearts and minds in a democracy." She said he had made legitimate environmentalists look bad. She said the communiques describe the

actions with pride, but that Tubbs portrayed himself "almost as a victim" even though he was involved in most of the arsons. She said, "It makes me profoundly...palpably... sad that I have to sit through eight more days of wasted lives," and said she finds it "incredibly depressing, when you imagine that you could have been out committing random acts of kindness instead." She ended by saying, "You all seem to be very smart people. Why couldn't kindness have been your tool? Stop destroying the Earth to send a message."

She then issued the sentence, applying the terrorism enhancement for Oakridge, Romania, Jefferson Poplar, and EPD substation. With upward departures for his "leadership" role and the level of destruction, and downward departures for cooperation, she sentenced Kevin to 151 months and 60 months, to run concurrently (12 years 7 months) and 3 years supervised probation. Supervised release conditions included that Tubbs cannot have any contact with environmental or animal rights activists or organizations. Defense objected. Aiken then indicated she recognizes the First Amendment and considered a memo submitted by Darren Thurston's attorney, and would refine the edict to require court approval of any contacts or organizations he wishes to interact with after he serves his prison sentence.