

MATT PAWA'S OPENING STATEMENT
LOBSTER BOAT BLOCKADE
Commonwealth v. Jay O'Hara
Commonwealth v. Ken Ward

My name is Matt Pawa and I, along with my co-counsel Joan Fund, have the privilege and honor of representing Ken Ward and Jay O'Hara.

Jay O'Hara and Ken Ward are an unlikely duo. Jay is 32 years old, lives in Bourne, Massachusetts and makes his modest living as a part-time sail maker - sewing sails my machine and by hand. He lives a mostly quiet life on Cape Cod, where he grew up, the son of public school teachers and where he has worked on, sailed and skippered boats his whole life.

The most important thing in Jay O'Hara's life is his Quaker faith, which he holds deeply and dearly and which is the motivating force in everything he does.

Ken Ward doesn't know all that much about boats – but he knows a lot about protecting our air and water and about fighting for the rights of the little guy against big corporations. For many years Ken has been a national leader in the movement to protect environment. He grew up in Rhode Island and has lived in many places, including Boston and Hull, Massachusetts. He is 57, divorced and has a 14 year old son.

Ken has spent his whole life on fighting for clean air, clean water and the rights of the consumer over the big corporations. During his career he has been the director of several statewide organizations, overseen scores of employees and is the founder of a dozen different projects to make our environment clean and healthy, including several major national projects

But as different as they are, Jay O'Hara and Ken Ward have something in common – something vitally important. They are men of principle. And they are willing to stand up and fight for what is right.

And they have something else in common too. They have been paying close attention to what the scientists are telling us about global warming and what we need to do about it. And what Ken and Jay have learned in recent years has scared them and motivated them to take positive action.

You will hear testimony in this case from one of the world's leading scientists on the issue of global warming - Dr. James Hansen, who was the director of the NASA Goddard Institute for Space Studies for over 20 years.

Dr. Hansen is going to tell you that when fossil fuels like coal, oil and natural gas are burned, carbon dioxide is emitted into the atmosphere. Carbon dioxide, also known as CO₂, is the most important greenhouse gas. And he will tell you that there is a clear scientific consensus that greenhouse gases cause global warming by a simple process – they trap heat in the earth's atmosphere that otherwise would escape into space.

Dr. Hansen will tell you that there is now so much carbon dioxide in the atmosphere from the burning of coal oil and natural gas that we are at a point of grave danger where we could cause sea levels to rise 20 feet or more by melting the planet's ice caps, causing flooding of the world's coastlines where billions of people live, including millions of people right here in Massachusetts. Dr. Hansen will tell you that in order to avoid this dangerous scenario, we need to keep carbon dioxide levels at 350 ppm. That is the magic number – 350 ppm. And in order to do that, we must stop burning coal right away because coal is the fossil fuel that, when burned, gives off the most carbon dioxide.

Dr. Hansen will also tell you that every ton of coal we burn – and every ton of carbon dioxide emitted into the atmosphere matters and makes a difference in the process of global warming.

And one of the biggest carbon dioxide polluters in the Northeastern United States is right here in southeastern Massachusetts - the Brayton Point Power Plant, which emits millions of tons of carbon dioxide every year and is a notorious polluter.

Ken Ward and Jay O'Hara were following the science closely when Dr. Hansen and nine other scientists jointly published the first scientific paper in the fall 2008 that announced that 350 is the danger point.

By this time, Ken and Jay had already been doing everything they could to use existing laws to combat global warming and to change the laws to fight global warming. When Dr. Hansen and the other scientists published their 350 paper, Jay and other folks brought Dr. Hansen to Massachusetts to lobby the legislature. But the law was not changed.

Jay did everything he could think of to help do his part to stop global warming – when he was not sewing sails he was working on a variety of projects to raise awareness and try to get positive

action from our leaders on global warming. But our leaders have not acted on the warning that 350 is the danger point.

For Ken it had been nearly a lifetime of fighting to protect the environment but nothing was working on the issue of global warming. No lawsuit, no lobbying effort, no treaty – there simply was no law to stop the Brayton Point Power Plant from emitting millions of tons of carbon dioxide – no matter what the consequences may be h on the climate and on the people of Massachusetts and beyond.

Ken and Jay had met in 2009 at a party to honor college students who had spent their summers working on the global warming issue.

In 2012 they ran into each other unexpectedly. Jay was participating in an all-night vigil at City Hall Plaza in Boston to try to get the US Senate candidates Scott Brown and Elizabeth Warren to address the issue of global warming because they candidates had not even mentioned the issue in their debates. This was the same night that Hurricane Sandy made its notorious landing on the east coast – so the weather in Boston was not good. Ken heard about the vigil and showed up with hot cider and donuts to cheer up the vigil participants. He ran into Jay, took Jay aside and shared an idea he had been considering.

Ken wanted to buy a small boat and try to block a ship delivering thousands of tons coal to Brayton Point Power Plant. Jay agreed that this was the right idea because everything else had failed.

And they decided that they would do this as a peaceful, non-violent protest action because they believed it was time to do something that would actually work to stop the burning of fossil fuels - and spark a broader protest movement that could stop global warming

They began planning their non-violent action.

It was easy to track the movement of coal delivery ships - that information is publicly avail online. From their research they knew that a ship called the Energy Enterprise would be arriving on approximately May 15, 2013 with a massive shipment for Brayton Point of 40,000 tons of coal.

Ken and Jay bought an old lobster boat in Newport, Rhode Island and fixed it up. They put banners on it announcing their message to the world - that coal is stupid and that 350 is the

danger point. They named it the Henry David T after one of our nation's most cherished historical figures - Henry David Thoreau, who called on people to stand up for their beliefs.

On May 15, 2013 they held a small prayer vigil in Newport. They boarded the Henry David I and motored out of Newport with Jay as the skipper.

They motored up Narragansett Bay past the Revolutionary War site at Fort Adams Park, under the Mt Hope Bridge and into Mt Hope Bay.

From there they proceeded into the Brayton point ship channel.

They dropped a heavy, 200 pound anchor chained to bottom boat with a bike lock. They kept the key in a pocket. They were anchored next to the pier that the power plant uses to unload coal from ships. Immediately after anchoring, Ken called the police. He wanted to let the authorities know their position in order to protect safety and avoid any possibility of a collision and to let the police know that they were there as a peaceful, non-violent protest. The Coast Guard was dispatched.

Ken and Jay took down 350 banners so the Coast Guard could see inside the boat and understand that there were no weapons. Ken and Jay went to the stern, sat down and put their hands in plain sight and waited for the Coast Guard.

The Coast Guard arrived and asked permission to board. Ken and Jay agreed and the Coast Guard undertook a routine safety inspection that found nothing wrong other than a missing fog horn.

By this time Somerset Police had arrived on the pier.

Shortly after the Coast Guard arrived, the Energy Enterprise arrived and tied up to the end of the pier at the Brayon Point Power Plant.

After the Coast Guard Inspection - the Coast Guard told them they were ordered to leave the ship channel or they could be fined \$40,000 per day. This caught them off guard. Jay and Ken were not expecting this massive financial hit. Ken saw his son's college fund going up in smoke, Jay - a part time sailmaker -could not afford even one day of this fine.

So Ken and Jay agreed to leave.

But there was a problem - the weight of anchor and the fact that it was locked to the bottom of boat out of reach.

So Ken and Jay asked for permission for the Coast Guard to cut the chain and they then used a long hook to get ahold of the chain and started cutting through the chain with a hacksaw. But before they could finish, the Coast Guard changed its mind and told them they could not leave the anchor on the sea floor.

So Ken and Jay tried to pull up the anchor with their hands for an hour - maybe two - but it was too heavy. They pulled, and pulled and pulled as hard as they could but they could not move the anchor.

A State trooper dive team was brought in, and dove down to confirm the anchor was not caught on anything. Ken and Jay gave them the bike lock key and the divers unlocked the chain and the chain was brought aboard the Henry David T.

Ken and Jay then called and hired a private salvage company to come and haul up the anchor.

The Coast Guard confirmed the salvage company was coming and they left - except for a few Coast Guard personnel who waited nearby to make sure the salvage company arrived.

The salvage company arrived and took the anchor chain from Ken and Jay.

And Ken and Jay – having done what they were ordered to do - motored away in the Henry David T.

The Coast Guard – the lead agency in charge of the situation – did not arrest them.

The Coast Guard - the federal government - did not charge them with a crime.

The Coast Guard - the federal government - did not fine them.

The state police did not arrest them.

The local Somerset police did not arrest them.

In the months that followed Ken and Jay's brave action, hundreds of people protested at the Brayton Point Power Plant. Ken and Jay joined these protests and, not long after, the owners of the Brayton Point Power Plant announced that they were closing the plant.

Ladies and gentlemen, the evidence will show that global warming presents a clear and imminent danger to humanity and to Massachusetts.

The evidence will show that the burning of 40,000 tons of coal at Brayton Point Power Plant is something that would contribute to global warming.

And the evidence will show that Ken and Jay reasonably expected that their action would be effective in avoiding the burning of 40,000 tons of coal and would also be effective in sparking a movement to shut down the Brayton Point Power Plant and even in sparking a broader movement to stop global warming.

Ken and Jay are charged with disorderly conduct. But the evidence will show that on May 15, 2013, Ken and Jay cooperated in every way possible with the orders they were given. They were never threatening to the officers – in fact they were respectful and cooperative in every way. Ken and Jay made no threats to anyone, they were never loud or obnoxious, were never disrespectful, never hurled insults at anyone or did anything similar.

The atmosphere was friendly - Jay and the Coast Guard personnel told boating stories to each other. There was even some joking going on between Ken and Jay and the Coast Guard. The state police were friendly to Ken and Jay and focused on trying to help them get underway.

But the local Somerset police viewed this situation differently. A somerset police officer stared menacingly at Ken and Jay for hours from a nearby boat. Another somerset officer made a menacing noise from the pier with a rifle – even though Ken and Jay were unarmed and peaceful.

The local authorities have charged Ken and Jay with failing to act to avoid a boat collision. But there was no collision and there was never even a close call. Ken and Jay never acted in a way to cause a near boat collision - just the opposite - they called the police immediately in order to make sure everyone, including the Energy Enterprise, knew of their position. The Henry David

T was easily visible to the Energy Enterprise and to the Brayton Point employees even before the Enterprise arrived at the ship channel.

The local authorities have charged Ken and Kay with negligently operating their boat in a manner that endangered the lives or safety of the public. But the evidence will also show that Ken and Jay were in control of their boat at all times. They carefully maneuvered their boat, under control, took deliberate actions and announced their position in order to make sure that there was no safety hazard to anyone. And the evidence will in fact show that no one's life or safety was in any danger at any time.

Ladies and gentlemen, it is the government's burden to prove these criminal charges beyond a reasonable doubt. That burden is a high one – the judge will explain that burden to you after you've heard all the evidence. At the end of the case, after you've heard all the facts, we are going to ask you for a verdict of not guilty on all counts because the facts of what actually happened will make it impossible for the government to carry its burden in this case. Thank you.