

"Team Outreach" Daily Reports re the North Dakota Valve Turner Trial (Michael Foster & Sam Jessup)

October 1 – 9, 2017
by Nicole Bradford

Pre-Trial Report - October 1

Dear Friends (if you are attending trial, read all the way to the bottom),

Almost a year to the day since the Valve Turners #ShutItDown, we gather in North Dakota for Michael Foster and Sam Jessup's #ClimateTrial. We're cozy, lumped in a hotel room, preparing for trial, looking over today's media coverage, and expressing gratitude for each other.

We are ready and, frankly, excited. Today we revisited the valve site — on the way driving past so many, ever-flat stretches of fields in various states of harvest. Every few miles we saw this great deposit of muddy sugar beets, hulking mounds 20 feet high and growing, ready for processing. Among the changing leaves and the rusty scenes of human production and harvest, it's easy to imagine that those working this land feel the climate catastrophe creeping in — if not by name, then by unreliable seasons.

You know, there are only 100 eligible jurors in Pembina County? Thirteen of those fine folks will be called to duty tomorrow at the County Courthouse, and among those, it's easy to imagine more than one will recognize the extraordinary citizenry of Michael and Sam who are standing up to crimes against humanity and the earth.

We'll keep you posted on [Facebook](#), [@ClimateDA](#), and www.shutitdown.today. Please share and spread the story. [Today's AP article](#).

Much Gratitude for your love and support.
Love, Nicky

Summary Report of Day 1 Trial - October 2

Oh Friends,

The first day was energizing and long and funny and heartening. It was heartening and surprising and theatrical. For those who were at Ken's jury selections, hold onto your hats: we're not done with jury selection after eight and one-half hours at court.

It's beautiful here, and the sky was open and full of color today. The courthouse is beautiful; it was built in 1912 and inside is all Greco-Roman and peach marble. Elected Judge Laurie Fontaine presides over the warm wooded courtroom, and the seats that weren't filled by jurors were filled with Michael's and Sam's supporters. The defense table was stacked with Michael Foster and Sam Jessup's legal team. Representing Michael is North Dakotan Mike Hoffman and the Climate Defense Project's Alice Cherry. Representing Sam is William Kirschner (Willie) and the Climate Disobedience Center's founder Lauren Regan.

Twelve jurors were quickly seated, and Hoffman began questioning folks in a quiet, patient voice, and few words. Then Kirschner took over, voluble, quick, friendly, with a Brooklyn accent. The prosecution followed, inserting doubt and shifting the tone.

In late afternoon, the sides agreed on a weary twelve, and then we started the process *again* with twelve more potential jurors, because both sides might strike several of the first twelve in "peremptory strikes" (in English: for any reason at all) tomorrow. The second round of potential jurors was much... angrier.

Have you heard about this case? the lawyers asked. Many had, on the evening news last year or last night. *Do you have feelings about it?* Many expressed a generalized worry about their communities. *Can you serve as an impartial juror?* In the morning everyone had said yes, but not in the afternoon; several were stricken very quickly. *What are your feelings on protests?* There was little tolerance for dissent, taking knees or otherwise.

All conversations converged on Standing Rock by end of day: "the protests." But as the potential jurors get hold of the pipeline protest theme, others get bolder.

Many times we were to hear: "Take him to jail." But it was also beautiful and enlightening: "I'd like to hear the belief behind a protest." There are folks who were thoughtful and down-to-earth: agronomists, teachers, nurses, mothers, nannies, dental hygienists, bankers, farmers, more farmers, factory workers, bean, sugar beet, and machinists. Everyone a worker, and most with a deep desire for productivity. But also, for kindness. With even phrases of vitriol there was an element of humor, and the courtroom laughed and laughed again and again. In guffaw, in nervousness, in a veiled anguish.

So it's end of day and there's no settled jury...but I'll let you know and, in closing, I'll tell: On the way to the courthouse, a forty-minute drive, Ken retrieved an embossed yellow-and-gold ticket from his wallet. "My Mom gave this to me for Christmas, it might be time to pass it on."...and hands to Michael a *Get out of jail free* card.

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Much Gratitude for your love and support.
Love, Nicky

Note: If you are attending the trial...

Please, come to the court with with the ultimate respect for the law. In our demeanor and bearing we come to witness the process of justice and in demonstrating this trust, we ask the system to trust us and consider what *true justice* looks like. Michael and Sam ask that we do not antagonize the court. We are representatives of the climate justice movement and we are guests of Pembina County. Please come in prayerful presence.

Courthouse rules and customs:

- No weapons. Even tiny pocket knives will be turned away by the detectors at the courthouse entrance.
- No hats in the courtroom — even women! In most jurisdictions, the bailiff will ask you to remove your hat. Before entering the courtroom, please ensure your phone is silent, and unless you are a member of the trial media team, turned off. Disruption from cell phone noises or photos of any kind could cause the judge to ban all phones from the courtroom.
- Please do not talk to a juror (or member of the jury pool before the jury is chosen) under any circumstance.
- NEVER PHOTOGRAPH A JUROR (this includes members of the jury pool before the jury is chosen).
- No signs or banners — these would be confiscated and do not convey the kind of respect for the court that Michael and Sam have requested.
- Sober and respectful demeanor and attire — No message T-shirts, buttons, signs, etc. Again, we hope to win hearts and minds of people whose idea of appropriate dress may be more conservative than ours. Our serious, respectful, and attentive presence showing support for Michael and his actions is crucial.

Summary Report of Day 2 Trial - October 3

Today was a satisfying day: we have a jury!

Two-fifths of the people in the jury pool were dismissed for cause, unwilling to comply with the legal requirement to presume innocence. One potential juror said there had to be consequences for laws broken under any circumstances. “If we didn’t have laws we’d have chaos. There’s always consequences for choices.”

“Don’t you think that this law, the presumption of innocence, is a good alternative to chaos?” Michael’s attorney, Hoffman returned. “I want to know that you are not just going to find these fellows guilty because the police arrested them. I want you to hear all the evidence and make a fair decision.”

“I would *like* to say that I’m the kind of person that does not pass judgement,” the potential juror responded. “But unfortunately, after the discussion yesterday, there are some preconceived notions. I trust law enforcement, and when there have been criminal charges placed, part of my mind asks, well there’s got to be a reason, it’s been a year. There’s a good reason we’re here. Law enforcement is sworn in and they do their duty. I assume they are guilty.”

Ironically, the presumption of innocence until proven guilty is a law that North Dakotans again and again proclaimed they couldn’t adhere to, despite repeated prompting from the judge.

Jury selection was fascinating. By the time the jury was seated, we had a strong sense of some of their characters; how many children they had; and where they worked, grew up, and had lived.

Then we heard opening arguments. The prosecutor framed TransCanada as the victim and accused Michael and Sam of being prideful hypocrites. “He rode a jet fuel airplane; he didn’t walk here. Sam came from Vermont, rented a car, and it wasn’t a hybrid... their purpose wasn’t to see the beautiful gorge or get to know the people, [they came here to make videos to show to] people in California and New York.”

Hoffman and Kirschner’s opening remarks called on the educational and moral legacy of Michael Foster, and on Sam Jessup’s deep belief in the democratic system. The remarks framed their action as a noble confrontation of what’s broken in our democracy — where profits are held in higher regard than people and planet.

We’re all up late, preparing for tomorrow. There’s a campfire, camp food, and the murmurs of people planning for a better future.

Until tomorrow,
Nicky Bradford

P.S. We’ll keep you posted on [Facebook](#), [@ClimateDA](#), and www.shutitdown.today. Please share and spread the story.

Summary Report of Day 3 Trial - October 4

Dear Supporters,

Today, filmmaker Deia Schlosberg’s footage from the action was admitted into evidence. The prosecution’s choice of video was strange. They ran a sustained shot with nary a sound for twenty minutes. Nothing but scene of road, barren rock, and dirt field. Near the end Michael and Sam walk by. The jury tries to keep necks craned dutifully towards the screen. Staring

uncomfortably, one juror scratched his head, another looks perplexed at the prosecution, another drops their head into a ready nap position.

The attorneys are adversarial. The jury was excused several times for legal rigamarole. After lunch, things got hot when the arresting officer gave testimony. The prosecution tried to paint alarm by asking the witness about his experience with a pipeline explosion he responded to in Minnesota, 2007. Relevance?

“Crude oil and flames were shooting 200 feet in the air, two burned in that explosion. I went to local residents to evacuate them from their homes,” he reported while looking meaningfully to jurors. Lawyers objected, the jury was removed, and quick research on part of the Civil Disobedience Center’s Lauren Regan revealed that, in fact, the federal Department of Transportation fined Enbridge \$2.4 million dollars for failure to safely maintain pipelines.

After the defense threatened to request a mistrial, the judge brings two options back to the defense, either cross-examine the witness to reveal the company’s fault or deliver a curative instruction to the jury, “This incident has no relation or similarity to what happened in Pembina County. The explosion in Minnesota was caused by the company itself.” The defense chose the latter.

The arresting officer’s testimony continues, describing the contents of Sam’s pockets at arrest: rocks, cords, batteries, and things like that. And we imagine Sam, walking around North Dakota in the gray, windy, gorgeous starkness picking up the prettiest stones.

Tomorrow we anticipate a decision on whether or not expert testimony is allowed, and we anticipate Michael and Sam taking the stand.

Love and Gratitude for your support,
Nicky Bradford

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Summary Report of Day 4 Trial - October 5

Oh Dearests,

Dr. James Hansen is here along with minister Rebecca Voelkel and scholar Tom Hastings. North Dakota barred the truth from its courts this morning, denying the motion to allow their expert testimony. In response, we held a press conference on the lawn, [watch here](#). Seriously, go to the [Facebook page](#) and look at all the crazy cool stuff we did today, it’s off the hook.

In court we learned a lot about what we already know. Michael Foster went to North Dakota and shut down the Keystone Pipeline! We heard from a manager from TransCanada's liquids pipeline control center. Emily Johnston says he looks like Clark Kent, and he does. He's cute and well-suited and exudes a friendly Canadian air. He's also been flanked all week by TransCanada's lawyers, both with stern visage.

Clark Kent's testimony was rife with euphemism: operational upset, high consequence area, pipe integrity program, worst case discharge, the liquids. There are 44 manual valves in the Keystone pipeline; it takes 28 minutes for the pipeline to shutdown; and it takes 8 hours to get it running again — and that process (allegedly) costs the company about 1.2 million dollars. We learned that TransCanada keeps all company clocks on Mountain Standard Time, which when pressed several times for clarification, Clark Kent responded emphatically, "the control center doesn't convert time for *anybody*." And that was the tenor of his testimony, the spokesperson for a corporation that is outside of time.

There were more videos. Motel rooms, Michael speaking to the camera, "We're going to go with bolt cutters and cut the padlock on the gate, and walk in, and call the company, and let them know we're there. And we're gonna say you better shut down the pipeline because we're going to shut off the valve. Turn the valve, it's so simple." Yup. It is. And it was difficult to suppress laughter at the prosecution's triumphant big reveal.

"The State rests." And then both Hoffman and Kirschner moved for acquittal on one or more of Sam's and Michael's charges, all denied after the judge took fifteen minutes in chambers to consider.

We are grateful and honored to spend this eve in the company of movement giants. Imagine us, huddled in a hotel room that we've transformed into a film studio, capturing interviews and the would-be depositions of Tom Hastings, Rebecca Voelkel, and Dr. James Hansen. While they didn't testify in open court, the message is reverberating around the country.

In Ethical Spectacle,
Nicky Bradford

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Summary Report of Day 5 Trial & Verdict - October 6

Hi,

On the way to the courthouse, we are driving these long straight routes; above us, low in the sky, a heavy full moon setting. There's mist in sharp ribbons just below the meager tree lines and it's all, just, so starkly beautiful. Today, Michael and Sam were convicted of almost all their

charges. Conscious of my own naivety I will tell you, I expected better from North Dakota. But we are here and we came ready for this.

Thursday night Michael realized that the eighteen seconds of a film the prosecution had played the day prior was from a longer video made by supporter Connie Barlow. In it Michael is featured saying all of the things that he and Sam might have expressed in the best of testimonies. But, in this case, they were not confronted with rebuttal. Under no other circumstances would a movement video have been admitted as evidence save this accident. No other testimonies needed — and the defense rests.

Closing arguments crept from inspiring to profane. Both Hoffman and Kirschner invoked the lives of those dedicated to the struggle against tyranny. They both emboldened the jury to act against a “government who doesn’t listen” where the “money goes into politics, but no one pays for you.” Kirschner hit it home saying, “You are the voice of this community. You can make your voice heard in North Dakota by bringing back a verdict that says ‘NO.’ We are not going to punish people for letting us know what goes on in the world.”

In response, the assistant to the State’s Attorney who (not joking) rolls a podium up to the jury to speak, all Sean Spicer style, and rants for twenty minutes about how allowing people with strong ethical conviction to reshape United States law would pave the way for Sharia law, “to allow the killing of even *your* own children.”

And truly, we were breathless with the astounding overreach of it. And, it did feel like the prosecution had pushed the jurors too far. Some of them were weeping as they announced so many guilty sentences. So there it is. We prepared for this, we came, we had the conversations; and we leave with the moon at our backs and those stretched, harvest fields forever in mind.

Love, Nicky Bradford

You can help the legal defense fund by donating here now: <https://actionfund-climatedisobedience.nationbuilder.com/donate>

Final Report, Heading Home - October 8

Hello Friends,

Michael and Sam seem equanimous now that they’ve been unburdened from the anticipation of trial. Michael was convicted of three counts (two felonies), but acquitted of reckless endangerment. Sam was convicted of felony criminal mischief and misdemeanor criminal trespass. Sentencing was initially scheduled on MLK Day (which wasn’t listed as a holiday on the court calendar); but once this incongruence was discovered, it was rescheduled to January 18th. Until then, Michael and Sam are free on original bond conditions.

People are making their way back East and West by plane, train, and automobile. Sam heads back to his home and work and people in Vermont. Michael, Annette, and Mosey (Emily's dog) are riding with Emily in her newly built-out, plywood-fantasy, camper mini-van. Leonard's van broke down in Montana, but Ken is snug at home. If you're in the Seattle area, come [this Wednesday to a big ol' celebration](#) with Michael, Annette, and Emily (see below, we need you bad).

You've reached out with heavy thoughts and we want you to know that everyone is doing *ok*. This is the work that we entered into with open eyes. We went to North Dakota to withdraw our consent from a system that puts corporate profits over a stable climate, and also to normalize and move people to radical disobedience. If the mission is working, what are you willing to do?

I came home today to bouncing children, swinging heads to punk music, and in their little bodies I saw the same rage/joy that animates me in my best moments, an innate state that makes a human prone to *question* and *act*. Our work harnessing that impulse in concert with so many others' impulses is the big work. Let's keep at that. Please show up, and when you can't be there, [donate so other people can](#).

We're on a short runway to [Leonard's trial](#), November 21st. Then it's Minnesota, then jail support, and then... well, that's up to you. What you might already know is that the people who are driven to stretch their beings towards the future come with a certain vulnerability that makes our thresholds for love a little porous. So, when we come together to celebrate our efforts and successes, a good time is had.

So this Wednesday, in Seattle, join us as we welcome Michael home, raise money for his legal fund, and honor the one-year anniversary of #ShutItDown. [October 11th, 6-9pm at Sole Repair](#), with 350 Seattle musical talent from the [Protect What You Love](#) album, and libation for purchase. Please share and reach out to volunteer: nicky@350seattle.org

Love,
Nicky Bradford