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PROCEEDINGS

WEDNESDAY, JANUARY 17, 2007

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2
3 THE CLERK: This is the time set for Criminal
4 06-60070, United States of America versus Kevin Tubbs,
5 hearing on defendant's motion for release from custody.

6 THE COURT: Good afternoon. Sorry to be a little
7 slow, but as you can see, none of us are immune to the ice.

8 So I would be happy to hear anything you wish to
9 add to the paperwork that you filed, Mr. Friedman, and I
10 don't have a response in writing from the government, so I'm
11 assuming you are going to give it orally in court this
12 afternoon.

13 MR. ENGDALL: Correct, Your Honor.

14 THE COURT: All right? Thank you.

15 Go ahead.

16 MR. FRIEDMAN: Thank you, Your Honor. I will make
17 my initial remarks brief. I think the motion pretty well
18 provides the basis in law for us to proceed at this time.
19 We are asking the court to consider Mr. Tubbs' release at
20 this time prior to his sentencing.

21 We would submit, Your Honor, that Mr. Tubbs is
22 neither a danger to this community nor a flight risk and is
23 in fact prepared to, through his family and friends, to post
24 substantial bond.

25 I have here today with us in court his fiance,

13:51:44

1 Michelle Page, who has been visiting him at Sheridan just
2 about every week, sometimes twice a week, since he's been in
3 custody, which is now since December. Also here coming down
4 from Portland are his close friends, Matt Rossell and Leslie
5 Hemstreet, right here.

6 Your Honor, Mr. Tubbs has been cooperating with
7 the government pretty much from the get-go in this case.
8 There is no doubt that his cooperation with the government
9 probably in substantial part led to some of the other
10 charges as well as pleas that have been brought forth in
11 this case, in these various cases. And we would submit that
12 that is a substantial reason why the court should consider
13 his release. I think ultimately the question before this
14 court is whether releasing Mr. Tubbs would constitute a risk
15 to this community or that there's a chance that he would
16 flee.

17 Your Honor, what we presented in the package to
18 the court, and we have no doubt that if the court were to --
19 if the court considers this and directs pretrial services to
20 consider this, you will be able to find that essentially his
21 family and his friends have put everything they have in
22 front of the court in terms of financial resources to enable
23 him to be placed on bond, and we are talking about a very
24 short period of time between now and April 17th, which is
25 the sentencing date. If he were to flee, they would lose

13:53:32

1 everything. And Your Honor, Mr. Tubbs is not a man who is
2 going to cause that kind of harm to his family or his
3 friends.

4 The fact of the matter is, Your Honor, Mr. Tubbs
5 has never had a desire to flee. He's been prepared to face
6 the consequences of these charges.

7 I think the court has some idea, a little bit
8 about his history, and I don't know that I'm going to go
9 into a whole lot of detail at this point unless the court
10 has questions. But the fact is that the incidents that he
11 has pled guilty to all occurred over five years ago and some
12 as long as ten years ago. He has stayed out of the activist
13 community.

14 And I know full well that counsel is going to
15 present some information that would suggest that he still
16 plays a role, and perhaps I will have an opportunity to
17 respond to that when counsel is done.

18 But the fact is that Mr. Tubbs had distanced
19 himself from all these matters. Obviously it's impossible
20 to completely put these matters behind him. He wouldn't be
21 where he is today if he could have. But at least in terms
22 of his mind-set, in terms of his desire to be involved to
23 any extent with the activist community, that was something
24 that was part of his past. It is part of his past and,
25 again, long before the government arrested him back on

13:54:56

1 December 5th, 2005.

2 Your Honor, the fact is that Mr. Tubbs is a very,
3 very decent individual, and he's prepared, and he knows --
4 he knows that he's facing a substantial amount of time in
5 this case, and that's something that this court is going to
6 have to determine later on. He also knows full well that if
7 the court were to grant his release and he were to flee,
8 that any deal he has with the government, any deal
9 whatsoever is gone. And that's very different than where we
10 were when we had a release hearing almost a year ago, Your
11 Honor. The fact of the matter is at that point there were
12 no deals. Everything was sort of open. Mr. Tubbs was
13 cooperating at that time, but he didn't know what the stakes
14 were.

15 And he's cooperated. He's made a deal with the
16 government. He doesn't want to blow that. He doesn't want
17 to do anything that's going to cause this court to have any
18 second thoughts about him.

19 So Your Honor, we are asking this court to place
20 him on release subject to any restrictions. And, again,
21 he's perhaps the only individual -- there are a number of
22 others that this court has had before it and has granted
23 release to who are not even in the state and at this point
24 not even on any form of electronic monitoring.

25 Mr. Tubbs will be in this community. If he's

13:56:20

1 released, he'll go and live with his fiancée in her home in
2 Springfield. He will abide by any terms with regard to
3 electronic surveillance or any reporting terms. He is not a
4 risk of flight, and he certainly is not a danger to this
5 community. I will leave it at that at this moment and then
6 ask to be able to respond to Mr. Engdall.

7 THE COURT: Mr. Engdall.

8 MR. ENGDALL: Thank you, Your Honor.
9 Counsel.

10 I should begin my argument or my position
11 statement to the court by saying that the arguments
12 presented in the defendant's memorandum to this court are
13 identical to the arguments submitted to Judge Coffin in
14 February. The single difference between now and in February
15 between what the defendant's proposing is that he has
16 pleaded guilty to the charges, some ten arsons and
17 conspiracy to commit arson which involved approximately more
18 than \$11 million of damage. He's pleaded guilty to that.
19 The burden for release now is greater on the defendant than
20 it was at the time we were before Judge Coffin.

21 The test for release for this defendant pursuant
22 to 18 United States Code § 3145(c) is that a defendant who
23 has been found guilty of a crime of violence for which the
24 maximum term of imprisonment is ten years or more, which is
25 what, of course, the defendant is involved with, there is a

13:57:51

1 presumption of detention unless the court finds that there
2 is, and it's clearly shown, that there are exceptional
3 reasons why such a person's detention would not be
4 appropriate. The burden is on the defendant now, not on the
5 government, for detention.

6 The case of United States v. Jose Ramon Garcia
7 cited in the defendant's memorandum, it's a Ninth Circuit
8 opinion, talks about exceptional reasons, gives some
9 examples of exceptional reasons, and I emphasize exceptional
10 reasons why a person that has already been found guilty
11 guilty of a crime should be released pending sentencing.

12 And the government understands from the holding in
13 Garcia that there are no limits placed upon the
14 considerations of this court when it examines a totality of
15 the factors, factors that may apply with regard to
16 determining what an exceptional reason may be.

17 But the court in Garcia does talk about truly
18 unusual factors or combination of factors that would render
19 it unreasonable to incarcerate the defendant or keep him
20 incarcerated. Unreasonable detention. There is no such
21 situation or circumstance in this particular case.

22 And the court goes on in Garcia to advise that
23 when considering these factors, you must bear in mind the
24 congressional policy that offenders who have committed
25 crimes of violence should not, except in exceptional cases,

13:59:35 1 be released pending appeal.

2 The examples of exceptional circumstances provided
3 to us by the Garcia case are not numerous. But the examples
4 given are -- one example would be if the conduct of the
5 defendant was an aberration. It was a reaction to an
6 unusually provocative circumstance. And I'm assuming they
7 are suggesting crimes of passion, such as manslaughter,
8 homicide, a person coming upon a spouse and a lover,
9 committing a crime sort of out of the blue.

10 As far as Mr. Tubbs is concerned, his crimes
11 involve no aberration. His first arson began at the Dutch
12 Girl or Echo Dairy here in Eugene on Christmas Day in 1995.
13 He operated alone in that particular arson. He manufactured
14 the destructive devices, three in number. One failed to
15 ignite. And in the government's exhibit list there is a
16 photo of -- Exhibit No. 10 is a photo of a failed device.
17 Exhibit 9 is simply a photo of the dairy truck involved in
18 that arson in 1995.

19 So he began his arson career in 1995. Continued
20 that career one year later by being associated with the
21 Oakridge Ranger Station arson. And by the end of a six-year
22 aberration, if you will, he had been involved in 16 arsons
23 and attempted arsons, as well as a number of animal releases
24 and destruction of research facilities in Oregon,
25 Washington, California, Colorado, Wyoming, and has caused

14:01:15

1 over, as I said before, over \$11 million in damage. This is
2 not a blip on the radar screen. This is part of the
3 defendant's character and was part of the defendant's
4 character.

5 Another consideration for exceptional
6 circumstances as directed to us by the Garcia case is to
7 consider the nature of the violent act itself.

8 Was it violent but did it not involve specific
9 intent. All the crimes that involved Mr. Tubbs and all the
10 crimes that he completed involved specific intent. They
11 involved extraordinarily sophisticated means of planning,
12 preparation, execution, and intricate destructive devices.

13 Another exceptional circumstance as suggested by
14 the Garcia court is the length of sentence imposed and the
15 maximum length of the sentence. And they go on to explain
16 that if the sentence imposed upon the defendant -- this is
17 primarily for people that are appealing their sentence -- if
18 it's a short sentence, that might be a proxy for the
19 seriousness of that particular crime. In this case, the
20 defendant is looking at a maximum sentence of over hundreds
21 of years of incarceration, and if he continues and abides by
22 the agreement of the government, a minimum of 14 years
23 incarceration.

24 So that particular exceptional circumstance
25 certainly does not apply to Mr. Tubbs.

14:02:42

1 Another circumstance the Garcia court talks about
2 are circumstances which would render prison unduly harsh for
3 this defendant or any defendant, where the defendant has
4 become seriously ill or possesses certain physical or
5 psychological or other characteristics such as old age or
6 special medical needs. We find none with regard to
7 Mr. Tubbs.

8 The nature of the defendant's arguments on appeal.
9 He's not appealing anything, so that's irrelevant in this
10 particular analysis.

11 Another one is an exceptional unlikelihood that
12 the defendant will flee or constitute a danger to the
13 community. Whether the defendant is wholly incapacitated or
14 might be entirely unable to either -- to act violent or to
15 abscond. This is the exceptional circumstances not only
16 that he will simply be a risk of flight. The exceptional
17 circumstances is he is unable to take flight. Was he
18 injured. The example given was a drug dealer who was shot,
19 critically wounded, and is paralyzed. Those are the
20 exceptional circumstances that the Garcia court is directing
21 us to look at.

22 The last one is was there a presence of an unusual
23 degree of cooperation with the government. And in this
24 case, the government fully agrees that there was cooperation
25 by this defendant with the government. However, was it an

14:04:01

1 unusual degree? What he did was he gave statements to the
2 investigation. That is not unusual. It happens routinely
3 in our work. And he is not required to be an undercover
4 informant, as one of the cooperating witnesses was in this
5 particular case. He simply makes a statement. So I submit
6 to the court those are not unusual. It's not an unusual
7 degree of cooperation when it comes to Mr. Tubbs.

8 Defendant's arguments for extraordinary
9 circumstances and truly unusual factors I submit fail to
10 meet the test. Defendant argues that for the past five
11 years he has not -- he has rejected the philosophy of direct
12 action and has realized that his conduct was both wrong and
13 counterproductive.

14 In preparation for this hearing, I went back
15 through some of the consensual recordings that were made by
16 a cooperating witness and this defendant, and I also went
17 back through some of the 302s from the other cooperating
18 witnesses in the case, and it doesn't bear fruit in support
19 of the defendant's argument for his assertion that he's
20 rejected the philosophy of direct action for the past five
21 years. In fact, it is within the last year before his
22 arrest -- he was arrested, I remind the court, December 7th,
23 2005. And he -- within a year of his arrest, he had had
24 contact with at least eight coconspirators in the case.
25 Ms. Gerlach; Mr. Thurston; Mr. Meyerhoff; Mr. McGowan;

14:05:44

1 Mr. Rodgers, since deceased; Ms. Rubin, who is a fugitive
2 from justice; and Mr. Dibee, who is also a fugitive from
3 justice; and of course, as well as the cooperating informant
4 in this particular case, Mr. Ferguson.

5 Mr. Tubbs has maintained contact with persons in
6 Canada who are willing to assist fugitive Josephine Sunshine
7 Overaker, and I submit this goes to the defendant's ability
8 to flee. He does not need money because he has a support
9 group in Canada.

10 On October 26th, 2004, about a year before his
11 arrest, he advised on a consensual recording that he had
12 gotten word from people in Canada who were willing to assist
13 Josephine Sunshine Overaker with money and a place to stay.
14 Mr. Tubbs made it clear to our cooperating witness that he
15 would serve as the go-between between the people in Canada
16 and anyone that had heard from the fugitive Overaker.

17 He also insisted if anyone heard from Overaker,
18 they should tell her that she can't come back to the United
19 States, but that we have a community in Canada which will
20 provide her a place to live and money.

21 Tubbs -- Mr. Tubbs also wants the court to believe
22 that he has removed himself from the ideology of the
23 movement. On December 10th, 2004, Mr. Tubbs stated in a
24 consensual recording that he feels closer to the members of
25 the movement than his own family, and that he feels that --

14:07:24

1 he feels powerful when he's with his coconspirators.

2 With his ability to flee, Mr. Tubbs advised on
3 November 13th, 2004, that he knew four or five people who
4 have hiked back and forth dozens of times on different
5 trails from the United States to Canada without being
6 contacted by law enforcement officials.

7 He was also provided maps showing the trails into
8 Canada and back into the United States by a friend of
9 coconspirator and fugitive Rebecca Rubin. That was 12
10 months prior to his arrest.

11 Today I went online to see if he still had his
12 support Web site on the Internet. He indeed does. And on
13 that Web site, he maintains that he's nonviolent and that
14 charges are unjust and to send money to his account.

15 And that's Exhibit 8. The court has those
16 exhibits. That shows that -- and we don't know what's in
17 the account, but it certainly shows that he has at least
18 monetary -- he's soliciting monetary support.

19 He has no regrets for what he's done. On
20 December 18th, 2004, within a year of his arrest, he stated
21 that as he gets older, his activities as an arsonist are
22 things that he does not regret; in fact, contrary to what
23 counsel has stated, the arsons make his life all worthwhile.

24 On December -- excuse me -- on December 10th,
25 2004, he talks to the cooperating witness and is excited

14:09:06

1 about 25 arsons that occurred in the State of Maryland and
2 the destruction of an animal release research lab at the
3 University of Iowa. He stated that he had heard of the 25
4 arsons or barbecues, as he called them in those days, in
5 Maryland and believed that it was, expletive deleted, cool.

6 He was also excited and supportive of the
7 destruction that had just occurred at the University of Iowa
8 research lab. He believed that the action was militaristic
9 and, expletive deleted, sharp.

10 So there's a pattern that's developing here, Your
11 Honor, or continuing, I should say, within the year of his
12 ultimate arrest, and that is, contrary to what he is putting
13 forth today, he was fully supportive of the ALF and ELF
14 direct action movement up until the date of his arrest.

15 In his memorandum to the court, he talks about his
16 best friends, Leslie Hemstreet and Matt Rossell, and they
17 live in Portland, and they have put their house up on the
18 block in support of Mr. Tubbs and his release. I should
19 give you some background information on these individuals.

20 In August, on August 28th, 1999, Mr. Tubbs and
21 nine other individuals were involved in an animal release
22 and the destruction of a medical research laboratory in
23 Orange City, California. That laboratory was -- had 46 dogs
24 which had implanted in them pacemakers. They were doing
25 heart -- pacemaker research at that time.

14:10:52

1 Mr. Tubbs and nine others had arranged to
2 surreptitiously enter the lab, burglarize the lab. They had
3 a van that was prepared with dog cages, a U-Haul van. They
4 placed the dogs in dog cages. The dogs were then driven
5 away from the laboratory, taken to a sympathetic
6 veterinarian where the pacemaker devices were removed from
7 the dogs, and the dogs were then adopted out.

8 Mr. Tubbs, during the course of that event, became
9 very agitated because the individuals that were charged with
10 the release portion of that direct action did not want to do
11 any other damage to the laboratory.

12 Mr. Tubbs, on the other hand, was adamant that the
13 laboratory should be burned to the ground and the research
14 destroyed. If not, then the research would simply get more
15 animals and begin the research again. Obviously, he was
16 vehemently against that.

17 He was a lone voice in that argument. The
18 research facility was not burned to the ground. However,
19 Mr. Tubbs and others poured acid onto the research documents
20 and destroyed the laboratory equipment and the laboratory
21 itself prior to leaving.

22 They then went back to Eugene. Now, once in
23 Eugene, Mr. Tubbs -- oh, excuse me. I should advise the
24 court that during the course of the destruction of the
25 BioDevices laboratory in Orange City, California, Mr. Tubbs

14:12:26

1 and others videotaped the damage that had been done and the
2 release of the animals.

3 Enter now Ms. Hemstreet and Mr. Rossell.

4 Mr. Tubbs goes to his best friend's house in Portland with
5 the videotape. He is tasked with making copies of the
6 videotape. He goes to their home, arrives at the house.
7 Ms. Hemstreet and Mr. Rossell prepare what's called a clean
8 room in that house where they set up plastic or a tent.
9 They had a videotape recorder that was wiped clean of any
10 kind of possible DNA, fingerprints. They made duplications
11 of these tapes. The tapes were subsequently disseminated to
12 ALF and ELF like-minded people showing what could be done
13 with regard to animal release and laboratory destruction.

14 I submit that Mr. Rossell and Ms. Hemstreet may
15 have other than altruistic motives in supporting Mr. Tubbs
16 and his release because we know not what else they may have
17 been involved in.

18 One other thing with regard to the defendant's
19 allegation that -- or assertion that he is a nonviolent
20 person. On March 22nd, 2005, so now we are nine months
21 before his arrest, he was reported in a consensual recording
22 talking about the Biscuit timber sale and was having a
23 discussion with a cooperating witness saying that the
24 Biscuit timber sale, the protestors there weren't doing it
25 properly. There's reference to some women that had locked

14:14:07

1 themselves down on the bridge and that all that happened is
2 that they were unlocked and taken away.

3 His thought was that a person like himself should
4 lock himself down on the bridge and then when the law
5 enforcement officers come to approach him to remove him, and
6 firemen, he would simply blow himself up. He would become a
7 suicide bomber.

8 The fact is he told the cooperating witness that
9 he had discussed this with his girlfriend Michelle Page.
10 Michelle Page, of course, we know also is putting up her
11 proportion of the house and property for Mr. Tubbs' release.
12 He had discussed this with Ms. Page, which means that
13 Ms. Page, certainly prior to the defendant's arrest, was
14 aware of his activities or his mind-set. And she suggested
15 that it would be better just to go ahead and find someone to
16 blow the bridge up or destroy the bridge versus a suicide
17 bomber.

18 Mr. Tubbs went on to tell Mr. Ferguson that, you
19 know, if you just blew the bridge up, they'd simply fix the
20 bridge and proceed with the logging, whereas this way, you
21 would certainly get more publicity. And in fact, he stated,
22 and I quote, if you love your cause, you should be willing
23 to die for it, right? I submit Mr. Tubbs is not all that
24 counsel would like him to be or appear to be, at least.

25 Finally, I come to some evidence that was

14:15:48

1 recovered after he was arrested. His house was searched.
2 Two safes were found in the house, and he was found to be in
3 possession of several stolen and fraudulent identification
4 documents.

5 Now, counsel has suggested that these are simply
6 relics of the past and were never used or never been altered
7 for anyone else's use. That is simply quite incorrect.

8 On June 16th, 2005, Mr. Tubbs admitted destroying
9 his Ronald Calloway identification documents that he had
10 used, in fact, to register vehicles during the course of the
11 criminal arson conspiracy. He used that name to register a
12 couple of vans so if the vans were ever identified, they
13 would trace it back to Ronald Calloway and he would avoid
14 detection.

15 Unfortunately, Mr. Calloway's fraudulent ID was a
16 driver's license, an Oregon driver's license, and because he
17 was on the Oregon driver's license list, he was,
18 Mr. Ronald Calloway, also known as Mr. Kevin Tubbs, was
19 selected for jury duty. And Mr. Tubbs failed to report to
20 jury duty. And as I said, some seven months prior to his
21 arrest, then, Mr. Tubbs destroyed the Ronald Calloway
22 identification documents because he was afraid that there
23 may be a warrant outstanding under that name for his arrest.
24 Also, subsequent to his last release hearing and subsequent
25 to his entry of guilty pleas in this particular case, the

14:17:29

1 investigators asked him specifically about the
2 identification documents that he had in his possession.
3 They are not relics of the past. In fact is he stated at
4 that time, and I submit candidly, that he kept the documents
5 because if he ever did an animal action again he could use
6 them. So he was clearly in preparation and in mind-set and
7 ability to go forward, at least up and to the time of his
8 arrest, to continue with his direct action ALF/ELF activity.

9 He does remain a flight risk. He has Canadian
10 connections. He is aware of how to come and go across the
11 Canadian border without being detected. He continues to
12 have an operational support Web site and presumably still
13 knows individuals in Canada, specifically Rebecca Rubin, who
14 is a fugitive.

15 He was fully supportive, fully supportive of the
16 ALF/ELF movement until the date of his arrest, and to say
17 otherwise is simply not credible.

18 He now looks at a recommended 14-year prison
19 sentence. That is if he continues to cooperate as he has
20 done. The maximum sentence is hundreds of years of
21 imprisonment.

22 He continued -- he has not -- I submit to the
23 court that he has not been a law abiding citizen for the
24 last five years. He simply hasn't. He may have not been
25 involved in an arson, but he's certainly had the mind-set to

14:19:19

1 participate in those kinds of activities.

2 An example supporting that hypothesis is that he
3 continued to have contact with his coconspirators until the
4 date of his arrest. He offered services to assist
5 Ms. Overaker to evade capture. He maintained his fraudulent
6 identification documents in the ready should he need to use
7 them for any purpose.

8 He suggested becoming a suicide bomber, as
9 outrageous as that sounds. That was what was going through
10 his thought processes. He discussed it with his girlfriend,
11 who believed that it would be better to blow up a bridge
12 rather than kill people.

13 He was excited over the 25 arsons in Maryland and
14 expressed support for that. He was excited about the
15 destruction of the University of Iowa research center and
16 expressed support for that. He continued to use drugs on a
17 daily basis, illegal drugs. He was a chronic marijuana
18 smoker and continued to do that until the day of his arrest.
19 Paraphernalia of marijuana and small amounts of marijuana
20 were discovered at his residence, of course.

21 He -- during the course of his activities, he used
22 sophisticated and extreme secrecy measures. He did use
23 pseudonyms and aliases throughout his arson career. He was
24 known as Bob, Kevin Paul Lilly, Kevin M. Golitz, and, of
25 course, Ronald Eugene Calloway.

14:21:08

1 During the course of the conspiracy, he wasn't
2 just a tagalong. He was an organizer and a leader in that
3 conspiracy.

4 The Cavel West Meat Packing Plant, he admitted to
5 investigators that he had in fact discovered that plant,
6 researched the arson, planned it. He realized that he
7 needed more people. He recruited others to assist him in
8 that particular endeavor and was on the ground when that
9 \$1.4 million arson was committed.

10 He planned the uncharged Dutch Girl Dairy arson on
11 his own. He manufactured devices. He is not simply a
12 driver or a wheel man. He is a full on -- he was fully on,
13 active in his arson career.

14 He also prepared the destructive devices used at
15 the Oakridge Ranger Station, and this is information that we
16 got from a cooperating witness.

17 During the criminal activity, he put others in
18 harm's way. I submit this to you, Your Honor, because the
19 question is, is he a danger to the community as he sits here
20 today. He's contrite and sad, but this is his behavior.
21 This is the person that he was and, I submit, until the day
22 of his arrest continued to be.

23 Now, today he's under stress because he's in
24 custody. But when he gets out, should he be allowed freedom
25 until the day of sentencing, which is, I submit, a very

14:22:50

1 short period of time from now, I don't know where this man
2 will go and what he will do, but I submit his behavior, his
3 past behavior, his past mind-set gives us a clear indicator
4 of what he might do. At Childers Meat, an arson that he was
5 involved in here in Eugene, a destructive device was placed
6 next to a natural gas meter. As the court is aware, that
7 destructive device was timed to go off after the first
8 destructive device went off.

9 And in fact is it went off after the first
10 responders arrived at Childers Meat Company to extinguish
11 the fire. The second device went off. The second device
12 was, again, next to a natural gas meter which could have
13 clearly caused harm to other individuals. His actions and
14 his coconspirators did put people in harm's way, clearly.

15 The United States Forest Industries, a device was
16 placed next to a passer -- excuse me -- next to the building
17 as a passerby attempted to put that fire out. The fuel that
18 supported the destructive device spilled out. It splashed
19 all around the passerby. The passerby was not hurt, but
20 only fortuitously.

21 At the Eugene Police Substation a similar event
22 occurred. He was involved with that one. Destructive
23 devices were placed in backpacks and on the back of a
24 bicycle. The bicycle device activated. A night watchman
25 saw that, tried to pull the bicycle away from the building.

14:24:21

1 Again, the fuel in that device splashed all around the night
2 watchman. Again, placed -- this defendant placed -- or his
3 activities placed people in harm's way.

4 Finally, Jefferson Poplar Farm, Government's
5 Exhibits 11 and 12 show basically, again, how this man and
6 his coconspirators placed people in harm's way. There was a
7 large liquid propane tank at that location. The liquid
8 propane tank was very close to the first responders, and the
9 device was placed next to that liquid propane tank in an
10 attempt to basically have the propane tank explode and cause
11 greater damage.

12 What Mr. Tubbs' coconspirators did not realize is
13 that they placed the destructive device, which was in close
14 proximity to the propane tank, they placed it next to a
15 plastic water pipe, and the fire from that particular device
16 was extinguished after the plastic water pipe melted through
17 and the water extinguished the device.

18 This defendant and counsel has not met the burden
19 for release in this particular case. They have offered no
20 exceptional reasons why detention would not be appropriate.
21 This man should be detained, must be detained. He continues
22 to be a risk. He continued up until the day of his arrest
23 to be actively supportive of the Animal Liberation Front and
24 Earth Liberation Front movement. Nothing changed until he
25 was arrested. Of course now, now that he's in custody, he

14:26:13

1 is contrite and willing to do whatever the court desires.

2 It's the government's position that he should be
3 detained and that he has not met the burden of proof by
4 clear and convincing evidence that there are exceptional
5 reasons for his release.

6 THE COURT: Mr. Friedman.

7 MR. FRIEDMAN: Thank you, Your Honor. I would
8 like to respond to counsel's characterization of Mr. Tubbs.

9 First of all, with regard to the law in this case,
10 we do submit, Your Honor, that under Garcia that
11 Mr. Tubbs -- that this court has a great degree of
12 discretion. I think counsel has acknowledged that.
13 Functionally there are no limits in terms of the court's
14 decision.

15 And I think that ultimately the question of
16 Mr. Tubbs' release does rest upon this court's decision with
17 regard to whether he constitutes a danger and whether he is
18 a flight risk.

19 The facts are, with regard to characterization of
20 of Mr. Matt Rossell with regard to this incident by the
21 BioDevices, this is being characterized as hush money. It's
22 no such thing. Mr. Rossell is a friend that Mr. Tubbs has
23 had since he lived -- they went to college together in
24 Nebraska. He's known him for a very, very long time. The
25 fact is -- the fact of the matter is if there were any

14:27:54

1 crime, and we submit that there wasn't any crime that
2 Mr. Rossell was involved in here whatsoever, the statute of
3 limits on that has long since past. Essentially Mr. Rossell
4 and his wife and their child are putting everything they
5 have got up to help ensure that Mr. Tubbs is going to be
6 here.

7 And they full well know that if they were to put
8 something up and Kevin were to disappear, they'd lose it.
9 They understand that. And they have that trust. They have
10 that faith in Mr. Tubbs.

11 The other thing I need to point out, Your Honor,
12 counsel has referred to both the Web site and the support
13 that's out there for him. Mr. Tubbs has no support. The
14 minute it became clear that Mr. Tubbs was cooperating with
15 the government in this case, all support vanished. In fact,
16 perhaps with the exception of Mr. Ferguson, who is
17 identified as CS-1 throughout many documents, Mr. Tubbs
18 unfortunately is reviled within this activist community
19 because he's been prepared to cooperate, has cooperated, and
20 is prepared to deal with the consequences of his actions in
21 this court. So there isn't any support out there. There's
22 no money flowing in.

23 The Web site that counsel's referred to, that's
24 been out. Perhaps it should have been shut down a long time
25 ago. But there isn't any money that's flowing into that.

14:29:21

1 That's basically something that just doesn't hold up.

2 Mr. Tubbs is not a violent man. Has never been a
3 violent man. The fact is that the role he played throughout
4 in this case is he was principally a lookout and driver.
5 Did he play some other role in some of these events? Yes.
6 There's no doubt that with regard to the Cavel West that
7 counsel's referred to, that was an idea.

8 But in terms of actually being an organizer or
9 planner, that wasn't Mr. -- that was not Mr. Tubbs. There
10 were other people involved in these things that actually had
11 the ability to do that. They were the ones that were doing
12 it, and Mr. Tubbs had, unfortunately, allowed himself to go
13 along with these things. Was he supportive? Yes. There's
14 no doubt that at a time in the past he was very supportive
15 of these things.

16 But the way counsel has looked at this, and,
17 again, I have -- I have listened to all the transcripts. I
18 have read all the 302s in this case. And the informant,
19 Mr. Ferguson, the bulk of these tapes are conversations that
20 he had with Mr. Tubbs.

21 And what you hear in these conversations is
22 somebody trying, just going out of their way, clearly at the
23 direction of the government, trying to go out of their way
24 to get Mr. Tubbs to make incriminating statements about
25 himself, to talk about things.

14:30:46

1 The fact is that, yes, he had -- there were --
2 there was a point in time in which he ended his
3 associations. Did he continue to have friendships with
4 people? Yes. He continued to have friendships. And more
5 so than anything else, it was Mr. Ferguson who suddenly sort
6 of reasserted himself into his life.

7 The fact is that with regard -- counsel has
8 pointed to Oakridge. Oakridge was something that
9 Mr. Ferguson was responsible for. Mr. Tubbs was not
10 responsible for that.

11 He has acknowledged and cooperated with the
12 government and has pled to nine incidents. There are many,
13 many other counts that go along with that, but essentially
14 it is nine incidents that he has acknowledged he's
15 responsible for, including incidents, and this is
16 significant, Your Honor, that he only played at most a very
17 peripheral role.

18 Counsel's referred to the Jefferson Poplar.
19 Mr. Tubbs was not present at the Jefferson Poplar. He was
20 part of the initial reconnaissance of that, but in terms of
21 placing these destructive devices, placing them near some
22 fuel mains and causing potential harm, he wasn't even there.
23 In fact, it's one of the defendants that's currently out on
24 bail that was responsible for that.

25 The only people that Mr. Tubbs knows that were

14:32:16

1 ever involved with the ALF or the ELF are the people that
2 are currently charged in this case. There isn't -- there
3 never was and there certainly is not now any sort of grand
4 conspiracy. The ability -- this notion that Mr. Tubbs is
5 going to be able to run off to Canada, the whole discussion
6 of those matters were something that Mr. Ferguson created.
7 It was something that he arranged in the first place in an
8 effort essentially years ago to silence what -- his
9 exgirlfriend, Ms. Overaker.

10 The fact is that this notion that there's an
11 ability to cross -- that he can cross over to Canada, I
12 mean, again, this is something that is nothing more, really,
13 than hyperbole because it's this idea that they can -- that
14 Mr. Tubbs would be capable of traveling through the woods in
15 the winter to cross the border, and that's just not
16 possible, and it's certainly not something that he could do
17 or would do. He simply has no desire to flee.

18 You know, this -- the discussion of what Mr. Tubbs
19 did and the other people involved in this case in terms of
20 the false identifications, yes, that's something that he's
21 acknowledged that he did and is responsible for. But Your
22 Honor, that's not part of who he is now. The fact that,
23 yes, there were -- some IDs were found when a safe was
24 opened, again, this is something that was never used. I'm
25 not quite sure what the government's argument is with regard

14:33:51

1 to the jury notice that Mr. Calloway received, but no doubt
2 when the ID was destroyed, there wasn't -- there wasn't
3 notice that was given to anyone else. It wasn't given to
4 DMV.

5 And certainly, you know, at that point in time, it
6 wasn't as if, and Your Honor understands, that it wasn't as
7 if Mr. Tubbs was going out and readily acknowledging that,
8 yes, I have done these things. It came on him. Yes, it
9 came on him. It came on just like everyone else involved in
10 this case. To the greatest extent, Mr. Tubbs thought that
11 what he had done was done. He -- there's probably a piece
12 of it where I think counsel is correct to say that there was
13 a certain -- the cause, the underlying cause, Your Honor,
14 was just, but in terms of what he did, he knows now, and
15 perhaps even knew then, that what he was doing was wrong.

16 And so it's one of these things that sort of got
17 drawn on, not because of some great conspiracy, Your Honor,
18 but more along the lines of a reliance upon friends, friends
19 that, you know, in hindsight, some of the actions that he
20 took, certainly with regard to the Eugene Police station,
21 the Eugene Police substation, this was done -- something --
22 essentially on the spur of the moment where someone else had
23 asked him to assist and all he did was act as a lookout.

24 The notion that Mr. Tubbs was responsible for
25 placing an incendiary device near Childers Meat, the

14:35:28

1 government knows that's not true. They know that it was
2 Mr. Ferguson that placed that. That Mr. Tubbs was in
3 fact -- he was the driver. He was the lookout. He was
4 quite a ways away at that time. Again, it was, you know,
5 Mr. Ferguson that was the individual that was responsible.

6 Mr. Tubbs has removed himself from this. No one
7 is asking -- I don't think -- you know, when the government
8 accepted pleas from, I think the press terms them the
9 noncooperators, they knew full well that this wasn't about
10 somebody saying everything that I have ever done is wrong.
11 But it was about acknowledging what people did do and
12 acknowledging that they are not part and not able to do that
13 anymore. They won't do that anymore. That's Mr. Tubbs,
14 Your Honor. He is not somebody that is capable of doing
15 this.

16 The fact of the matter is that he's been in
17 custody and has had absolutely no write-ups. Maybe that's
18 not a big thing for the court. But the fact is that this is
19 essentially a person that would not do any harm. He's
20 somebody that's not even capable of harming a spider.

21 On tape when Mr. Tubbs was asked specifically by
22 Mr. Ferguson whether or not he would do it again, He told me
23 directly that he would never participate in a direct action
24 again. He simply said it's not worth it. He said, No, it's
25 not worth it. He had -- long before -- again, long before

14:37:19

1 his arrest he had renounced his activities.

2 To suggest -- for counsel to suggest that
3 Mr. Tubbs was prepared to blow himself up or that he was
4 even thinking about that, again, I suggest is just this
5 hyperbole, this macheezmo. The fact of the matter is that
6 when Mr. Tubbs was arrested, maybe the government had a
7 perception that this was someone that was a true believer.
8 That was based upon, you know, what Mr. Ferguson perhaps had
9 told them. That he is prepared to die for his cause, I
10 suggest, Your Honor, that that image had to have been
11 shattered when, upon his arrest, he was prepared to
12 cooperate right away. This is not somebody who is prepared
13 to die for his cause. He is not about to blow himself up.

14 Again, Your Honor, the fact is that he has
15 provided. The government may -- may not -- choose to not
16 say that this is an extraordinary degree of cooperation, but
17 again, within the context of this case and the result of
18 what Mr. Tubbs has done, it is an extraordinary degree of
19 cooperation.

20 Mr. Tubbs is not a desperate man. The day he was
21 arrested he knew that the jig was up. And he's chosen to
22 cooperate fully without any limits, without any reservations
23 long before there was any plea.

24 We suggest, Your Honor, that this court is not --
25 would not be taking a risk in allowing Mr. Tubbs to be

14:39:20 1 released prior to sentencing if conditions can be properly
2 imposed on him. The consequences both to him personally, if
3 he were to violate any terms set forth, both with regard to
4 being remanded to custody and the consequence of his
5 sentence, is clear. The dire impact that it would have upon
6 his family and his friends is clear. We suggest that he is
7 not a violent person and he's not a risk to the community.

8 What I would like to ask, Your Honor, is to allow
9 Mr. Tubbs to address the court.

10 THE COURT: If he chooses to do that, that's fine
11 with the court.

12 Mr. Tubbs.

13 Mr. Engdall.

14 MR. ENGDALL: Your Honor, may I respond in
15 rebuttal to what counsel had to say before Mr. Tubbs makes
16 his plea, or should I do it afterwards?

17 THE COURT: Briefly. No. Go ahead. Either. It
18 might be more helpful to hear what he has to say.

19 MR. ENGDALL: All right. Thank you.

20 THE COURT: Mr. Tubbs, again, you are certainly
21 not obligated to say anything. If you choose to, you just
22 need to understand that this case is pending sentencing, and
23 so I'm going to take this into account for today and what
24 you say is -- I will remember it.

25 THE DEFENDANT: All right. Thank you for giving

14:40:38 1 me the opportunity to speak.

2 First of all, there were so many exaggerations and
3 stuff by Mr. Engdall, I don't know where to begin. The
4 examples that he uses that I was a threat by placing an
5 incendiary device by that Childers Meat Company or at the
6 U.S. Forest Industries, both of those incendiaries were set
7 and placed by Ferguson, and yet he feels comfortable with
8 Mr. Ferguson in the community and not posing a danger to the
9 community.

10 And then he mentioned me at Jefferson Poplar Farm.
11 I had been there once about six or eight months before that
12 incident happened to look at it, decided I didn't want
13 anything to do with it, and that was about it. One of the
14 people who did place that incendiary device there is
15 currently out on bail, and yet he makes it look like my
16 fault. I mean, there were so many exaggerations that it's
17 too many to even counter. I couldn't write it down fast
18 enough, and it's very dismaying that he would do that in
19 court.

20 But I will get on with my presentation. I want to
21 thank you for giving me the opportunity to speak today. And
22 first of all, I do want to apologize to you and the court
23 for having to take the time to deal with this case. I want
24 to apologize to the victims of the crimes that I was
25 involved in, and I'd like to apologize to my friends,

14:41:57

1 family, and loved ones for having to put them through this.

2 Your Honor, I respectfully ask that you allow me
3 to be released on bail just until sentencing. I understand
4 that the main concern is whether or not I am a flight risk.
5 But I can look you in your face today, Your Honor, look you
6 in your eyes and tell you in all honesty, I am not a flight
7 risk. I never was a flight risk. I know at my last release
8 hearing almost a year ago it was argued I was a flight risk
9 because I faced a potential sentence of life in prison. And
10 even at that time I wouldn't have fled. I wouldn't have
11 left my family.

12 And although I was denied release at that time,
13 Judge Coffin said my release could be reconsidered after I
14 accepted a plea deal. Well, now you know I did accept a
15 plea deal about six months ago, and now we know I no longer
16 face a sentence of life in prison but a sentence of up to 14
17 years.

18 And even though this is a sad, painful, and
19 heartbreaking amount of time for me and my loved ones, we
20 still know that one day I will be released and one day I
21 will be allowed to return home to my family. I'm not going
22 to throw that opportunity away for anything.

23 Furthermore, though my family may not have
24 millions of dollars in cash bonds and property to put up,
25 they are putting up everything that they have in order to

14:43:14

1 guarantee my return to court. If I fled, not only would I
2 lose my family and my plea deal, but my family would lose
3 everything that they have as well and be broke and homeless.
4 Anyone who suggests or even thinks I might do this to my
5 mom, my sister, my 14-year old niece, my fiancée, or my
6 friends and their five-month old baby doesn't know me and
7 doesn't know anything about the type of person I am. Right
8 now I have got a fiancée and a warm, loving home to return
9 to when I'm released from prison, and my mom and family are
10 anxiously awaiting the resolution of this traumatic
11 experience so I can return home. I'm not going to throw
12 that away.

13 Your Honor, I am not a terrorist. I never
14 intended to promote terrorism, and I am not a threat or a
15 danger to the community or anyone in it. Though I did take
16 part in some illegal and stupid activities years ago, I was
17 young and idealistic and caught up in the movement, and my
18 actions were wrong and illegal, even if my intentions were
19 good at the time.

20 It's been more than five years since that last
21 incident, and as you probably know, I got out of being
22 involved in anything like that on my own more than five
23 years ago and long before there was any detection by law
24 enforcement agents.

25 Up until my arrest I had been living peacefully in

14:44:29

1 the community. I was working more than 45 hours a week
2 every week managing a store. I was doing charitable work
3 for the community, and I basically lived, worked, and
4 interacted in the community all that time, and I didn't pose
5 a threat or danger to anyone in all those years.

6 Also, I was no longer involved in activism. In
7 fact, when the confidential informant, Jacob Ferguson, asked
8 me the very leading and provocative question on FBI wire,
9 would I ever participate in direct action again, I had told
10 him no, it's not worth it and that I was truly done with --
11 proving that I was truly done with illegal activism.

12 Instead, I was focusing on my family. I had a
13 fiancée now. I was working hard at a career. I was getting
14 promoted and moving up in the company. We bought and
15 started owning our first home. We got engaged and were
16 planning our wedding, and I was planning on starting a
17 family of my own. I basically turned my life completely
18 around, got it back on track, and was a happy and productive
19 member of the community. And I wasn't a danger to anyone in
20 all those five years and I'm still not today.

21 Furthermore, I have done everything asked of me
22 and everything I possibly can to help resolve all of these
23 cases in the most expeditious way possible. I have been
24 totally and completely cooperative. I don't know what else
25 they want. I'm not asking out for an extraordinary amount

14:45:57

1 of time or an extremely long time. Just enough time to wrap
2 up loose ends, have my mother and relatives come visit me.
3 Excuse me. Enough time to see my niece and my godchild and
4 see my family, tell them good-bye.

5 I also want to mention that I reside locally here
6 in Springfield, Oregon. I'm not asking to stay out of state
7 or even to travel out of state to visit anyone. I
8 understand I will be under house arrest and kept under some
9 very tight restrictions, and I will be happy to wear an
10 electronic monitoring device, check in with the court once
11 or twice a day every day as well as anything else that you
12 feel is necessary in order to release me.

13 I'm sorry for my illegal actions in this case, and
14 I'm truly sorry to all the individuals and the different
15 businesses that were affected. I felt this way for a long
16 time now, but I didn't come forward for fear of being sent
17 to prison for a long time and fear of losing my family.

18 But now I know that I will never lose my family.
19 They are sticking with me and they are helping me to get
20 through this scary and painful time. Though I'm not looking
21 forward to leaving them, I am prepared to serve my prison
22 time. It will be good to have all of this resolved and to
23 get this behind me once and for all so that I can return to
24 my loved ones, pick up the pieces of my life, and try to
25 focus on my family again.

14:47:25

1 Until then, I just finally request that you please
2 grant me this short time to spend with my family. Please.

3 THE COURT: Mr. Engdall.

4 MR. ENGDALL: Thank you, Your Honor. We are
5 familiar with Mr. Tubbs' pleas. He is not a victim here.
6 He claims that he is not a terrorist. I just don't think
7 that Mr. Tubbs gets what he has done. I don't think he gets
8 it.

9 He has always maintained and maintains today and
10 his counsel maintains today that he's a nonviolent person.
11 He's not a terrorist. Ask the victims of the arsons if they
12 were terrorized. Ask the researchers if they felt
13 terrorized, all their research destroyed.

14 He claims that he withdrew from the movement so
15 long ago. The truth of it is -- oh, and that he had
16 withdrawn from the movement. He didn't withdraw from the
17 movement. The government arrested him and took him away
18 from the movement.

19 The things that I cited to the court are taken
20 directly from the consensual recordings that Mr. Tubbs made
21 with the cooperating witness, Jacob Ferguson, and also
22 things that were stated to other cooperating witnesses.
23 They are not something that I have hatched up today and put
24 forth to the court to perpetrate a fraud on the court.
25 Mr. Tubbs claims that I know very well that he didn't place

14:48:53

1 the devices at Jefferson Poplar Farm or Cavel West. Of
2 course I do. But that was not the point. The point is that
3 Mr. Tubbs associated with, conspired with, and committed
4 arsons with these people that did those things, and he was
5 aware of it. He knew what was going on.

6 Quite frankly, I'm dismayed that he still doesn't
7 understand the full gravity of what's going on and what his
8 behavior has caused.

9 And quite frankly, until the moment of his arrest,
10 he was still fully engaged with the movement, still had the
11 mind-set, support of that movement. And that, I think,
12 bears great weight with regard to considering his release.

13 There's a presumption of detention in this
14 particular case. He hasn't overborne that presumption. He
15 talks about other coconspirators being released, Mr. McGowan
16 in the first place. Mr. Tubbs was involved with 16
17 different arsons. He's pled to nine. Mr. McGowan was
18 involved in two arsons. Pled to both. Has \$1.6 million in
19 bail posted. Had an incredibly onerous reporting scheme
20 that was required of him, and he's gone along with that.

21 Other defendants. Ms. Tankersley was involved in
22 a single arson. Ms. Savoie was involved in two arsons.
23 Mr. Paul in one. Ms. Kolar in one; then another at the
24 University of Washington, so two total. Mr. Thurston, one.
25 Yes, they are out. They are out on release. But they

14:50:42

1 weren't involved as completely and totally immersed in this
2 conspiracy as was Mr. Tubbs.

3 I believe that this plea from Mr. Tubbs is
4 heartfelt. I believe that he is sincere this moment in what
5 he tells the court about being sorry for what he has done.
6 I believe that sorrow, though, comes not from necessarily
7 bringing himself to justice, but sorry that he was in fact
8 arrested and now finds himself in this particular
9 circumstance.

10 Again, Your Honor, with regard to his release,
11 what is required of Mr. Tubbs is to show that there are
12 exceptional reasons why his detention should not be
13 continued. Exceptional reasons. There are no exceptional
14 reasons here. He has not done anything that's exceptional.
15 He has -- other than admitting his -- his wrongfulness and
16 advised the government of all his participation.

17 While that's important, and I don't deny that
18 that's incredibly important, it's not exceptional when you
19 consider all the other defendants in the universe of
20 prosecution who have done the same things and are seeking to
21 be released from detention.

22 He is like all of the others. He is not an
23 exceptional person.

24 He is not -- what he has done with regard to the
25 circumstances for detention is not exceptional. It's what

14:52:31

1 we see every day.

2 So he's not borne the burden of overcoming that
3 high burden. So it's the government's position and we'll
4 urge the court to continue to have this man detained.
5 There's three months before he will be sentenced. It's a
6 short period of time for him to wait until that sentencing
7 date.

8 To continue to have him be detained because he is
9 a flight risk. He did continue to have communication with
10 other coconspirators. Mr. McGowan did not. He did suggest
11 that he could blow himself up. Mr. McGowan did not. He did
12 suggest that he could help fugitives from justice remain
13 fugitives from justice and assist them. Mr. McGowan did
14 not. He is not in similar circumstances to Mr. McGowan or
15 any of the other defendants who are now out on bail or
16 otherwise. He deserves to be detained. What we are asking
17 is quite simply that there are no truly unusual factors in
18 the case that he has put forth to the court to make
19 continued detention of him unreasonable. Detention is very
20 reasonable in this case. The community deserves to have him
21 detained. He has caused great harm to the community, he is
22 a flight risk, and he continues to be a danger.

23 THE COURT: First, I want to thank you for your
24 statement. I appreciate your taking the time to write
25 something out and to make comments to the court. So thank

14:54:14

1 you very much for those statements. And to the extent that
2 they are heartfelt and they are sincere and honest, I take
3 them as such.

4 But under 18 U.S.C. ° 3143(a)(2), a person who has
5 been found guilty of an offense involving a crime of
6 violence with a maximum sentence of ten years or more shall
7 be detained pending sentence unless, and then the factors as
8 outlined, (i), the court finds there is a substantial
9 likelihood that the motion for acquittal or new trial will
10 be granted. That's not an applicable prong in this
11 instance. Or second, the government does not recommend a
12 sentence of imprisonment; and the court finds by clear and
13 convincing evidence that the defendant is not likely to flee
14 and does not pose a danger to the community.

15 The factors, the exceptional factors that were
16 outlined in your memorandum, and they essentially boiled
17 down to four, the cooperation that was received by the
18 government from you upon your arrest. The statements about
19 your lack of desire to flee. The false identification, that
20 that's behind you and that that's not what you are intending
21 or would be intending to do. You stated, as indicated by
22 your lawyer, you didn't intend to do that a year ago when
23 you were looking at a potential life sentence and now with
24 your family placing resources in the totality on behalf of
25 you, you would not be intending to flee. The status of the

14:56:05

1 codefendants, that was another factor that you outlined.
2 And then finally, your desire to have your family members
3 see you in civilian attire and in a -- not a lockdown
4 situation.

5 You know, individually and collectively, none of
6 those are factors that warrant a determination that they
7 reach an exceptional or an extraordinary factor, even if I
8 were to reach them.

9 I don't reach them because I do find that you have
10 not met the burden, and the presumption of detention remains
11 in effect because I do consider you potentially a flight
12 risk and I do consider the circumstances such that it's a
13 danger to the community to release you even during this
14 short period of time.

15 So for those reasons as stated, and I do
16 understand the Garcia case, and I have fashioned orders
17 where those exceptional circumstances have been met, and I
18 don't find that they, in my mind, in looking at the four
19 that were placed before the court or any other factor that I
20 could elicit through the paperwork and the documents and the
21 letters that you submitted, that the court finds that I
22 could fashion an order that would overcome the burden that
23 is required at this stage of the proceedings.

24 And I beg also to note that Judge Coffin, I
25 believe last week, is that correct, had a hearing? Did

14:57:26

1 Judge Coffin have a hearing on this or did you come directly
2 to this court?

3 MR. FRIEDMAN: Neither, Your Honor.

4 MR. ENGDALL: The original hearing before
5 Judge Coffin was last February, Your Honor.

6 MR. FRIEDMAN: Yes.

7 THE COURT: So he had the original hearing a year
8 ago.

9 MR. ENGDALL: Correct.

10 THE COURT: All right. I was under the
11 misimpression that he had had an earlier hearing after that
12 initial hearing.

13 But I don't believe under the circumstances -- and
14 I have worked on a number of these cases. Judge Coffin has
15 handled most of the preliminary matters and I have reviewed
16 and looked at specific cases. But under the context of each
17 of those individual cases, I don't find this one to warrant
18 a determination different than a requirement what the
19 statute obligates the court to do, and that is detain him
20 because that burden has not been overcome. So the motion is
21 denied.

22 And I believe we have a change of plea in another
23 case next. I don't know if the lawyers are here and ready
24 to go.

25 THE CLERK: They are.

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THE COURT: All right. We'll just take that up

now.

(The proceedings were concluded this
17th day of January, 2007.)

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I hereby certify that the foregoing is a true and correct transcript of the oral proceedings had in the above-entitled matter, to the best of my skill and ability, dated this 22nd day of February, 2007.

Kristi L. Anderson

Kristi L. Anderson, Certified Real Estate Reporter

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