

Terri Wood, OSB #88332
Law Office of Terri Wood, P.C.
730 Van Buren Street
Eugene, Oregon 97402
541-484-4171
Fax: 485-5923
Email: twood@callatg.com

Richard L. Fredericks, OSB #832034
750 Lawrence Street
Eugene, Oregon 97401
541-343-6118
Fax: 683-9240
Email: rlfred@comcast.net

Attorneys for Stanislas Meyerhoff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,
Plaintiff,

-VS-

STANISLAS GREGORY MEYERHOFF,
Defendant

Case Nos. CR-06-60078-01-AA
CR-06-60122-02-AA

REQUEST FOR JUDICIAL NOTICE OF
FACTS IN SUPPORT OF
OPPOSITION TO TERRORISM
ENHANCEMENT

Stanislas Meyerhoff, by and through his undersigned counsel, pursuant to Rule 201, Federal Rules of Evidence, requests this Court to take judicial notice of

the following facts in connection with its determination of the application of the terrorism enhancement, U.S.S.G. §3A1.4:

1. Since its enactment in 1995, the courts have applied the terrorism enhancement, U.S.S.G. §3A1.4, in only two cases where arson was the offense of highest severity; and neither of those two cases involved arsons committed by defendants known to be affiliated with the ELF or ALF.

2. The Government has not sought the terrorism enhancement against any defendants known to be affiliated with ELF or ALF in any previous arson prosecution of such defendants.

3. The Government is not seeking the terrorism enhancement in the cases of two defendants currently being prosecuted in the Western District of Washington for crimes that are among the overt acts in the conspiracy count against Mr. Meyerhoff and his co-defendants in this District; *United States v. Jennifer Kolar*, CR 06-5612FDB (W.D. WA.) & *United States v. Lacey Phillabaum*, CR 06-5613FDB (W.D. WA.).

4. None of Mr. Meyerhoff's crimes of conviction involved a substantial risk of serious bodily injury or death.

5. Stanislas Meyerhoff did not commit any of his crimes of conviction so as to knowingly create a substantial risk of serious bodily injury or death.

POINTS & AUTHORITIES

FRE 201(d) provides that the Court shall take judicial notice of adjudicative facts if requested by a party and supplied with the necessary information. Judicial notice may be taken at any stage of the proceeding. §201(f). Judicial notice is appropriate if the facts in question are “not subject to reasonable dispute,” and either “generally known within the territorial jurisdiction of the trial court” or readily capable of determination “by resort to sources whose accuracy cannot reasonably be questioned.” §201(b).

The facts recited above in paragraphs 1–5 are relied upon in Mr. Meyerhoff’s Memorandum of Law in Opposition to Application of the Terrorism Enhancement. The facts in paragraphs 1–3, come from, respectively, the staff of the United States Guidelines Commission, searches performed on Westlaw, and other extra-judicial sources. However, the Government has not yet disputed the accuracy of these facts, and it is the only party that has access to all of the information needed to confirm or controvert these facts. The defense submits that if the Government can offer no contrary facts, then accuracy cannot be reasonably questioned, and the Court should take judicial notice of the facts as stated in paragraphs 1–3 above.

The facts stated in paragraphs 4–5 are based on a thorough review of the Government’s discovery in this case, and consultation with experts in arson investigation, fire suppression, and related fields. If determination of these facts becomes essential to the application of the terrorism enhancement, as urged by the defense, Mr. Meyerhoff should not be required to prove a negative. If the Government has evidence that any of his crimes of conviction involved a substantial risk of serious bodily injury or death, or him knowingly creating such

risks, it should be required to offer affirmative evidence of such facts—not simply contrary opinions—or alternatively concede the Court may take judicial notice as requested herein.

Respectfully submitted this 11th day of May 2007.

...../S/.....
Terri Wood, OSB 88332
Attorney for Stanislas Meyerhoff

...../S/.....
Richard Fredericks, OSB 83203
Attorney for Stanislas Meyerhoff