

Suspect may admit he set fire but isn't arsonist

By Bill Bishop, *Register Guard*, May 31, 2001

Arson defendant Jeffrey Michael Luers is expected to testify in his trial that he intentionally set fire to trucks at a Eugene dealership last summer, but the act was criminal mischief and not arson. Luers' legal defense hinges on the fine points in laws describing first-degree arson, his lawyer, Brian Barnes, said Wednesday at the opening of the non jury trial.

The 22-year-old Eugene man faces a mandatory 7 1/2 -year Measure 11 prison term if convicted of first-degree arson in a fire that destroyed three trucks at the Romania Chevrolet lot off Franklin Boulevard in June. He could get a longer sentence if convicted of other charges related to an attempted arson at the Tyree Oil Co. in the Whiteaker neighborhood last May. Luers and a co-defendant told police after their arrests that they were anarchists. The Romania fire coincided with a seven-week series of demonstrations by activists last summer.

In a last-minute legal maneuver this week, Luers waived his right to a trial by jury. Barnes asked Lane County Circuit Judge Lyle Velure to decide the case. Barnes told Velure he doubts Luers can get a fair hearing by a jury because of a spate of recent arson fires, including one that did \$1 million in damage to the same Romania lot in March, and because the case requires intellectual analysis instead of emotional reaction.

"This case is about several technicalities, if you will," Barnes told Velure. "He (Luers) is going to talk about what he did with respect to the Romania case. He's going to tell you it was never his intention to hurt anyone. Several precautions were taken to make sure that wouldn't happen." Barnes said Luers scouted the truck lot on several occasions to determine the night watchman's schedule. Luers also determined that a nearby Oregon Department of Transportation building was unoccupied, he said. For Luers to be convicted of first-degree arson, the prosecutor must prove he started a fire that damaged an occupied dwelling or that recklessly endangered a person, Barnes said. For the act to be reckless, the suspect must be aware of and consciously disregard a risk to another person that is a gross deviation from society's norms, he said.

Under the law, that provision doesn't apply to firefighters and police officers who respond to fires unless they're seriously injured, Barnes said. No one was injured in the Romania fire. "He made a conscious choice to avoid danger to others," Barnes said. "That, we submit, makes or breaks the case." Regarding attempted arson charges in the Tyree Oil Co. case, Barnes told Velure that no proof links Luers to the crime. A single fingerprint found on an undetonated firebomb can't be identified and doesn't match Luers', Barnes said.

The materials used in the firebomb, while similar to those found in a storage space rented by Luers, don't prove Luers did the crime, he said. Many people, some who share Luers' philosophy, had keys to the storage area. Some slept there at times. Others worked or hung out there, Barnes said.

"They don't have the evidence to pin it (the Tyree incident) on anyone," Barnes said. "It's pure guesswork and speculation that more than one person committed that crime. That fingerprint does not belong to Mr. Luers." Deputy District Attorney Caren Tracy is expected to use the rest of the week presenting evidence against Luers. She made no opening statement Wednesday. A co-defendant in the two crimes, Craig Andrew Marshall, admitted in a November plea bargain that he conspired to commit first-degree arson and possessed a destructive device. The convictions related only to the Romania fire.

Marshall, 27, was sentenced to 5 1/2 years in prison, but could end up serving just under two years if he qualifies for the state's boot camp program.