A MALICIOUS PROSECUTION

By Bradford Metcalf

Definitions:

Malicious Prosecution: One begun in malice without probable cause to believe the charges can be sustained ... Black's Law Dictionary, 6th Ed

Kangaroo Court: Term descriptive of a sham legal proceeding in which a person's rights are totally disregarded and in which the result is a foregone conclusion because of the bias of the court or other tribunal.

The following story is an example of federal prosecution. It is not an exception, but the rule, of what happens in federal courtrooms on a daily basis.

In a time of political unrest in our nation, I associated with a group of like-minded individuals. The only thing that we all had in common was a desire for a return of the Constitution of the United States. This group was what is called the militia by both the press and by legal definition.

I was a firearms hobbyist, having been a federally licensed firearms dealer for 6 years. I was a competitive shooter, reloader, amateur machinist and tinkerer.

I, like many other Americans, loved my country, however, didn't like what I saw was going on with the mis-administration of our government. I understood that those mis-administrators not only were a threat to our liberties, but to the whole civilization. This leadership had set America up as a target for any terrorist group.

Though I had been a Boy Scout for only a short time, I had learned a vitally important lesson — Be Prepared. Most of the other like-minded associates had felt that preparedness was a good idea, as well. For what? Natural and man-made disasters, economic collapse, war and the old concern of our forefathers — tyranny.

So what **did** these like-minded individuals do? A small group of them would show up at my place to roll around in the dirt and weeds, dig holes in the ground, shoot at the target range and tell tall tales. I had 37 acres to play in and a good time was had by all.

Ken Carter became the commander of my group, not due to his

wonderful leadership skills, but because Carter had emphysema, a heart condition, and a bad back. He didn't work. He loved to talk on the phone and watch the news. Carter could be depended upon to call up members of the group to show up for training — a time consuming chore, and he was very good at it.

Carter had an attitude about government infringement of American rights. Many people do — at least those who could see what has happened to those rights. No one in this group thought that having an opinion was criminal. We were soon to find out otherwise.

In August, 1997, after at least three botched attempts, the BATF and FBI, assisted by the Michigan State Police, conducted a "raid" on my rural home. The State Police pulled me over for a "traffic stop", while returning home from my night job. An ATF-SRT member "detained" me at gun point. Shortly, 70+ agents were swarming over my house. I had warning that the ATF may come, so I had carefully checked over everything I had and determined I had nothing illegal. That didn't slow down the ATF, in the slightest. The search warrant specified a .50 caliber machinegun and a .30 caliber machinegun.

My wife, and her children, were at home, during this time. My 17-year-old stepdaughter was "frisked" by a male ATF agent who, when done feeling her to his satisfaction, pulled her waistband out and looked down into her shorts. One has to wonder what he was looking for — machineguns?

ATF "special agent" Mark Semear, told me they had found three machineguns. I told Smear that what they had found were LEGALLY purchased parts sets — that a completed right sideplate (which I did not possess) is what constitutes a machinegun. Thirty minutes later, after calling their office to check this out, Semear led a group of agents back into the house, with the battle cry, "We are going in for the sideplates!"

I asked twice for an attorney, and was twice refused. ATF's response — "You haven't been arrested, only detained". After EIGHT hours of rummaging through my personal belongings, ATF secured another warrant — this time for all legal-to-own items. I watched in disgust as ATF carried my gun collection of 28 **LEGAL** firearms out to their cars, along with my computer, software, many of my videos and books, and **armloads** of my own personal property — which included my gold and silver, gun parts, knives, ammunition, hunting and camping gear, etc. They just helped themselves, while I was forced to sit by a tree, to observe the carnage of my rights. Afterwards, several friends videotaped the damage the agents did to the inside of my house — ripping down insulation, traipsing dirt throughout the house, strewing papers and debris

everywhere, and leaving their empty pizza boxes and water jugs for me to dispose of. A "detention" normally only lasts about 20-30 minutes. My "detention" lasted 10 hours. Detentions normally don't involve handcuffs, and certainly not behind one's back. I was cuffed for about 2 hours.

I filed a lawsuit against the government which was dismissed by the "Honorable" Richard Alan Enslen.

Seven months later, March, 1998, Carter, and another man - Randy Graham, and I, were arrested. We three "defendants" were arraigned and given a preliminary exam. NO indictment had yet been delivered. No bond was set, due to the defendants being "too dangerous". If we were so "dangerous", why did the ATF wait for 7 months to arrest us?

In the eight months that it took to go to trial, a number of interesting things happened. Seventeen pre-trial motions had been filed. None were answered promptly by the judge. After Graham and Carter had agreed to a plea bargain of 3 years, I was locked up in solitary confinement, unable to do any legal research, or make contact with family or legal counsel. The purpose was to coerce a plea bargain.

U.S. Attorney Lloyd K. Meyer offered me a 3-year "bargain", but I refused, asserting my innocence. Graham was told that he would have to lie about me in order to get his "bargain" — a guaranteed 3 year sentence. Graham refused to lie, was forced to go to trial, and for this, he was sentenced to 55 years in federal prison. While Graham was awaiting trial, his dislocated shoulder went untreated, even after the trial judge was requested to order treatment for him.

Carter, on the other hand, not only "got on the bus" and lied about Graham and me, but he also agreed to become an informant, and reported everything on everyone he had ever met. His agreement would be to serve a 3 year sentence, and receive a heart / lung transplant, and back surgery. I found that Carter only received a bypass and one lung. He was sentenced to 5 years (51 months — with good time). Carter died a year after being released from prison.

It came out at my trial, in the "hearsay" evidence, that Carter had been conspiring with an undercover ATF agent for months, to start a war with the federal government. I was given a copy of the Grand Jury transcripts, showing the forbidden, unethical one-sided (ex parte) communications the investigating agents had with Judge Richard Alan Enslen, the Chief Judge in the Western District of Michigan. He was told that my "group" had planned on killing him and other federal judges. Not only was this a lie, but I was never given an opportunity

to rebut the accusation. Ex parte communication is a structural error, one that if someone in the judiciary would address it, would require the entire dismissal of this case. This judge, obviously, was biased against me, before he ever laid eyes upon me.

Judge Enslen ignored everything that was inconvenient to getting a conviction. He ignored Graham's affidavit about the coercion, intimidation, and subornation of perjury by Assistant U.S. Attorney Meyer, in trying to obtain a plea bargain from him. He cancelled my evidentiary hearing pertaining to Graham. When I asked what type of conspiracy charge (1, 2, 3 or 4 element) I had to defend against, Judge Enslen replied, "Ask your attorney." (I had appeared pro se).

Judge Enslen disallowed about 1% of Meyer's evidence against me. My objections to hearsay and / or irrelevance went unheeded. When it came time for me to admit my evidence, Judge Enslen disallowed everything except the previously played audio tapes (that had been cut and edited) of the government telephone tap. Judge Enslen also disallowed me expert witnesses.

My evidence consisted of letters, advertisements from commercial publications, government statements, and government publications. All of it was admissible evidence — also if the judge had wanted it to be. All of it was intended to show my innocence, however, none of it was allowed by Judge Enslen. Judge Enslen didn't care that I was a family man, had been working full time at Kellogg's, in Battle Creek, for 10 years, prior to my arrest, or the fact that I had no prior criminal history. There would be no place for truth in this hearing.

No evidence had ever been presented by the prosecutor, to prove any conspiracy by me. Judge Enslen had been shown that the alleged silencer was actually a rifle barrel extension. He had been shown the statute that stated the "destructive device" was a legal signaling device. He had also been requested by me to force the prosecutor to supply video footage of the alleged machineguns. In short, Judge Enslen knew I was NOT guilty of any of the charges placed against me.

Throughout trial, Judge Enslen continuously attributed ALL of Carter's statements (from the telephone tapes), to me, even though I had never even heard many of those statements. When it became apparent to me that the only law that Judge Enslen paid any attention to was "case law" (previously decided cases), I cited two Supreme Court cases that should have caused a dismissal of everything but the conspiracy charge. However, Judge Enslen decided to ignore me, and these court cases.

Judge Enslen had been asked to suppress my seized gun collection as

evidence, due to the firearms being ALL legally owned and configured. However, the collection was paraded in front of the jury to prejudice them. The prosecutor alleged, "Why else would he have all these guns except to wage war against the government?" The jury, as I predicted, bought it.

I had asked for an expert witness, however, was told that if I had had a lawyer, I could have had an expert witness appointed.

After I examined one of my (out of two) witnesses, Prosecutor Lloyd K. Meyer started his cross examination and then called for a recess. Meyer then grabbed his friend, ATF agent Semear, and proceeded into the foyer to question and intimidate my witness (my witness was a head taller than either of these two). When I found out what had happened, I brought it to the attention of Judge Enslen. Judge Enslen had a "hearing" (without the jury in the courtroom), to see if any damage had been done. After listening to the witness state that he had, in fact, been intimidated, Judge Enslen compared the sizes of the prosecutor and ATF agent to the size of the "tampered" witness, stating that he couldn't understand how he could have felt intimidated by these two, and deemed that no harm had been done. According to Judge Enslen, a larger man (my witness), when accosted by two smaller federal employees (presumably both packing guns) has no reason to be intimidated. So much for obvious witness tampering and intimidation.

After my closing statement, Judge Enslen told the jury to ignore my comments regarding the Second Amendment and other constitutional issues. Judge Enslen, twice, instructed the jury, that in order to find me guilty of conspiracy, they must unanimously find me guilty of at least one of the four objects of the conspiracy. Judge Enslen then supplied the jury with a verdict form that allowed a general verdict — leaving me without any idea of what I was convicted of, or how to appeal it.

Throughout trial, Judge Enslen made it clear that he hadn't read any of my pre-trial motions. He had denied <u>all 17</u> of these motions (several had challenged the sufficiency of the indictment), however, a month later, stating for the record, Judge Enslen states, "I <u>haven't even read the indictment, I don't know what you are charged with.</u>" So, how could the judge rule the indictment sufficient if he had never read the indictment?

At my sentencing hearing (May, 1999), I argued my "use of a firearm in the commission of a violent crime" (18 U.S.C. 924(c)), according to the Sentencing Guidelines, should NOT be the mandatory 30 years (for "machineguns"), as prosecutor Lloyd Meyer had requested, nor the mandatory 10 years (for a "semiautomatic assault weapon") as Judge Enslen eventually ruled — but a mandatory 5 years (for a "firearm"),

because I was convicted of "use or carry" of a firearm. Judge Enslen told me that I should feel lucky. I had just saved 20 years of my life (sentencing me to 40 years, instead of 60 years), by my successfully arguing that machineguns were not used in the "violent crime" (according to Judge Enslen, having a political opinion is a violent crime). NOW I will be released when I am 87 years old, instead of being 107 years old. In other words, Judge Enslen had sentenced me to 40 years without parole for having **LEGAL** firearms, and for having an opinion — a virtual sentence for life in prison!

At sentencing, Judge Enslen "over-ruled" all of my objections to the Pre-Sentence Investigation Report (PSIR). Under the sentencing statute [F.R.Cr.P. Rule 32(c)], the judge, for each matter in controversy, MUST make either a finding on the allegation, or declare the matter won't affect sentencing. Judge Enslen did neither. I objected to almost every issue in the PSIR, due to inaccuracies, irrelevance, or unproven allegations at trial.

Early in the 20th Century, the Supreme Court ruled that jurisdiction may be challenged at any point in the proceeding, and if jurisdiction is not proven, the case must be dismissed. When I challenged jurisdiction at sentencing, Judge Enslen stated that my "motion was untimely."

When I asked the court for my right to have a copy of the trial transcripts, I was refused. Normally a prisoner is considered indigent unless proven otherwise (especially when he hasn't had employment in 14 months). However, not in this case. Judge Enslen had sustained my argument about trust ownership of my house, but then ruled that I could sell my house in order to pay for transcripts to affect my appeal. I found out that the first copies of the transcripts would cost $5 per page — paying for the transcription and typing. Purchasing the whole set would cost me $10,000 — $12,000. The court clerks office would only charge 50 cents per page to anyone needing further copies. Of course, the first person who needs the transcripts would be the prisoner. (Later, my house trust was invaded by the state and liquidated, contrary to my protestations, and the proceeds given to others).

I appealed.

During the several extensions of time requested by prosecutor Lloyd K. Meyer (which were granted to him), to respond to my appeal, Meyer wrote a letter to the Sixth Circuit Court of Appeals, stating that I had been found guilty of "conspiring to murder the governor of Michigan, a federal senator, and Western District of Michigan federal judges, as well as to blow up the Federal Building in Battle Creek." These allegations of Meyer's were never alleged or brought up at trial.

It didn't take much for the appeals court to shoot my appeal down. It was apparent that a law clerk had written the opinion based solely on the brief of the prosecutor and the lies contained in the "extension" letter — the opinion had repeated both verbatim, with none of my issues being addressed. Quite obviously, NO judge had ever seen my paperwork. There were no signatures from judges, only the court clerk. NO relief was given to me, at all. In fact, my appeal was labeled "frivolous".

I then petitioned the Supreme Court to hear my case. I was shot down on December 11, 2000 — coincidently, at the exact time the election case of Bush v. Gore was being heard. How could the Supreme Court pay attention to my case (to decide it's worthiness to be heard by them) when the Justices were tied up with choosing a president and making history. The answer was simple — the law clerks, again, had denied me.

I petitioned for a rehearing. Again, I was denied — by the law clerks, since the Justices were on "holiday recess". I knew that Justices Thomas and Scalia have practically begged for a pure Second Amendment case for years. They didn't have an opportunity to see my petition. Justice still had not been served.

My family scraped together enough money to have an attorney prepare a habeas corpus petition under 28 U.S.C., section 2255.

I, again, submitted a motion for the judge to recuse himself from the case, considering the extrajudicial source of apparent bias from the ex parte communication. When confronted with the actual evidence, Judge Enslen "danced around it" by saying he could to talk to marshals anytime. True to form, he slam-dunked my 2255 motion, and the Motion to Recuse, as well as denied me a Certificate of Appealability. The Sixth Circuit Court of Appeals deprived me of my "right" to a certificate of appealability. It was my "right", due to my having met the requirements specified by law.

I petitioned the Supreme Court, clearly demonstrating the miscarriage of justice. However, since petitions for certiorari are "discretionary", I was, again, denied my day in court.

I later filed a pair of motions with the original district court. One of those motions was another motion requesting Judge Enslen to recuse himself (for the fourth time). The other motion, (F.R.C.P. Rule 60(b)), showed fraud by the prosecutor with 68 (known) ethics violations. Judge Enslen denied the recusal motion and transferred the fraud motion to the appeals court for me to request a certificate of appealability. Both the judge and I knew that the motion did not qualify as a habeas

corpus petition (therefore, also not qualifying for a certificate of appealability). I appealed Judge Enslen's decision.

I filed my notice of appeal as a matter of right, asking for a docket number and briefing schedule. I received neither. After numerous letters and phone calls, I finally, out of frustration, simply filed an appeal brief. The brief was promptly returned to me, with no explanation.

I filed a petition for a writ of mandamus with the U.S. Supreme Court. This is an "extraordinary writ", meaning that it is rarely issued, except when all other avenues of relief have been exhausted. The mandamus is an order from a higher court to force (usually) a lower court to do its job. I qualified. The Supreme Court simply refused to grant me my day in court (for the fourth time). I have been before the courts 20 times now, (District, Appellate, Supreme Courts), with NO adjudication on my issues.

I filed a motion for the return of my property (approximately $50,000 worth of legal firearms), in January, 2005. Initially, Judge Enslen stated that I could designate someone to receive them, however, in his final order, he denied the return of those firearms in July / August, 2005. The appeals court denied my petition, ignoring its own precedential case law and using Eighth Circuit case law, which didn't even apply to me. This action represents the final deprivation of all of my material possessions, by the federal government, with no considerations as to what the law dictates.

In January, 2005, I filed a Petition for Clemency, (pardon request), with President Bush, via the Pardon Attorney, at the U.S. Department of Justice. I was informed that most clemency request investigations take 18-24 months. After 40 months, my Pardon Request was denied with a statement that clemency was not deemed appropriate at this time. Unfortunately, 800 other petitioners were also recommended negatively by the Pardon Attorney. It was the same for another 800 people who were denied several months earlier. It didn't matter that I had submitted incontrovertible evidence of my innocence.

In January, 2007, I filed a complaint (lawsuit and habeas corpus) in Washington, D.C. against the Federal Bureau of Prisons. This pertained to numerous constitutional violations and the unlawful taking of monies from me (i.e., extortion). After a year and a half, the D.C. courts, again, without addressing my issues, blew me off. Unfortunately, the Supreme Court declined to hear my case, again.

In July, 2012, I refiled the 2005 clemency petition with the Pardon Attorney. It was again denied in 2014.

In April, 2012, I filed a complaint to the BOP's Regional Office about the warden at FCI Terre Haute. They did nothing, so I filed it at the BOP's Central Office, who also did nothing. I then sent a copy to the U.S. Attorney General. A later Freedom of Information Act request showed that the A.G. never received my complaint. In August, since my mail was being severely tampered with (diverted/delayed/destroyed), I gave a copy of the complaint to an outgoing prisoner who was supposed to contact me later. The BOP intercepted it and put me in the SHU("the hole"). My sanction was a loss of 7 days of good time and 30 days commissary/email restriction. I spent 146 days in isolation and was shipped to a maximum security prison as retaliation. So much for the constitutional right to "petition the government for a redress of grievances."

In January, 2014, I filed an actual innocence §2241 petition to the Supreme Court. They returned it, stating that the petition did not comply with some of their rules. Most of their assertions were blatantly untrue, of which I informed them when I made the corrections that were needed. In March, they issued an order which stated that my petition was dismissed because my In Forma Pauperis motion was denied, ostensibly because it was either frivolous or malicious. In April, I submitted a motion for [reconsideration/ clarification/ and adjudication of a jurisdictional challenge]. On April 17, the Court issued another order for me to comply with another rule. I had 15 days to reply. Surprise! I never received it. In early May, I asked my brother to check the docket. He said that no entries had been made in my case. I resubmitted my reconsideration motion on May 26, then I received a copy of the April 17th order (which hadn't made it to the docket 3 weeks after issuance). The Court replied with an order stating that I was, "out of time" to respond (to an order which I had not received). This is typical of the misconduct endemic in our federal judicial system. This ping pong game got tiresome so I prepared the same petition for submission to the local district court.

In October, 2014, I filed essentially the same petition in the court for the Southern District of West Virginia. I had 2 issues raised: 1) Judge bias, which caused convictions for which I was: 2) Actually Innocent. The challenge to original jurisdiction was also submitted. Without any consideration of the innocence issues, the Court dismissed the petition. On appeal, the Court stated, "We have reviewed the record and find no reversible error." A petition for rehearing yielded the usual denial.

As of this writing(Nov., 2018), I have spent over 20 years in federal prisons for a LEGAL gun collection and exercising my supposed rights to free speech, religion, association and petitioning the government for a

redress of grievances. Since the beginning of this nightmare, I have lost my job, my home and property, and my personal possessions. I also went through a divorce and have lost contact with my daughter.

Although this has been a "cornucopia of governmental misconduct," these are the tactics which are used on a daily basis to ensure convictions in many, if not most, federal prosecutions. So where does it end? Apparently it won't without Divine Intervention.

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